



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312049-21

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<b>Development</b>	Erection of lighting on amenity and pedestrian routes.
<b>Location</b>	Lisdoonvarna Sport and Amenity Park, Rathbaun, Lisdoonvarna Co Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	21170
<b>Applicant(s)</b>	Lisdoonvarna Failte Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Patrick Fitzgerald (Trustee of St. Breckan's GAA)
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	21 <sup>st</sup> of January 2022
<b>Inspector</b>	Adrian Ormsby

## 1.0 Site Location and Description

- 1.1. The application site is a primarily a large amenity space located in the settlement boundary of Lisdoonvarna with a stated site area of 14.13ha (Question 11 of Application form).
- 1.2. The Aille River and its tributary run along the southern and northern boundaries of the site. The eastern site boundary includes lands onto the R476 Regional Road where a vehicular entrance provides access to the site, the Pavilion Community Hall and a car park. There are also pedestrian accesses to the site located to the north eastern and western boundaries of the site. The Pavilion building is a Protected Structure with the RPS Reference No. 628.
- 1.3. The site includes an existing amenity trail/walk which starts along the southern side of the Pavilion building before and bounds the perimeter of the site connecting to the pedestrian entrance on the public road at the north east corner. A number of mature trees bound the site and trail and are particularly primate to the path along its northern extent.
- 1.4. St Brackens GAA pitch and lands to the rear of the clubhouse are located within the application site boundary. There is a hard surfaced area along the western boundary of the pitch that provides connectivity between the northern and southern parts of the amenity trail.

## 2.0 Proposed Development

- 2.1. The proposed development originally comprised of-
  - The erection of public LED lighting along existing amenity trails and pedestrian routes
  - 63 number 6m high columns
  - The drawing showed a “proposed trail” to the west of the GAA pitch
- 2.2. The Planning Authority sought Further information on the 21/04/21 in relation to-
  - The applicants legal interest in the site

- Further details of the lighting having regard light spillage and the proximity of an area with medium to high habit suitability for bats
- Unsolicited further information received on the 30/03/21 showing a revised site layout and submission of a final proposed layout was requested.
- Proposals for management of the walkway

2.3. Following the submission of Further Information on the 26/07/21 which was readvertised as Significant Further Information and submitted on the 27/09/21 the application has been revised to provide for-

- 54 number 6m high columns as identified on the drawings (the drawing also states 63 number columns.
- The drawing showed the “proposed trail” located further west than originally proposed

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to grant permission on the 05/11/21, subject to four conditions including the following-

- C.2-
  - (a) Details to be submitted for agreement that the lighting design is compliant with Bat Conservation Ireland Guidelines for lighting.
  - (b) lighting to have low negative impact through the use of narrow spectrum lights with no UV content, low pressure sodium and warm white LED bulbs together with directional down lights which illuminate below the horizontal plane.
- C.3-
  - (a) The columns shall comprise octagonal galvanised steel and certified to IS EN 40 Series
  - A minimum distance of 2m between the ESB mini pillar and first column as per ESB Guidelines

- C.4
  - Lighting shall only be between 16.00 hrs and 22.00 hrs

## 4.0 Planning Authority Reports

### 4.1. Planning Reports

The final report of the Planning Officer signed the 02/11/21 & 03/11/21 reflects the decision of the Planning Authority. The following is noted from that report-

- The applicant has not proven unequivocally that they have sufficient legal interest to carry out the development in particular the section of walkway and lighting proposed along the western boundary of the GAA pitch.
- It is not considered reasonable to omit by condition the section of lighting along the GAA pitch.
- The layout shall be conditioned in accordance with revised plans received on the 27/09/21.
- The applicants shall be advised in note re section 34(13) of the Act.
- Proposals for lighting to avoid impacts on residential amenity are noted as satisfactory.
- Lighting proposals are not supported by an ecologist and can be addressed by condition.
- Having regard to recreation zoning of the site it is considered the proposal would be in accordance with proper planning and sustainable development of the area.

### 4.2. Other Technical Reports

- Roads and Transportation 19/03/21- Further Information requested
- West Clare Municipal District Office 06/04/21- No observations
- Environmental Awareness Officer 15/04/21- Further information requested

- Given the proximity of the Allie River and as surrounding area has a medium to high habitat suitability for bats, light spillage onto adjoining lands should be avoided.
- Lighting should be designed in accordance with BCI Ireland Guidelines for Lighting (document on file).

#### 4.3. Prescribed Bodies

- None

#### 4.4. Third Party Observations

- Three third party submissions were received on the initial application. The issues raised can be summarised as follows-
  - Only certain parts of the proposal objected to
  - Anti-social behaviour
  - Climate Change
  - Inaccurate drawings
  - Impact on residential amenity
  - The applicants cannot claim legal rights to GAA lands and the GAA club cannot give consent because it would be contrary to GAA Rules
- Three further submissions were received on the submitted significant further information. These can be summarised as follows-
  - Two of the observers have raised no objection to the revised proposal.
  - A brief history is provided of how the GAA club acquired their land.
  - Insurance related concerns raised .
  - The revised plan is misleading and inaccurate and does not accurately show the required works.
  - There are level differences between the two properties which would have to be buttressed to prevent instability or subsidence on the GAA side.

- The applicants will have to prevent trespass into GAA lands.
- The submission is accompanied by legal documents relating to the sale and ownership of the GAA lands.
- A representation was received on the 14/04/21 from-
  - Councillor Joe Garrihy

## 5.0 Planning History

Within or partially within the application site boundary-

- 21198- a gym facility to the rear of the existing sports complex **Grant**, 28/04/2021, Applicant and indicated owner of site- St Breckan's GAA Club
- 18609- extension to the existing crèche, **Grant** of outline 07/09/2018, Applicant and indicated owner of site- Applicant and indicated owner of site- Lisdoonvarna Failte
- 14706/ ABP- 244472- retention permission for works at the rear of the Roadside Tavern, **Grant**, 22/06/2015, Applicant and indicated owner of site- Peter Curtin & Lisdoonvarna Failte Ltd
- 08/847- an all-weather sports facility, **Grant**, 08/07/2008 Applicant and indicated owner of site- Lisdoonvarna Failte
- 07/2017- a public playground, grant 21/10/2007, applicant- Failte Lisdoonvarna, indicated owner- other
- 06/2473- a sports field and athletics track, **Grant**, 12/12/2006, Applicant- Lisdoonvarna Failte

## 6.0 Policy Context

### 6.1. Legislation

#### 6.1.1. Planning and Development Acts 2000 (as amended)

- Section 34 (13)

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

6.1.2. Planning and Development Regulations 2001 as (amended)

- Article 22 (2) (g)-
  - *A planning application referred to in sub-article (1) shall be accompanied by – ....*
  - (g) where the applicant is not the legal owner of the land or structure concerned –*
    - (i) the written consent of the owner to make the application....*
- Article 26
  - *(1) On receipt of a planning application, a planning authority shall consider whether the applicant has complied with the requirements of articles 18, 19(1)(a) and 22 and, as may be appropriate, of article 24 or 25*
  - *(2) Where a planning authority considers that a planning application complies with the requirements of articles 18, 19(1)(a) and 22 and, as may be appropriate, of article 24 or 25, it shall stamp each document with the date of its receipt and—*
    - (a) send to the applicant an acknowledgement stating the date of receipt of the application, .....*
  - *(3) Where, following consideration of an application under sub-article (1), a planning authority considers that-*
    - (a) any of the requirements of articles 18, 19(1)(a) or 22 and, as may be appropriate, of article 24 or 25 has not been complied with, or*
    - (b) the notice in the newspaper or the site notice, because of its content or for any other reason, is misleading or inadequate for the information of the public, the planning application shall be invalid.*

## 6.2. Ministerial Guidelines

### 6.2.1. Development Management Guidelines for Planning Authorities (DEHLG, 2007)- Section 5.13-

*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.*

## 6.3. Development Plan

The Clare County Development Plan 2017-2023 is the operative development plan. The settlement boundary for Lisdoonvarna is identified on Page 45, Volume 3d of the County Development Plan- West Clare Municipal District-

*“Lisdoonvarna is identified as a ‘small town’. The objective for small towns is to ensure that their existing role is maintained and strengthened. This will be achieved through adequate zoning of lands and the promotion of appropriately scaled and well-designed urban development. (P.42).”*



The lands enclosed within the planning application site red line boundary benefit from a number of land use zonings as per the Lisdoonvarna Settlement Plan Map P. 45. A description for each zoning is described in section 19.4 of the County Plan.

The zonings and objectives include-

- *Open Space- It is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities. The open space/park areas could contain active play facilities such as children's play areas but these would only be a small component of the overall areas involved.*
- *Recreation- This category of zoning provides for the use of land for the provision of sports grounds/playing pitches, golf courses, tennis courts and other active indoor and outdoor recreational facilities that contribute to meeting the leisure, recreation and amenity needs of the immediate community and/or the wider area.*
- *Tourism- Land zoned for tourism development shall be used for a range of structures and activities which are primarily designed to facilitate tourism development and where uses are mainly directed at servicing tourists/holiday makers and visiting members of the public.*
- *Community- The development of lands for community uses shall be taken to include the use of lands for community, civic, health services, public or educational uses including the provision of schools, community halls, healthcare facilities etc.*
- *Enterprise- Lands zoned for 'enterprise' shall be taken to include the use and development of land for high-end research and development, business, science and technology-based industry, financial services, call centres/telemarketing, software development enterprise and incubator units, small/medium manufacturing or corporate offices in high quality campus/park type development.*
- *Existing Residential- The objective for land zoned 'existing residential is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow small scale infill development which is*

*appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained.*

A number of specific objectives appear to apply to the lands enclosed within the red line planning application site boundary. These include-

- REC1
- REC2
- TOU1
- ENT1

I have not been able to identify any specific references to these for Lisdoonvarna in the Development Plan.

There is one protected structure within the application site boundary. This is RPS No. 628 Lisdoonvarna Pavilion Hall. This is described in the RPS as-

*“Multiple-bay double-height steel and corrugated iron gabled Town/Village hall, c.1912. Built in kit form by Harland & Wolfe, Belfast for export to the “colonies”, known locally as the “Pavilion”. Restored 2008 Categories of special interest: Architectural, Detail/Design, Materials”*

#### **6.4. Natural Heritage Designations**

The site is located-

- c.1.5km west of the Ballyteige (Clare) SAC (000994),
- c. 7.5 km west of the Moneen Mountain SAC (000054),
- c. 5km east of the Black Head-Poulsallagh Complex SAC (000020),

#### **6.5. EIA Screening**

- 6.5.1. An Environmental Impact Assessment Screening report has not been submitted with the application.

- 6.5.2. Schedule 5 Part 1 and 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for certain classes of development and certain sub-threshold developments. Having considered these I am satisfied the proposed development does not come within the identified criteria.
- 6.5.3. Having regard to the limited nature and scale of the proposed development it is considered that 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.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

One third party appeal was received from Patrick Fitzgerald a Trustee of St Breckan's GAA Club. The grounds of appeal can be summarised as follows-

- The GAA property adjoins lands of the Lisdoonvarna and Rooska Spa Wells Trust, now leased to Lisdoonvarna Failte Ltd.
- GAA property is vested land. The provision of walking trails as part of a Limited Company Scheme of Public Amenity can be regarded as unlawful and in breach of GAA rules.
- A consequence of such trespass invalidates the public liability currently afforded to GAA Clubs and Trustees. The submitted drawings indicate that such trespass is inevitable.
- The ambiguous nature of the wording of the conditions attached to the grant of permission are a cause for concern. The language used is confusing and unclear to the lay reader and creates uncertainty, constitutes an unfair advantage and, depending on interpretation may impinge significantly on the rights of those who must live with the consequences.

### **7.2. Applicant Response**

- None received.

### 7.3. **Planning Authority Response**

The planning authority's response to the grounds of appeal can be summarised as follows-

- It would appear that the issue of sufficient legal interest remains disputed. The permission granted is subject to the provisions of Section 34 (13) of the Planning and Development Act.
- The appellants comments regarding Schedule 2 are noted. These conditions relate to technical specifications for lighting.
- It is requested that An Bord Pleanála uphold the decision.

### 7.4. **Observations**

- None

## 8.0 **Assessment**

### 8.1. **Introduction**

8.1.1. I have examined the application details and all other documentation on file, including the submissions received in relation to the appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the main issues for this appeal are as follows-

- Zoning and Principle of the Development
- The Applicants Legal Interest to carry out the Development
- The Applicants Legal Interest in the Site Boundary i.e. the Red Line
- The Planning Authority's Conditions
- Impact on Bats
- Appropriate Assessment

## 8.2. Zoning and Principle of the Development

- 8.2.1. The site is located within the Lisdoonvarna settlement boundary as identified in the West Clare Municipal District, Volume 3d of the Clare County Development Plan 2017-23 (CDP).
- 8.2.2. The lands enclosed within the red line site boundary benefit from a number of land use zonings as per the Settlement Plan Map on page P. 45 of Volume 3d and as detailed in section 6.1 above.
- 8.2.3. The specific zonings and objectives relevant to the location of the proposed development are-
- Open Space- *It is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities. The open space/park areas could contain active play facilities such as children's play areas but these would only be a small component of the overall areas involved.*
  - Recreation- *This category of zoning provides for the use of land for the provision of sports grounds/playing pitches, golf courses, tennis courts and other active indoor and outdoor recreational facilities that contribute to meeting the leisure, recreation and amenity needs of the immediate community and/or the wider area.*
  - Tourism- *Land zoned for tourism development shall be used for a range of structures and activities which are primarily designed to facilitate tourism development and where uses are mainly directed at servicing tourists/holiday makers and visiting members of the public.*
- 8.2.4. The proposed development of lighting to an existing recreational amenity is consistent with each of these land use zonings.

## 8.3. The Applicants Legal Interest to carry out the Development

- 8.3.1. The appeal relates to the provision of connectivity from the existing northern walking trail to the southern walking trail along the western boundary of the GAA pitch and the provision of lighting to this area.

- 8.3.2. I have visited the site and walked the existing trails around the site and the hard surfaced area along the western boundary of the GAA pitch. The connecting route from the existing northern trail to the existing southern trail and car park was open and accessible to the public. There is a low level boundary fence dividing the eastern boundary of the 'multi-purpose playing pitches' (as per drawings submitted on the 27/09/21). There was a clear difference in the surface of the walking trails, the connecting route and the main carpark area i.e. finishing materials and width. This could suggest separate ownership. However, I did not observe anything to suggest I was trespassing on GAA lands along the western boundary of the GAA pitch by connecting back to the car park from the northern part of the walking trail.
- 8.3.3. It is clear there is a dispute over the applicants interest in lands along the western side of the existing GAA pitch in which it is proposed to erect c. 8 lighting columns. In order to fully understand the context of the appeal, I have given detailed consideration to the appellant's two submissions to the Planning Authority during the course of the application.
- 8.3.4. In the first submission dated 25/03/21 it is stated that the GAA Club cannot give a letter of consent because it would be contrary to GAA Rules. It is not clear what consent the appellant refers to i.e. consent to use lands under the control of the GAA for the development or consent for the purpose of making the planning application. Most of the GAA lands including the pitch are identified within the red line of the application site boundary.
- 8.3.5. Further Information on the matter of sufficient legal interest was requested. The applicant formally responded on the 27/09/21. The response included a copy of a solicitors email, a 'Particular's and Tenure' document and two 'Rural Place Maps'. The solicitor's email states-
- "...it appears to me that the proposed route of the LED lighting appears to be within the confines of the Trust property in the townland of Rathbaun, by reference to such maps as are in my possession."*
- The email also states the solicitor *'is not a mapping expert'*.
- 8.3.6. I have reviewed the 'Particular's and Tenure' document and the associated maps. These documents identify lands in the GAA club ownership and lands to the north east of the site over which the GAA club have rights of way. These documents

demonstrate the applicants have identified lands in GAA ownership including the playing pitch, to be within the red line site boundary. They also demonstrate there is uncertainty over the ownership of the lands along the western boundary of the GAA lands and to which part of the development was originally proposed.

- 8.3.7. The submission of 27/09/21 also includes a revised site layout plan providing for a proposed trail and lights. The drawing outlines the site boundary in red and a blue line within the red line. The blue line is located generally around the existing walking trail and identifies the proposed trail along the western boundary of the GAA pitch. The blue line also shows where the proposed lighting columns are to be erected.
- 8.3.8. The submitted Further Information was readvertised as 'Significant' and received as such by the Planning Authority on the 18/10/21. The appellant made a new submission/observation (26/10/21) on the Significant Further Information. This details the information submitted by the applicants was actually received from the appellant and is now being used to claim the revised lighting layout does not infringe on the GAA lands.
- 8.3.9. The submission then details that St Breckan's GAA Club purchased 2.08ha of land from the legal owners Lisdoonvarna and Rooska Spa Wells Trust on the 11/09/02 and this was lodged in the Registry of Deeds on the 24/04/06. A copy of the Memorial of Indenture detailing the sale of lands to the GAA club and identifying the appellant as a Trustee of St Breckan's' GAA club was submitted. A copy of the Declaration of Trust further identifying the appellant was also submitted.
- 8.3.10. The submission also details the "*revised* FINAL layout plan" shows a new walking trail going from north to south and parallel with and adjacent to GAA boundary and an accurate plan and specification of the non existing walkway would be required in order to show how trespass can be prevented. The submission then refers to an agreement to provide a 7m wide strip of land parallel with the boundary of the Hydro Hotel. This is along the eastern side of the GAA lands. A map showing this accompanied the submission.
- 8.3.11. In coming to its decision to grant permission the Council's Planning Officer states they are not satisfied the applicants have unequivocally proven legal interest to carry out the development particularly along the western boundary of the GAA pitch. They note the GAA club have not consented in writing to the making of the application.

They then refer to section 5.13 of the Development Management Guidelines 2007 and rely on section 34 (13) of the Planning Acts to permit the development.

8.3.12. A letter dated the 05/11/21 attached to the notification of the decision to grant permission advised the applicants that in accordance with Section 34 (13) of the Act a person is not entitled solely by reason of a permission to carry out any development.

8.3.13. I have reviewed section 5.13 of the Guidelines. This states-

*‘Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis.’*

Having considered the applicants Article 33 response, I share the Planning Authority contention that the information submitted by the applicants does not prove unequivocally they have sufficient legal interest in the part of the lands to which the works are proposed along the western boundary of the GAA pitch. The drawings do not accurately identify the lands in the applicants ownership, nor does it distinguish the lands in GAA ownership. This creates uncertainty over where exactly the proposed trail and lighting columns with electrical supplies will be laid. In this context, I agree with the Planning Authority’s approach to grant permission with the advice note referencing section 34 (13) of the Act.

#### **8.4. The Applicants Legal Interest in the Site Boundary i.e. the Red Line**

8.4.1. In question 10 of the Planning Application form the applicants have indicated their *‘Legal interest in the land or structures’* subject to the application as the *‘Owner’*. They also identify the site area as 14.13ha in question 11 of the application form.

8.4.2. Article 22 (2) (b) of the Planning and Development Regulations 2001 (as amended) requires applicants to submit drawings identifying clearly-

*(i) the land or structure to which the application relates and the boundaries thereof in red,*

The drawings submitted with the planning application identify the site in red. This site within the red line is clearly *‘the land or structure’* as per the legislative requirement above. The drawings clearly show the GAA pitch and associated lands as within the red line boundary. The drawing also details the site area as 13.90ha. I do not



consider the discrepancy in site areas to have a material bearing on the assessment of the application.

- 8.4.3. The applicants response to the Article 33 Further Information request clearly demonstrates that they do not own the 2.08ha of land that make up the GAA grounds, despite including it within the red line site boundary.
- 8.4.4. Article 22 (2) (g) of the of the Planning and Development Regulations 2001 (as amended) details a statutory requirement when making an application and states-  
*‘where the applicant is not the legal owner of the land or structure concerned–  
(i) the written consent of the owner to make the application,...’*
- 8.4.5. Having considered the above and the information on file, it is clear the applicants are not the legal owners of all the lands outlined in red and they have not submitted a letter of consent from the owners of the GAA lands. The appellants’ submission dated 25/03/21 details the GAA Club cannot give a letter of consent.
- 8.4.6. The applicants have failed to comply with a statutory requirements of the Planning and Development Regulations. However the confirming evidence to this effect i.e. the Article 33 response was submitted at a stage of the application process after the Planning Authority had already considered the application compliant with Article 22 of the Regs. A letter of acknowledgment as required by Article 26 (2) was sent to the applicants on the 04/03/21. A copy of this letter is on file. Accordingly the Planning Authority upon receipt of the Article 33 submission, may have formed the opinion they could not invalidate the application under Article 26 (3).
- 8.4.7. I refer the Board to McCallig -v- An Bord Pleanála & Ors [2013] IEHC 60 (24 January 2013)<sup>1</sup>. McCallig argued (amongst other grounds) that the Boards decision was *ultra vires* as the Board considered that lands identified as part of the development concerned were not in the legal ownership of the applicant and the applicant did not have control of the lands. The Judge found that the decision of the Board to grant permission insofar as, in respect of or in any manner affecting the land of McCallig or any part of it, to be void. Importantly, the Judge declined to quash the Board’s decision to grant permission for the overall development.

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<sup>1</sup> <https://www.bailii.org/ie/cases/IEHC/2013/H60.html>

- 8.4.8. The Planning Authority's decision to grant permission with conditions does not impose any burden on the GAA lands included in the red line site boundary. This is subject to the provisions of section 34 (13) of the Act i.e. the contested lands along the western boundary. The applicants can only locate the proposed trail and erect the proposed lighting on lands within their control. Disputes around this control are civil matters between the parties.
- 8.4.9. I consider it reasonable to grant permission with conditions. However the Board may wish to consider the case law cited above and if it is precluded from giving further consideration to the granting of this permission as the applicants did not have the consent of the GAA club to include their lands within the red line boundary.

## 8.5. The Proposed Development

- 8.5.1. The appellant concerns relates to the provision of connectivity from the existing northern walking trail to the southern walking trail along the western boundary of the GAA pitch and the provision of lighting to this area. The appellant describes this as "the provision of walking trails" on part of the application site, which is considered to be GAA lands, to be unlawful and to be in breach of GAA rules. The appeal then refers to inevitable trespass and subsequent impacts upon public liability afforded to the GAA club.
- 8.5.2. The original public notices for the development and submitted drawings do not detail "*the provision of walking trails*" however, the drawings clearly show a "proposed trail" to be located to the west of the GAA pitch. An unsolicited drawing was also submitted by the applicant on the 30/03/21. This drawing relocates the proposed trail further west and omits a number of lighting columns to the west and north east of the site.
- 8.5.3. A 'REVISED SITE LAYOUT PLAN' drawing was submitted on the 27/09/21 as Significant Further Information. This drawing details the following- '*Proposed trail/street lights 63\*6m Columns C-C <25m*' and also omits a number of lighting columns. The drawings show 54 columns despite continuing to state 63.
- 8.5.4. The revised drawing proposes a trail with street lights within the area identified on the drawings as 'Existing multi purpose Playing Pitches'. This appears to be outside of the area which is considered GAA lands. However the drawings do not clearly

identify or distinguish the existing low level fence bounding the lands or provide details on the proposed trail such as width and surface materials etc.

- 8.5.5. Should permission be granted it is recommended a condition be applied requiring further details of the proposed trail to include width, materials and boundary treatment along the trails eastern boundary i.e. separating it from GAA lands. A condition should also stating a maximum of 54 lighting columns in the interest of clarity.

## 8.6. **The Planning Authority's Conditions**

- 8.6.1. The appellant also raises concerns over the wording of the Planning Authority's conditions. In particular the appellant considers they are confusing, creates ambiguity, constitute an unfair advantage and may impinge significantly on the rights of others.
- 8.6.2. I have reviewed the four conditions and consider conditions 1 and 4 to relatively standard and easily understood. Condition 2 (a) relates to the impact of lighting on bats and confirmation from a suitably qualified person that the proposal will comply with specified standards. This is precise and easily understood. Condition 2 (b) and 3 relate to performance and design standards of the lights, columns and compliance with ESB Guidelines. I accept these are more technical in nature. However, I do not share the appellants contention that they impose any advantage or impinge on the rights of others.
- 8.6.3. Notwithstanding this, I again refer to Section 34 (13) of the Planning and Development Acts as amended which clearly details that a person is not entitled solely by reason of a permission to carry out any development.

## 8.7. **Impact on Bats**

- 8.7.1. The proposed development is for a trail and lighting to an existing recreational and amenity facility. At Further Information Stage the Planning Authority highlighted the proximity of the Aille River and surrounding area detailing the medium to high habitat suitability for bats. They raised concerns over the impact of the proposed lighting referring to the obligations under the Wildlife Act 1976.

- 8.7.2. The applicants responded to the concerns with a report from a Quantity Surveyor/ Estimator on behalf of Electric Skyline. The report details that unnecessary light spillage will be reduced across the site where possible. They also detail louvres can be applied if required.
- 8.7.3. The Planning Authority was not satisfied with this response and in particular the absence of support from an ecologist. They addressed this through condition 2 of the grant of permission.
- 8.7.4. The development proposes lighting columns mainly around the perimeter of an existing walking route. The drawings identifies some columns in close proximity to the existing track along the northern boundary of the site. Having walked the route it would appear that some trees may need to be removed or cut back in order for the columns to be erected. The provision of lighting, felling or cutting back of trees could impact upon the habitat of Bats.
- 8.7.5. Granting this planning permission does not constitute consent for a developer to disturb bats or to interfere with their breeding or resting places. The developer would still be obliged to comply with the provisions of the NPWS's licensing regime and a derogation licence may be required for the works should they disturb or interfere with Bats i.e. through light pollution or removal of trees. Should the Board decide to grant permission I recommended a condition in relation to the protection of bats should be applied.

## 8.8. **Appropriate Assessment**

### 8.8.1. ***Introduction***

- a) A screening report for Appropriate Assessment was not submitted with this application or appeal. Therefore, this screening assessment has been carried de-novo.
- b) In the first Planning Report in the section titled Appropriate Assessment the Planning Authority refer to the proximity of the Aille River which is identified as having a medium to high habitat suitability for bats where light spillage onto adjoining lands should be avoided. This section states

*“I am not satisfied that the Planning Authority can conclude based on the information submitted to date that no Appropriate Assessment issues arise or that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects, on a European Site. A appropriate assessment screening report will be requested.”*

An AA Screening Report was not requested through Further Information.

- c) The Planning Authority have carried out a Screening Report for Appropriate Assessment & Determination dated 22/04/21. In the determination section they describe how the proposal may affect European Sites- *“Lighting may adversely affect the use of adjoining habitat by bats.”*. They then detail that effects may be significant but it is not possible to determine because the impact of lighting design on bats has not been documented.
- d) The Planning Authority determined potential effects to be unknown and *“Further information to be submitted”*. Details on lighting were requested at FI stage and based on the submission the Planning Authority noted the absence of support from an ecologist and recommended a grant of permission subject to conditions including requirements for the lighting installation.

### **8.8.2. Stage 1 Screening**

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

### **8.8.3. The Proposed Development and Receiving Environment**

- a) The proposed development comprises the erection of 54 number, by 6m high LED lighting columns along an existing amenity pedestrian route for use between the hours of 16.00 and 22.00hrs.
- b) The site is an existing recreational amenity located within the settlement boundary of Lisdoonvarna.
- c) The Aille River runs along the southern boundary of the application site. A tributary of the Aille runs along the northern boundary of the site before meeting the Aille to the south west of the site. The river then flows westwards and into the Atlantic at a point in between two European Sites (Black Head-Poulsallagh Complex SAC and the Cliffs of Moher SPA). It does not flow directly into any European Sites.
- d) The site is not located within or adjoining a designated European site.

#### 8.8.4. **European Sites**

- a) Given the location of the site, and the nature and scale of the proposed development, I consider the designated site as set out in Table 1 below to be within the zone of influence of the subject site.
- b) I am satisfied that other European sites proximate to the appeal site (including those identified in section 6.4 above) can be 'screened out' on the basis that significant impacts on such European sites can be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct or indirect hydrological or other pathway from the appeal site to European Sites.

Table 1		
European Site and code	Qualifying Interests	Distance
Moneen Mountain SAC (000054),	<ul style="list-style-type: none"> <li>• 1065 Marsh Fritillary <i>Euphydryas aurinia</i></li> <li>• 1303 Lesser Horseshoe Bat <i>Rhinolophus hipposideros</i></li> <li>• 3180 Turloughs*</li> <li>• 4060 Alpine and Boreal heaths</li> <li>• 5130 <i>Juniperus communis</i> formations on heaths or calcareous grasslands</li> <li>• 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>) (* important orchid sites)</li> <li>• 7220 Petrifying springs with tufa formation (<i>Cratoneurion</i>)*</li> <li>• 8240 Limestone pavements</li> </ul>	c.7.5 km east of the site

#### **8.8.5. Test of Likely Significant Effects**

- a. The project is not directly connected to or necessary to the management of any European site. The proposed development is examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- b. Based on the source-pathway-receptor model and having regard to the existing recreational use on the site, the sites context in Lisdoonvarna, the nature of the proposed development, the scale of works proposed, the distance to identified European sites and having regard to the NIS carried out for the County Development Plan including the identified conditions underpinning European Site integrity and implications for this site, the following are considered for examination in terms of likely significant effects on European sites-
  - Potential disturbance to Lesser Horseshoe Bat a Qualifying Interest of the Moneen Mountain SAC (000054) i.e. light pollution and disturbance of habitat

#### **8.8.6. Potential Effects**

- a. The NPWS Conservation Objectives Series for the Moneen Mountain SAC 000054 details that Lesser Horseshoe Bats are very sensitive to light pollution and will avoid brightly lit areas. Inappropriate lighting around roosts may cause abandonment and lighting along commuting routes may cause preferred foraging areas to be abandoned.
- b. The Conservation Objective details Lesser Horseshoe Bats normally forage in woodlands/scrub within 2.5km of their roosts and they normally follows commuting routes from the roost to its foraging grounds. They will not cross open ground. Consequently, linear features such as hedgerows, treelines and stone walls provide vital connectivity for this species within 2.5km around each roost.

- c. The Conservation Objective details there should be no significant increase in artificial light intensity adjacent to named roosts or along commuting routes within 2.5km of those roosts.
- d. Map 6 of the Conservation Objective identifies the roosts, foraging range and potential foraging roosts.
- e. The application site is located c.7.5 km west of the identified boundary of the Moneen Mountain SAC. In this regard I am satisfied the proposed development is sufficiently located away from the identified roosts, the foraging range and the potential foraging roosts of the Lesser Horseshoe Bat as identified in the Moneen Mountain SAC (000054). The application site is not likely to be within a commuting distance or route of the identified roosts.

#### **8.8.7. *In-combination Impacts***

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

#### **8.8.8. *Conclusion***

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) would not be likely to have a significant effect on the following European Sites-

- Moneen Mountain SAC (000054)
- or any other European sites, in light of those sites' Conservation Objectives', and a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not therefore required.

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



## 9.0 Recommendation

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

## 10.0 Reasons and Considerations

10.1.1. Having regard to the provisions of the Clare County Development Plan 2017-2023, and the nature and scale of the proposed development to serve the existing amenity and recreational facility, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or the ecology within or surrounding the subject site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 27<sup>th</sup> day of September, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Appropriately scaled drawings and details of the proposed trail, including levels, dimensions, surface materials and boundary treatment to adjoining lands outside the control of the applicants shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The drawings shall provide for a maximum of 54 lighting columns only.

Reason: In the interest of orderly development and visual amenity of the area.

3. The lighting or any equivalent replacement lighting shall be directed onto the trail surface to be illuminated and shall be directed and cowled such as to reduce, as far as possible, the light scatter over adjacent property.

Reason: To protect the amenity of properties in the vicinity.

4. The operational hours of the lighting shall not extend beyond 2200 hours with automatic cut-off of floodlighting at that time.

Reason: To protect the amenity of properties in the vicinity.

5.

- a) Detailed measures as advised by a qualified ecologist in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. These measures shall be implemented as part of the development.

- b) Any trees to be removed on site to facilitate the development shall be felled in late summer or autumn.

Reason: In the interest of nature conservation and wildlife protection.

6. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

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Adrian Ormsby  
Planning Inspector

08<sup>th</sup> February 2022