



<b>Development</b>	Construction of 58 residential units. Alterations and upgrade to the access road and associated site development works. The application is accompanied by a Natura Impact Statement.
<b>Location</b>	Drumbiggle, Ennis, Co. Clare.
<b>Planning Authority</b>	Clare County Council
<b>PA Reg. Ref.</b>	21599
<b>Applicant(s)</b>	Leadlane Drumbiggle.
<b>Type of Application</b>	Planning Permission
<b>PA Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party vs Grant
<b>Appellant(s)</b>	Michael O'Flanagan, Brian McMahon Kevin Tiernan John Hodnett, Sean Connolly,
<b>Observer(s)</b>	Kate McAney
<b>Inspector</b>	Suzanne Kehely

## **1.0 Introduction**

- 1.1.** This report is an addendum report to the Inspector's report (dated 22nd August 2023) in respect of the construction of a housing development.

1.2. Following a meeting of the Board held on 3<sup>rd</sup> November 2023, the Board decided to defer consideration of the case and to issue a section 137 notice to the relevant parties in respect of 2 issues considered by the Board to be new having regard to a change to the zoning of the proposed development area from 'residential' to 'strategic residential reserve' and flood Risk Assessment in the Clare County Development Plan 2023 to 2029 that came into effect on 20th of April 2023 since the lodgment of the appeal and consequent submissions and observation . The issues more precisely being:

- Compliance with the Core Strategy, in particular whether the PA is satisfied with the progress of residential development and if it is faster than expected or that a shortage of residential land may arise hindering the delivery of units
- The Site Specific Flood Risk Assessment requirement

1.3. In its order, the board has stated its regard to volume 1 chapter 3 Core Strategy of the CDP which states: 'strategic residential reserve lands have been identified across serviced settlements to facilitate longer term growth needs across the county. These lands comprise infill or contiguous sites or in some cases there is an on-site planning history of residential use. These lands are considered as the most appropriate sites for the long-term sequential expansion of the relevant settlement. **These strategic residential reserve lands in general will not be brought forward for development within this plan.** However non-residential development may be considered if it is appropriate to the site context. **Consideration may also be given to development of some strategic residential reserve lands for housing before the end of the plan period.** In its assessment of proposals for residential development on strategic residential reserve lands the PA **must be satisfied that the development of residential zone grounds is progressing faster than expected and a shortage of available lands may arise or that residential zoned land is not being brought forward as expected and the shortage may arise which would hinder the delivery of residential units to meet demand during the plan period.** The assessment will also be subject to **compliance with the core strategy** and that the development permitted will **not prejudice the future use of the remaining strategic residential reserve lands for longer term growth needs of the plan area.** The residential development of such lands would **only be considered from the beginning of year 4 of the plan (April 2027)** to give an opportunity for zoned land to be brought forward development. It will also be a requirement that the strategic residential reserve lands

**can be serviced and can offer a reasonable substitution being delivered within the lifetime of the plan that they are sequential lands within the settlement with good connectivity and access to services and amenities.**

- 1.4. The Board also noted volume 3a Ennis municipal district settlement plans of the Clare County Development Plan 2023 to 2029 and the designation of SR8 adjacent to Pairc na Coille nursing home: 'This site has been identified for residential development the area of the site to the west of Parc na Coille nursing home includes an attractive natural habitat a portion of which should be retained as open space between any new development and the existing nursing home providing an open space between the two developments This site is located less than 1 kilometre from a known Bat roost. Proposals for development on this site must be informed by ecological assessment of the site and appropriate bat surveys and shall ensure that there is no loss of habitats used by lesser horseshoe bats. All design proposals including lighting must be informed by the results of the bat survey. A landscape management plan must also accompany any development proposals. Development proposals shall include mitigation for bats water quality and special conservation interest birds, as set out in volume 10a Natura impact report as it relates to SR8 (NIR mitigation 2, 3 and 4a. There is a small watercourse (Cahercalla Stream) that runs through the site. A site-specific flood risk assessment is required in accordance section 4.3 of the strategic flood risk assessment volume 10 C and the sequential approach will be applied.
- 1.5. On 7<sup>th</sup> November 2023 the Board wrote to the relevant parties and invited submissions in respect of the above considerations. The notice issued sought to establish if the PA is satisfied this criteria is being met with a particular emphasis on the progress of development of residential land and shortage of available lands which would effectively hinder the delivery of residential units to meet demand. Submissions and/or observations were also invited in relation to the issue of a site-specific FRA.
- 1.6. Following submissions to the Board, further submissions were invited from the DAU as well as from the appellant parties and the PA on the 20<sup>th</sup> December 2023.
- 1.7. This report considers the responses by the planning authority, the applicant and third-party submissions. One party initially failed to submit proof of address, and this generated further correspondence among the parties. Processing has confirmed to me that this has been resolved. All submissions on file are as I understand it therefore valid. I have also had further regard to the context of the new County Development

Plan (CDP) and viewed the OPR submissions as part of that process and its recommendations on the amendments in addition to having further regard to the relevant national policy and guidance. Notable changes in the policy and guidance framework include:

- The new Climate Action plan CAP24 approved by government 21 March 2024: The Avoid-Shift-Improve framework for transport sustainability was introduced in CAP23 and this approach has been applied again in CAP24. This framework emphasises the crucial role of spatial and land-use planning in designing transport systems that can support our net-zero ambition. The main work programmes and high impact actions are summarised in section 15.6 (p.232)
- CAP24 a key action for enhanced spatial and land use planning: - ‘Support and promote a modal shift towards healthy active and sustainable mobility in the design and delivery of LDA developments. Plan to reduce travel by private car and design to optimise connectivity and access to sustainable and active travel. Promote mobility management planning and e- mobility as well as options for car sharing/clubs.’
- Also refer to section 15.1.5 which cites the recommendations of the Climate Change Advisory council. (p.239-241) and sections 15.2.2 and 15.2.4 sets out how enhanced spatial and land use planning through such mechanisms as contained in the Compact Settlement Guidelines can avoid excessive carbon inducing travel by travel demand management and modal shift. Eg car to active travel – cycling and walking

In respect of the Compact Settlement Guidelines, these were adopted since the lodgement of the appeal and are already cited in my report. The creation of compact and connected urban areas is key to achieving the overarching aims of the Sustainable Mobility Plan. Many of the policy goals relate to land use planning and the design of settlements and are further strengthened by way of CAP24.

- 1.8.** Notably, since the submission of the responses an appeal has been lodged 319358 in relation to a phase 2 residential scheme in the adjacent site and which completes the development of the entire landholding. Housing development was refused by the planning authority. While I have referred to this case, all comments are without prejudice.

## **2.0 Response by Applicant (28/11/23)**

**2.1.** In response to the issue of **Core Strategy**, the applicant makes the following points:

- The proposal was in compliance with the core strategy and zoning objectives of the development plan governing the area at the time of both the application, decision and appeal.
- In its grant of permission, the planning authority stated having regard to the policies of the development plan and the pattern of development. it is considered the proposed development would not injure the amenities of the area and the PA also requested the Board the uphold its decision.

**2.2.** In respect of rezoning, it is highlighted that the chief executive report on the Draft Plan assigned the site as phase 1 'Residential' zoning and the change in the zoning subsequently stemmed largely from the 3<sup>rd</sup> party submissions which included specialist ecology reports. It is submitted that these were desk based and not site-specific. It is further submitted that the housing units were counted into the core strategy of the previous plan and within the housing need assessment of the new plan.

**2.3.** It is pointed out that the timing of the rezoning was some 12 months after a decision grant permission. This post-decision change together with the delay in decision making has placed the applicant in a disadvantageous position and justification against the new criteria, is, in this context unjust. The applicant had no requirement to provide this justification within the normal timelines.

**2.4.** The board is requested to consider the development plan at the time of the application and expected decision date.

**2.5.** Notwithstanding, the applicant makes the following points on pattern of residential development in the context of current plan and this is supported with data and maps contained in Appendix 2. (Nov 23) It is affirmed that:

- Based on the pattern of residential sites and permission for development it is submitted that it will be difficult to meet the housing targets for Ennis. As of November 2-23 8 sites zoned residential including low density have the benefit of permission and total approx. 297 units an additional 4 applications for a total of 70 units/ . A further 19 sites (6 with low density zoning) will require permission to deliver the remaining 1793 units and many of these are sited well outside the town centre – further out than the subject site.

- The site is most appropriate for housing in context of national planning policy and in a key town where there is likely to be a shortfall.

**2.6.** In respect of **flooding** a site specific FRA has been prepared by consulting engineers (Tobin Consulting) and is contained in Appendix 3 (Note: the collation of the report is mixed up with section one of the report at the end of Appendix 2 but it is all substantially in sequential order) . the following points are made by the agent (MKO):

- The site is in Flood Risk Zone C and no spite specific FRA was sought by the planning authority.
- The SSFRA appended to this response demonstrates that there is no flood risk of concern on this site.
- There are no past flood events recorded on this site or in the vicinity.
- The fluvial indicative 1% AEP is based on broad scale analysis prone to error by omission of the culverted stream in its analysis.
- There is a fluvial Indicative 1% AEP Event associated with part of the site according to the OPW National Preliminary FRA 2012 which but that is stated in their report to e based on a broad scale simple analysis and may not b e accurate for s specific location. It is pointed out that the flood risk potential on the northern boundary of the subject site is associated with a largely culverted stream which I not mapped or modelled in the OPW PRFA and therefore demonstrates its limitations
- The SSFRA, in addition to reviewing this fluvial flood extent, also considered CRFAM fluvial flood risk, pluviual flood risk, coastal flood risk, groundwater and surface water flood risk and capacity of the existing culvert to the north of the site. On this basis it was determined that there is no flood risk associated with the specific site. In respect of the culverts the report states that the channel has capacity to convey the maximum flow from the upstream culvert without bursting its banks (section 4.3 of Tobin Report. )
- Having regard to the SSFRA and location in a flood risk zone C, no Justification test is required.
- The potential highly vulnerable use is appropriate located and sequential approach criteria to development of the site is met.

### **3.0 Submissions by Third Parties**

#### **3.1. Brian McMahon (received 22/11/23)**

- 3.1.1. The proposed residential development is not in compliance with the core strategy having regard to current strategic reserve status and no shortage of lands by reference to the Chief Executives report on the Draft CDP.
- 3.1.2. The site is in a flood plain and is submitted to act as an overflow for the culvert through the land from Willsgrove.
- 3.1.3. The applicant did not submit a site-specific FRA and this is relevant in view of the potential back-flooding of Willsgrove consequent on development of the subject site. There is lack of capacity in the pipe network to facilitate the development.
- 3.1.4. In a submission to the PA on the development plan review of the 2017 CDP, the landowner of the of the subject lands sought a change to the residential zoning criteria by way of relaxing the open space requirement. It is submitted that the refusal of the PA to concede this reinforces the need for a buffer zone

#### **3.2. Michael O'Flanagan (23/11/23)**

- 3.2.1. The points preceding are restated in more detail. The points regarding flood risk are emphasised with supporting documentation which includes the detailed submission on the draft CDP zoning for the site. It is appended with a report in the Flood Risk of Proposed residential Development at Drumbiggle, co. Clare and flood assessment /modelling for Cahercalla Stream, Cahercalla, Ennis Con Clare (Planning ref 2325) prepared by a Rory O'Connor chartered engineer on behalf of the residents of Willsgrove.
- 3.2.2. A cd is also appended and I have looked at this and noted its contents. The video narrates the images shown in the written submission. It is explained how the Cahercalla stream rises to the south and flows through Willsgrove the site and under the rugby club to the town. Willsgrove is stated to have been built in the vicinity of a natural flood plain which is incorporated in the central green. The stream was then piped (1.2m diameter pipe along boundary) to manage the storm water and this

approach has worked except for when the pipe blocks and there is extreme weather. The video illustrates how in various scenarios this is aggravated with duration of blockage (hours) and amount of rainfall. The 2009 rainfall for example generated flooding 1cubic metre/s after 40mm of rain in one day but 240mm is highest in day. The scenario of pre and post development using the 2009 rate over 1,2 and 3 hours of blockage. illustrate how the area is vulnerable. Tanks cannot percolate to wooded area anymore as a consequence of the development. This report is also referred to other third-party submissions.

### **3.3. Sean Connolly (28/11/23)**

3.3.1. This submission reiterates points made and notably highlights::

- Cites page 65 of the CDP in support of the core strategy and strategic reserve lands
- Strategic reserve is appropriate in context of ministerial directive ad over-zoning of land and also the flood plain character.
- Site is best kept in reserve in context of current requirements for the site – ensuring appropriate bat surveys and no loss of habitat
- Issue of flood plain – as raised as in other submissions.

### **3.4. John Hodnett (28/11/23)**

3.4.1. This submission emphasises the inadequacy of the infrastructure (underlying the zoning) and particularly in relation to drainage. The site is in a historic flood plain by reference to older maps. The drainage capacity will be aggravated by the extent of hard surface and overloading of the systems. The existence of an attenuation is doubted due to the topographical features over the stream and inaccuracy of the information in this regard. It is considered there is a lack of due consideration to the culverted stream and a failure to adequately assess the site for flood risk.

3.4.2. Back flooding has become an issue since the lodgement of the phase 2 application. Engineer's report appended. (R.O'Connor) this report concludes that further analysis of the Cahercalla Stream is imperative due to upstream flooding consequent on dwellings in a flood plain.

3.4.3. Satisfied that the planning authority has rationalised SR8 by the limited rate of progression of residential zoned lands and the sufficiency of lands. This is supported

by reference to the chief executives report to the elected members on specific submissions on the draft CDP (no.52/801) by the applicant regarding SR\* on the subject lands. It is further supported by reference to the ministerial direction on excessive zoning.

3.4.4. That SR8 requires more open space and natural habitat west of the nursing home support the appellant's case.

3.4.5. There is considered to be inadequate consideration of Bats as supported by detailed critique of methodology in an appended Ecologist Report by Veon on phase 2. This report uncovers discrepancies and errors in phase 1. There are no all-season bat surveys and so more robust surveys are needed for the site as in the case of phase 2.

### **3.5. Kevin Tiernan (25/11/23)**

3.5.1. This submission reiterates points made emphasising concerns about over zoning, flood risk on the surrounding lands and also the inadequacy of bat surveys.

- It is submitted there are better residential zoned lands for housing development than the subject site particularly with regard to its Tier 2 status and its effective lowest ranking. Residential development at the site is unnecessary.
- The SR8 zoning is appropriate to the pace of development and in the interest of sustainable and harmonious development.
- Chief executive expressed satisfaction that zoning of these lands as residential is unnecessary and contrary to the proper planning and sustainable development of the area and is understood to be the higher authority.
- Preservation of natural habitat is mandated by SR8 on site which has ecological benefits.
- Flood risk- Groudnhwater pipe network requires reassessment.
- Bat Survey limitations as raised by others.
- Reports appended that were submitted in consideration of phase 2 (PA ref2325)/concurrent case –
  - Flood risk assessment by Rory O'Connor, engineer

- review and analysis of the consideration of Bats (within the EclA and Planning report conducted at phase 2 proposed development site By Daniel Connell, Veon Ecology.

## **4.0 Response Submissions by Third Parties**

### **4.1. Michael O’Flanagan (16/1/24)**

- 4.1.1. There is no basis for favourable consideration under the current zoning.
- 4.1.2. The appellant notes the comments of the PA regarding zoned lands and makes the point that the PA who refers only to permission for 6 houses since the adoption of the new plan, omitted reference to the SHD permission 314448 on 18<sup>th</sup> April 2023 for 289 units in the vicinity. It is further confirmed that there is no shortage of ‘residential’ land and it could not be said that development is not moving ahead.
- 4.1.3. In respect of the flood risk, it is disputed that the surface water management and flood risk were comprehensively assessed by the planning authority in its assessment by reference to the occurrence of back-flooding of Willsgrove. There is no evidence of an independent flood risk assess report by the council. Sight of such is requested.
- 4.1.4. The Further information rests by the PA has not been sufficiently responded to. Site investigations to ascertain underlying bedrock and impacts of development are needed.

### **4.2. Brian McMahon (17/1/24)**

- Land zoning precludes favourable consideration
- There is no shortage of housing land
- Disputes that a thorough assessment of surface water management has been carried out and would like an independent assessment.
- The assumption of no flood events is inaccurate.
- Disputes absence of karst features and that there is no consequent flooding impact.
- The applicant failed to respond adequately to the further information requested

- Points regarding capacity of the attenuation tanks and groundworks associated with it are unresolved.

#### **4.3. John Hodnett (18/1/24)**

4.3.1. In the subsequent submission in response to the applicant it is submitted that :

- The timing is irrelevant and the current development plan applies.
- The claim that ecology is the basis for the SR8 zoning is inaccurate as the Chief executive report refers to the need for a FRA for the subject lands as the stream is unmapped – it is multi-factorial zoning.
- The site is also only Tier 2 of the 10 Strategic Reserve Lands which is based on availability of services. [Tier 2 is where lands are serviceable within the life of the plan - Some off-site works are required but could be delivered as part of a planning application to develop the site or capital investment is identified to facilitate development over the course of the Plan – page 152 vol.3]
- Zoning rests with the County council and not the Board. The current zoning has been through a rigorous process.

#### **4.4. Kate McAney (18/1/24)**

4.4.1. The Veon review of the bat survey refers to lack of information on key attributes for the protection of LHB. For example, inadequate information regarding number and condition of auxiliary roost and use of woodland area in site for foraging. Reference is also made to the 2023 guidance on lighting for bats.

#### **4.5. Sean Connolly (18/1/24)**

4.5.1. This submission provides further comments on additional information and clarification by Clare County Council and Leadlanes submission regarding flooding and zoning and site-specific FRA.

4.5.2. Land use zoning - it is submitted that councils claim of shortfall of residential land is counteracted by the permission for nearby significant residential development by the Board.

4.5.3. the applicant's assertion of no flood risk is based on historical evidence of flood prone areas nearby.

4.5.4. Surface water management and back flooding concerns – issues raised in CDP submission have not been addressed. The council's claim to comprehensive assessment is disrupted in that back flooding was not adequately addressed. It is submitted that given the underlying karst of the development site that any construction could impede natural dissipation of excess water and lead to flooding of Willsgrove and Cahercalla Drive. This is not addressed in the SFRA whereas and the appellants appended report engineer's report details the bedrock composition.

- The report assesses the underlying karst from records and holds the view that the culvert for Cahercalla Stream carried out 30 years ago to facilitate Willsgrove among other houses and is insufficient in size and the stream cannot accommodate more direct flood water. This together with the loss of the Cahercalla Stream floodplain as exist with karst features which can store water would result in flooding of the surrounding housing developments.

4.5.5. The applicant's dismissal of potential back flooding is not supported by an adequate understanding of the karst terrain and the culvert capacity. The lack of site investigation is of concern.

4.5.6. The applicant's approach to attenuation tanks is questionable especially regarding the by-passing of the existing tank which may be possible for phase 2 but remains impossible for phase 1 as it is an integral part of the drainage infrastructure. It is further submitted that concerns about impact on nursing home in Pairc na Coile during site investigation work on the existing attenuation tank raise inconsistencies in the applicant's reasoning.

4.5.7. Difference in flood risk assessment between phase 1 and phase 2. SSFRA for Phase 1 omits crucial information which demonstrates legitimate flooding threat. Page 22 of the FRA for phase 2 is attached.

4.5.8. The channel capacity is .36 cubic metres which is below the required threshold.

## **5.0 Submission/Response by Planning Authority (24/11/23 and 17/1/24)**

5.1. In its initial response in November 2023 the PA refers to its response to the appeal against its decision to grant permission in which it was confirmed that the planning permission should be granted. It also acknowledges the amount of change and

strategic zoning for the site as adopted in the development plan and the current restrictions/ The planning authority clarifies that earliest date for considering permission is stated to be April 2027 so as to allow for zoned land to be developed and that favourable consideration cannot now be given. Notwithstanding the infancy of the plan, it is stated that permissions largely relate to amendments of existing permission other than a grant of permission for 6 houses. Surface water management and flood risk were comprehensively assessed.

- 5.2.** In its final report it reaffirms its comprehensive review of the matters raised and has nothing further to add.

## **6.0 First Party Response (18/1/24)**

- 6.1.** In response to the submissions by the planning authority:

- There is now less housing than predicted by applicant in submission of November 2023 – implying even further from housing target of 2160 units
- The 4-year restriction means that the objective is only temporary breached. Residential development is not precluded from SR8 lands – all other requirements are met – it is open to non-residential development, so it is essentially an issue of use and not principle of physical development.
- It is an important site close to the town centre and surrounding by housing.

- 6.2.** In response to third parties, the following refuting statements are made

- A shortage of housing will arise
- A buffer zone is in fact provided in the layout between the nursing home and proposed housing in addition to retaining woodland corridor
- It is the most favourable of strategic reserve sites - it is not in a flood plain
- It was not identified as specifically needing to be de-zoned in fact it encourages sequential development in that it is compact and serviceable.
- The Chief Executive report regarding S2/990 recommended 'Residential' zoning to reflect planning history and rejected amenity zoning.
- Minister/OPR not opposed to this site as residential.

**6.3.** In respect of ecology, it is submitted that:

- in the first instance it is considered that this matter is not strictly within the scope of issues raised in the Board's correspondence. Notwithstanding the scope of issues, it is confirmed that the application has been accompanied by a comprehensive suite of assessments such as NIS, EclA and Bat Survey all of which were found to be acceptable to the planning authority at that time and during the course of the appeal.
- An all-season survey is considered unduly onerous. It was however done as part of the phase 2 application and the result align with the initial survey findings.
- All the ecological surveys and mitigation measures fed into the design and layout and informed the detailed element such as lighting linear bat foraging corridors.

**6.4.** In respect of drainage and flood risk matters the following points are made:

- An SSFRA has been completed and the site is in zone C. It passes the sequential test.
- The proposed drainage arrangements have been comprehensively assessed by the county council
- The site is not in a flood plain and there is no increase in flood risk as a consequence of the proposed development
- An attach memo prepared by qualified hydrologists and engineers in Tobin Consultant s provides a technical response to the concerns raised about drainage and hydrology. it is concluded that the proposed drainage will be designed and manged to greenfield run-off rates and that there is no evidence to support the flood risk would be increased elsewhere.
- The memo response to the 3<sup>rd</sup> party flood risk report and is of the opinion that it is inaccurate and inflammatory as the proposed development would not increase the risk of culvert blockage. The proposed development would have no impact on

inlet of existing culvert nor any mechanism causing blockages therefore rendering the model on which the flooding is predicted to be irrelevant.

- Allegations about culvert design to allow overflow onto the site are false. Photos in fact show typical construction elements of a sealed culvert unit.
- Allegations about attenuation tanks no existing area untrue. The tank is underground.
- The proposed drainage and engineering design are in accordance with Best Practice and have been thoroughly assessed by the planning authority and permission should not be refused on these grounds.

## **7.0 Policy Context**

### **7.1. Clare County Development Plan**

7.1.1. The Clare County Development Plan 2023-2029 was adopted on 9<sup>th</sup> March 2023 and came into effect on 20<sup>th</sup> April 2023. However, pending amendments further to the Ministerial Direction in respect of the Clare County Development Plan, an interim Clare County Development Plan 2023-2029 was adopted. As I previously noted, the ministerial direction was finalised on 3<sup>rd</sup> August 2023 and relates to zonings not directly relevant to the subject site. A final Plan has now been adopted with review date of the plan of 11<sup>th</sup> August 2023 as stated on the council's website of

7.1.2. In Vol. 3a Draft Clare CDP 2023-2029 Ennis Municipal District as displayed (on November 2022 to Jan 2023) on page 98, Site R23 Adjacent to Pairc na Coile Nursing Home is shown as proposed amendment from SR8 to R23 and identifies the site on page 99 and clearly relates to the subject site. This site has been identified for residential development. The area of the site to the west of Park na Coille includes an attractive natural habitat which should be retained, at least in part, as open space between any new development and the existing nursing home, providing an open space buffer between the two developments. This site is located less than 1km from a known bat roost. Proposals for development on this site must be informed by an ecological assessment of the site and appropriate bat surveys and shall ensure that there is no loss of habitats used by Lesser Horseshoe Bats. Any habitat loss must be offset by additional landscape planting to ensure connectivity across the landscape. All design proposals, including lighting, must be informed by

the results of the bat survey. A landscape management plan must also accompany any development proposals. Development proposals shall include mitigation for bats, water quality and Special Conservation Interest Birds, as set out in Volume 10a Natura Impact Report as it relates to R23. (NIR mitigation 2,3 and 4a). –

- 7.1.3. In the Chief Executive's Report on submissions on the proposed amendments the rationale for not adopting the R23 objective is based on biodiversity value in so far as it states: 'Evidence from the submitted reports demonstrate the biodiversity value of the site given the presence of 5 different bat species together with the presence of Lesser horseshoe bats for which the site is within the Likely Zone of Impact for a number of protected sites. It is not possible given the level of information currently available for this site to conclude a finding of no significant effects on the environment, or that the zoning as R23 will not lead to negative impacts on local and internationally important bat species, including Lesser horseshoe bat. On this basis I consider that the Plan should be made without the proposed Material Alteration.' This I note refers to reports prepared for and submitted by residents in the area
- 7.1.4. I note from the OPR submission on both the draft and proposed amendment to this that the subject site is not specifically referred to in its recommendations regarding residential zoning in the context of the core strategy, settlement hierarchy and need for compact and sequential led development. Nor, in respect of flooding, is the subject site included in recommendation 13 of the OPR submission (28<sup>th</sup> March 2022) of the draft Plan or recommendation 9 (flood risk management) in its subsequent submission January 2023. .
- 7.2. On review of the internal reports, I further note the report of the Ennis Municipal District Planning report on the storm water issues. 3 conditions set out requirements for the design and maintenance including the insertion of interceptors and use of the existing system. The fourth condition requires the transfer of wayleave rights over the existing culvert traversing the site to the council as part of its taking in charge.
- 7.2.1. Settlement Strategy in Vol 3a, section 1.1.3: **Objective V3(a)1** sets out the key elements shaping the growth of Ennis including subsections j and k which state it is an objective to
- (j) **To integrate land use and transport planning such that new employment and residential development should be consolidated in a manner which renders it**

**serviceable by public transport and accessible, at the local level, by walking, cycling and public transport.**

k) To promote and encourage sustainable transport, and in particular to make it **convenient and attractive to walk, cycle or use public transport**

### **7.3. National Policy**

- 7.3.1. **Climate Action Plan 2024:** This was launched on 20<sup>th</sup> December 2023. A supplementary Annex of Actions was published at a more high level than that published on 7<sup>th</sup> March 2023 for the CAP 2023. This is the 3<sup>rd</sup> review since its inception in 2019. It sets out more details on implementation of a carbon budget programme and sectoral emission targets. There is a notable emphasis on Avoid, Shift and Improve in the transport sector and implementation of the Sustainable Mobility Action Plan.
- 7.3.2. **The National Biodiversity Action Plan 2023-2030:** This is the 4<sup>th</sup> NBAP goes further than the Actions pursuant to the Habitats directive and EIA directive aims to align government policies to achieving Global Biodiversity Targets. There are 5 key objectives addressing factors that will achieve restoration of biodiversity. The role of the urban environment is identified as part of nature-based solution contributing to national climate ambitions.
- 7.3.3. **Housing for All 2021** is the Government housing plan to 2030 and aims to provide everyone in the state with a home.

## **8.0 Assessment**

### **8.1. General**

- 8.1.1. This addendum report follows the submissions of the appeal parties (the applicant, the Planning authority, the appellants and observers) on foot of the particular issues raised by the Board and the cross circulation of initial responses between these parties. The issues centre on

- The change in the development plan objectives with respect to the type of residential zoning governing the subject site and
- The requirement for a site-specific Flood risk assessment

Since the preparation and assessment of my previous report there have also been some changes in policies pertinent to urban development. This is in addition to the continuously evolving regulatory framework emanating from European Directives and consequent binding commitments to address climate change at a European level. I have considered this context to provide the Board with more up to date criteria to inform its decision.

## **8.2. Development Plan – changes**

- 8.2.1. The key change in the development plan is that the residential zoning objective governing the subject site at the time of the application lodgement, planning authority decision and lodgement of appeal has changed to Strategic Residential Reserve lands.
- 8.2.2. In my report while I was cognisant of the change, I ultimately took a view that that the proposed residential use did not constitute a material contravention in light of the continued residential zoning and grant of permission by the planning authority having regard to the pattern of the development in the area. In this regard I also note the Board has since granted permission for housing of a comparable density on lands further outside the town and zoned for low density considering the scheme to accord with national guidance in terms of location and accessibility.
- 8.2.3. However, the planning authority notwithstanding its reference to standing over its decision in previous submissions has flagged that the phasing criteria in the latter objective cannot now be adhered to. It refers to the early stages of the life of the current operational plan and difficulties in meeting SR8 criteria reliant on an established pattern of residential development since its adoption and ultimately the prematurity of such consideration being well in advance of the 4 year limit. This supports a case that the proposed residential development constitutes a material contravention of its plan. This is also I note the decision in the case of the adjacent site governed by the same zoning (SR8) at the time of the planning authority's decision to refuse permission.

- 8.2.4. The appellants rely extensively on the current strategic reserve zoning as a basis to refuse permission and make the case that the council is the decision-making body regarding zoning and not the Board and therefore suggest that the Board has no rights to grant permission contrary to the zoning. This is incorrect. The Board is not precluded from granting a material contravention. I note section 37 (2) (a) provides for the Board to grant permission in the event of an appeal, even if it contravenes materially the development plan. This is subject to the provisions of paragraph (b) which sets out criteria for a grant of permission where the planning authority has decided to refuse permission on grounds of material contravention. In this case, as the planning authority has decided to grant and not refuse permission, it may I consider be reasonably interpreted that the criteria to be met in (b) namely in (i), (ii) or (iii) or (iv) is not relevant. However, having regard to the current zoning, the more recent submissions and probable basis for the planning authority to consider refusing permission I consider that in determining the proper planning and sustainable development of the area it would be appropriate and in accordance with the spirit of the act and natural justice to have regard to the matters such as that set out in subsection (b).
- 8.2.5. While I note the appellant comments about not overriding the adopted plan which has been through a rigorous process, I have examined the chief executive's report as well as the OPR report which preceded the Ministerial Direction and do not agree that the ministerial directive specifically mandates SR8 'strategic reserve' over 'residential' on the subject site. The site was not identified for rezoning from the original R23 as compared to many other sites that were identified, such as those being proposed from agriculture to residential. I do acknowledge the overall concerns about over zoning, however, in this case the site is well placed in terms of accessibility and services. I say this also having regard to the basis for permission for similarly dense development further out from the town centre. (ABP ref. 314448)
- 8.2.6. In broad terms, the proposed development is of national importance in so far as it is contributing to increasing housing supply in an area and a manner that meets with the criteria of the National Planning Framework in terms of sustainable land use. The site is surrounded by a built-up area and will contribute to achieving more effective density and consolidation rather than sprawl which is a top priority. The siting of a housing scheme in such a location meets with the more recent Compact Settlement Guidelines and such is also identified as a critical need in the government document Housing for

All. The layout also provides for sustainable mobility by integration of safe and convenient alternatives to the car by providing for walking and cycling within the surrounding area and is consistent with the Avoid -Shift model through transport planning as a means of implementation of the Climate Action Plans.

- 8.2.7. In more local terms, Ennis is a key town in the NPF and with a population of 25,276 (CSO 2016) is the largest settlement in the county and a key town in the RSES and such towns are identified in the Sustainable and Compact Settlement Guidelines wherein it is strategy to support consolidation within and close to the existing built-up footprint.
- 8.2.8. In the Sustainable and Compact Settlements Guidelines for Planning authorities it states in respect of key towns (section 3.3.3.) that the key priorities for the growth of Key Towns and Large Towns in order of priority are to: (a) plan for an integrated and connected settlement overall, avoiding the displacement of development generated by economic drivers in the Key Town or Large Town to smaller towns and villages and rural areas in the hinterland, (b) strengthen town centres, (c) protect, restore and enhance historic fabric, character, amenity, natural heritage, biodiversity and environmental quality, (d) realise opportunities for adaptation and reuse of existing buildings and for incremental backland, brownfield and infill development, and (e) deliver sequential and sustainable urban extension at locations that are closest to the urban core and are integrated into, or can be integrated into, the existing built up footprint of the settlement. Table 3.5 sets out a density guide in the range of 30dph to 50dph net to be applied generally in suburban areas of these towns. Higher densities shall be open for consideration subject to accessibility criteria being met in 3.8 of these guidelines.
- 8.2.9. For reasons already set out in section 8.3 of my main report the site is well placed in terms of connectivity and proximity to the urban core and services. It is a strategically positioned infill site that has the potential to consolidate residential housing and strengthen the town. Subject to meeting with conditions relating to landscaping and ecology, I consider the proposed development to constitute a significant contribution to the proper planning and sustainable development of the area.
- 8.2.10. In terms of complying with development plan settlement objectives, I consider the location supports the objective V3(a)1 insofar as meeting with the aims of subsections

(j) and (k) as cited, and moreover, having regard particularly to the Sustainable and Compact Settlements Guidelines for Planning authorities under section 28 and having regard to the pattern of development and permissions granted in the area since the making of the development plan, permission for the proposed development should I consider be granted.

### **8.3. Flood Risk**

- 8.3.1. The applicant has submitted a Site-Specific Flood Risk Assessment which has been circulated to the planning authority and third parties for comment. This assessment meets with the criteria for this SR8 site as set out in Volume 3a of the CDP and section 4.3 of Volume 10c (the Strategic Flood Risk Assessment) due to the existence of a potential unmapped fluvial risk which in this case relates to the Cahercalla Stream which traverses the site. There is a fundamental dispute between the applicant and the appellants, as individuals and as represented by their engineer, about the adequacy of assessment of flooding – the principal issue being impact on neighbouring residential development due to loading to this stream as well groundwater impacts in a karst area. There are fundamental differences of opinion on the risks, drainage capacity and design. The planning authority took the view that these matters were comprehensively assessed in the course of its consideration and offers no further view in this case on the SSFRA.
- 8.3.2. While I note the concerns, I note that the applicant has now completed a site-specific flood risk assessment which I am satisfied has been carried out in accordance with Planning System and Flood Risk Management Guidelines. I note it has been carried out by Tobin Consulting engineers with the benefit of specialist hydrologist and engineering input. The report sets out the methodology and approach by reference to the guidelines. I note in respect of climate change it factors in a mid-range future scenario of 20% for extreme rainfall and peak river flood flows and a 0.5m mean rise in sea levels. I consider this reasonable and note in this regard the past flood events in section 3.1, none of which are in the vicinity of the site. The CFRAM (Catchment flood risk assessment and management) study by OPW in 2015 is considered to be more accurate and figure 3-4 shows the areas liable to flooding although the stream flowing through the site was not modelled. The site as outlined in the GSI mapping in Figure 3-9 in not included in areas of groundwater or surface water flooding. As part

of the assessment Tobins carried out a site-specific hydraulic analysis. Geometric survey data was collected by the consulting survey team . It is explained that the upstream and downstream invert levels for each culvert along with appropriate culvert dimensions and roughness were applied to each scenario in CulvertMAster to calculate the capacity of the existing culvert . On this basis the culvert is calculated as having a maximum capacity of 3.70m<sup>3</sup>/s while also maintaining a 300mm freeboard within the open channel section of the Cahercalla Stream - effectively potentially conveying the 1000 year predicted flows from catchment. The smallest section was used for a conservative capacity calculation. The analysis demonstrates that the channel has capacity to convey the maximum flow from the upstream culvert and that the risk of fluvial flooding is minimal. In this regard I consider the siting of units 100m from the stream is appropriate.

- 8.3.3. In terms of pluvial flooding capacity, the site is not at risk during an extreme 0.1% AEP pluvial flood event having regard to the data provided and surface water management which includes a dedicated stormwater drainage system incorporating SuDs and limiting discharge from the site to greenfield run-off rate.
- 8.3.4. As the site is 8.1km from the sea and the River Fergus, which is susceptible to tidal influenced flood event, is 800m upstream – a distance that is not reached by such events, it is I consider reasonable to conclude that the site is in Flood Zone C.
- 8.3.5. I further note the comments in the technical memo in the latest submission by the applicant explains the drainage system and flood modelling having regard this culverted stream. As the culvert design and sealed nature is downstream of the inlet, the blockage scenario as presented by the appellant is stated to not realistic as the proposed development in phase 1 cannot increase the risk of blockage. This I accept is a maintenance and design issue upstream. It is further emphasised that the SuDs based dedicated drainage system which will limit the run-off to greenfield run-off rates will be provided and that there is no evidence to suggest that the proposed development will increase flood risk elsewhere. I consider the consulting engineers have made a reasonable case and in view of the forgoing I am satisfied that the proposed development will not give rise to a flood risk such that a refusal of permission is warranted.

- 8.3.6. Notwithstanding the clarification of using SuDs principles in the drainage design I remain of the view that condition 5 as recommend in my report is appropriate to comprehensively address the drainage issues.
- 8.3.7. I do not consider the point made about the purpose of open space as essentially being part a flood plain as inferred from the CEO report on the draft amendments and the reversion of the subject site to a strategic reserve, demonstrates a flood risk. I say this noting the Chief executive's report on the CDP amendment and references to biodiversity. There are clearly localised issues upstream of the culvert however the principle of essentially retaining the site as a compensatory attenuation area required consequent on another development is not reasonable.

#### **8.4. Ecology and Bats**

- 8.4.1. While not the subject of Board's Direction of November 2023 and subsequent notices, the matter of ecology and more particularly, impact on bat species by reason of habitat and foraging disturbance due to loss of woodland is again raised by the third parties. It is perhaps indirectly relevant in so far as ecological issue may have influenced the prioritising of residential land - however I have addressed the matter of compliance with strategic reserve categorisation in the context of the core strategy and wider settlement issues. As I have set out in main report, I am satisfied that the open space requirements have been adequately met subject to recommended condition 2 which seeks to protect linear foraging among other amenity considerations. I say this without prejudice to the decision in the case of the adjacent phase 2 lands.
- 8.4.2. More precisely, the submissions throw up errors in timing of surveys and significantly it is pointed out that a roost has been identified in the adjacent phase 2 site. The key criticism centres on the lack of 'all-seasons' bat survey in the subject phase 1 site. The applicant makes the case that this is an onerous requirement but that the all-seasons survey in the phase 2 part of the site bears out the findings of the bat survey for phase 1. In the appraisal by Dr Flynn the commuting/foraging area was noted to be essentially retained. Section 8.11 of my report addresses the issue of bats by reference to Dr. Flynn's appraisal of the methodology and site characteristics, as does the appropriate assessment. I also note that Phase 1 has potentially the benefit of being provided with additional buffering in phase 2 insofar as open space layout and

landscaping can be modified to augment that proposed in phase 1. Although I say this without prejudice as the cumulative impacts are a matter for the Board to consider in Phase 2 case. I note the current CDP requirement is 'appropriate bat survey' and no loss of foraging habitat for the LHB. I am satisfied that the proposed development substantially complies with this requirement. Should the Board hold the view that the loss of scrubland/vegetation amounts to a loss of a habitat contrary to the provisions of the development plan I would refer the Board back to the provisions for material contravention.

## **8.5. Conclusion**

8.5.1. In view of the forgoing, I am satisfied that my assessment in my report of August 2023 remains relevant. In respect of compliance with the current development plan, having regard to the Board's Order and the submissions, I conclude that:

- the proposed development of housing materially contravenes the Core Strategy in respect of development of Strategic Residential Reserve Lands which includes the subject site, being zoned SR8. This is due to the specific requirement of a 4-year limit from the adoption date of the Clare County Development Plan 2023-2029 before permission can be considered,
- having regard to the location of the site in an accessible location in a key town and the surrounding pattern of development that the development accords with objective V3(a)1 of the Clare County Development Plan 2023-2029 in terms of integrated land-use and transport and moreover, with the provisions of the section 28 Sustainable and Compact Settlement Guidelines for Planning Authorities (2023) and constitutes a sustainable form of development that supports the achievement of the objectives as set out in the National Planning Framework 2040 (2018), Housing for All – a New Housing Plan for Ireland (2021) and the Climate Action Plan 2024
- the SSFRA has sufficiently demonstrated that the proposed development is not in an area at any significant risk of fluvial, pluvial or coastal flooding and would not pose a risk of flooding to neighbouring development and would accordingly meet with the sequential approach criteria,

and the proposed development would therefore accord with the proper planning and sustainable development of the area.

- 8.5.2. As compared to my previous wording in the reasons and consideration, in view of the foregoing, I recommend that the wording being updated to reflect these considerations.

## **9.0 Recommendation**

I remain of the opinion that permission should be granted subject to the same conditions as my original report with an amended wording of the reasons and considerations so as to set out the basis for a material contravention in view of the criteria for SR8 land particularly relating to the 4-year limit on permission as measured from the adoption date of the current development plan.

### **Reasons and Considerations**

Having regard to the policies and objectives of the Clare County Development Plan 2023 - 2029 in respect of both urban ecology and housing provision and the site specific objective for strategic residential reserve SR8 it is considered that in the context of, national policy and particularly the Sustainable and Compact Settlement Guidelines for Planning Authorities, (2023), according to which new residential development should be increased in intensity and directed into locations within the existing built up serviced areas and also having regard to the building pattern in the area and the scale and design of the proposal up to three storeys in height and incorporation of retained linear features for foraging bat species as part of the range of mitigation measures, it is considered that the provision of housing development at this location and at this stage in the life of the development plan, while contrary to the timing criteria for strategic residential reserve land, is appropriate and a material contravention is justified. It is further considered that subject to compliance with the conditions set out below that, the proposed development would not seriously injure the visual or residential amenities of the area, would not result in a significant loss of bat foraging area and would be acceptable in terms of quantum of development, permeability, traffic safety, flood risk and ecology. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

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Suzanne Kehely

Senior Planning Inspector

11<sup>th</sup> December 2024