

An  
Bord  
Pleanála

## Inspector's Report 313570-22

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### Development

Demolition works and construction of 4 storey development providing 39 residential units (33 apartments and 6 town houses), ground floor digital hub and café, basement car parking and ancillary services/facilities, surface car parking and ancillary services, in an Architectural Conservation Area . A Natura Impact Statement accompanies the application .

### Location

Nos.1-4 Buttermarket Street and Simm's Lane, Drumbiggle Ennis, Co. Clare

### Planning Authority

Clare County Council

### Planning Authority Reg. Ref.

21663

### Applicant(s)

Eko Integrated Services Ltd.

### Type of Application

Permission

### Planning Authority Decision

Grant Permission with conditions

### Type of Appeal

Third Party

### Appellant(s)

Mary Burke & Patrick Conboy

Stephen Loftus and others.

**Observer(s)**

None

**Date of Site Inspection**

30<sup>th</sup> December 2022.

**Inspector**

Suzanne Kehely

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## **Appendix 1 –**

Form 1: EIA Pre-Screening

Form 2: EIA Preliminary screening

## **1.0 Site Location and Description**

- 1.1 The site of .3 hectares is centrally located at the southwestern end of Ennis Town Centre. It is a derelict block site with road frontage on all sides. To the north there are 4 derelict single storey buildings fronting Buttermarket Street (on its southern side), to the east there is a stone boundary wall along the lane way frontage which also backs onto a tradition terrace of primarily commercial properties along Carmody Street some of which have frontage onto the lane and otherwise the site is boarded/fenced-off from the street along Drumbiggle Road and the Simms Lane frontage to the west. County council civic offices are in a Protected Structure 'Butter Market' on the opposite side of Simms Lane facing the site. The site is within an ACA.

## **2.0 Proposed Development**

- 2.1 Permission is sought to:

- demolish 4 cottages (dwelling houses) at nos.1-4 Buttermarket Street and part of an existing eastern boundary wall along Buttermarket Lane
  - construct 3 blocks of varying heights, forms and uses including 39 dwellings (as revised from 45 units in Further information) / on a site of 300sq.m and comprising:
    - 4 storey apartment with (fifth recessed roof level) building fronting Drumbiggle Road with 31 dwelling units
    - 6 x 3 storey townhouses
    - a café with digital hub /meeting room facilities with two independently accessed apartments over
    - Other elements include a roof terrace and courtyard open spaces, a semi-basement car park, bicycle store, bin store, plant), substation, set down parking, landscaping, solar panels and attenuation tank.
- Setbacks/provision for road realignment /provision for cycle lane.

- 2.2 The application is accompanied by:

- Natura Impact Statement revised in further information (FI) and further updated on 13<sup>th</sup> June 2022 in submission to the Board. (Revised public notices requested by Board and submitted.)
- Buttermarket Design Statement Report (FI) It sets out development justification having regard to dereliction, improving environs, urban design approach and benefits of central housing with associated footfall and vibrancy. It refers to a range of apartment schemes in the town. It refers services and infrastructure and to a flood risk assessment concluding the site is not at risk of flooding.
- Architectural Heritage Impact Assessment report: This shows the site in context of Protected structures the nearest being the Buttermarket and buildings along Carmody Street.
- Daylight and sunlight assessment report (FI)
- Bat Assessment report (FI)
- Outdoor lighting report FI
- Preliminary CEMP incorporating surface water management Plan (FI)
- Landscape and visual impact Assessment with FI including a Landscape Masterplan and Planting Plan.
- Photomontages (FI)
- Attenuation tank (FI)
- Public Lighting Design (FI)
- Part V details
- Ecological Impact Assessment

## **3.0 Planning Authority Decision**

### **3.1 Decision**

- 3.1.1 Following satisfactory submission of further information on 23<sup>rd</sup> Feb 2022 the planning authority issued notification of its decision by order on 29<sup>th</sup> April 2022 to grant permission subject to 26 conditions:

C1 standard compliance

C2 clarifies permission is for 37 units by way of omitting 2 units over café/hub and reconfiguring these ground floor units to double height.

C3 Part V

C4 Occupancy restriction By S.47 agreement.

C5 S.48 Contribution (164,250.4)

C6 S.28 car parking contribution €12000

C7 Cash security for house

C8 Cash security for services

C9 Communal facilities details and management.

C10 Café use.

C11 Construction hours.

C12 Phasing.

C13 Construction methods and environmental mitigation/ NIS mitigation.

C14 CEMP.

C15 Bat protection/ecology.

C16 Archaeology.

C17 Stormwater/Surface Water.

C18 Naming and numbering.

C19 Materials and finishes of road and footpath surfaces, signage..

C20 Waste management

C21 Service cables

C22 Restriction on roof level development.

C23 Post construction details to be submitted.

C24 Restriction on commercial use.

C25. Discharge to sewer.

C26 Parking control to prevent obstruction to accesses to rear of Carmody street properties/ details of provision for cycle lane along Drumbiggle Road.

## **3.2 Planning Authority Reports**

3.2.1 Further information sought on 17/8/2021 and subsequent revised notices sought on 25<sup>th</sup> Feb 2022. Details related to:

- Urban Design having regard to protected structure and active frontage to the east.

- Excessive density of 153/hectare and 2 bed units, greater mix required.
- Visual impact in ACA and height massing scale – to be addressed in a redesign with supporting assessments and photomontages.
- Daylight and sunlight assessment.
- Reduction of overlooking.
- Impact on vehicular, bicycle and pedestrian movements.
- EV.
- Parking provision as it is insufficient.
- Storm water discharge.
- Bat survey.
- Open space functionality.
- Eastern boundary wall removal/treatment

3.2.2 The applicant responded with a modified proposal with a reduced number of units from 45 to 39. This comprises 33 apartments (2 x 3 person 2bed, 26 x 4 person 2 bed, 1 x 3bed and 4 x 1 bed) and 6 town houses.

3.2.3 The issues have been addressed substantially to the satisfaction of the planning authority o consideration of the modifications and having regard to the detailed specialist reports submitted ins support of the rationale for the nature of the scheme.

3.2.4 In terms of density, it is noted that 130 units per hectare equivalent is compatible generally although 2 units over the café are recommended to be omitted to reduce the scale of the development and reduced the car parking ratio which falls short of the guideline. However, the planning authority is satisfied that the there is a case for reduced parking provision on site having regard to the town centre location and national policy and the provision the plan to relax requirements. The availability of on street parking and is noted and also the availability f private car parking in the car park.

It is considered that outstanding matters could be addressed by condition and the following shall be complied with prior to commencement of any dwelling units.

### **3.3 Third Party Observations**

Issues as raised in grounds of appeal.

### **3.4 Other Technical Reports**

**Road Design Office:** FI required: TTA, Road layout details re sightlines, parking details. Sightlines acceptable in FI.

**Road and Transportation Dep:** queries regarding lighting and ESB services.

**Estate Team: 13-7-21** Details required regarding roads, footpaths, water services, storm water, public lights, construction traffic and other general issues.

**Ennis Municipal District Planning report:** FI required. in report of 27-4-22 a range of issues are addressed.

- General: reuse limestone in wall in façade and keep for recycling.
- Transportation: on street parking for the six houses only – no permits for apartment will be available and units to be sold on this basis. Conditions set out in detail for this.
- Public transport upgrade nearby NTA Town Bus service shows east to west route nearby.
- Need secure bike parking (e.g. For electric bike etc
- Roads: Detailed requirement for the treatment of Buttermarket Lane as public road in addition to the other roads in terms road opening, access, detailed design and treatment, signage, sockets, construction and waste.
- Storm water: standard conditions including permeable paving.
- Flood Risk Assessment: General statement of culvert overflow route and management. No site-specific issues raised.

## **4.0 Prescribed Bodies**

**Irish Water:** (20-4-22) No objection.

**DAU Nature Conservation** (22-7-21) – recommends all mitigation measures in NIS section 7 are included as conditions. Bat surveys are required at appropriate times- if a roost is found a derogation license will be required.



In a later report of 12-4-22, the bat survey is noted and recommends that in the event of permission conditions should address derogation license prior to commencement of works, site clearance outside of bat survey tie and bird nesting season, , artificial alternative bat roosting should be constructed, a lighting plan shall be in accordance with Bat Conservation Ireland guidelines. A landscape buffer shall be provided. Measures in section 7 of the NIS shall be a carried out.

**DAU: Archaeology:** Report (8-3-22) comments as restated in letter to the Board received 5-7-22: No objection subject to conditions. Archaeological test excavation and conditions recommended due to scale of site.

## **5.0 Planning History**

- PA ref P05 21069 refers to a refusal of permission on the site (or part of) for a mixed use scheme on the site for reasons relating to design, residential amenity of proposed development , impact on dwellings on Buttermarket Stret and impact on Architectural Conservation Area.
- There is also reference to the site being subject of CPO proceedings for the purpose of car parking.

## **6.0 Policy Context**

### **6.1 County Development Plan 2022-2029**

#### General

The current County Development Plan was adopted in March 2023. Ennis is designated as a key town, being both the largest settlement in Clare and the largest town in Munster. The core settlement strategy for Ennis, as governed by the climate action strategy in Chapter 2 of the CDP, is to pursue consolidation as further elaborated in s.17.2.7). Objective CDP 4.1(Vol 1) sets out the strategic settlement objective for Ennis and Volume 3a Ennis Municipal District Settlement plan sets the basis for assessment. Within Vol.3, the site is located in the Clonroad Beg

neighbourhood and is zoned mixed use. The focus is on increased housing by addressing vacancy and redevelopment of infill sites and the subject site is within an identified opportunity site. Relevant policy context for Ennis include:

- Permeability and connectivity are recognised as a key priority area in creating successful urban places in line with the Urban Design Manual (2009) This is elaborated on in page 421.
- CDP11.2 Smarter Travel - To support and facilitate sustainable transport and active travel through integrating land use and transportation and by facilitating mixed use developments as a means of supporting national targets of climate policy mitigation.
- CDP11.5 Walking and Cycling: It is an objective of Clare County Council: a) To require walkability and accessibility to be a central consideration in the planning and design of all new developments, transport infrastructure and public transport services;
- Section 18.3.1 (vol 1) refers a goal to prioritise walking cycling and public transport and efficient use of land and minimising transport demand while also protecting the built and natural environment.
- Sustainable Mobility: Permeability and accessibility will be encouraged within developments to reduce car dependence and to promote active travel. Where appropriate integration with adjacent lands is possible through the provision of vehicular, pedestrian and cycle way opportunities, this should be proposed within a development. Development proposals for housing developments comprising 10 units or more shall be accompanied by a Transport and Mobility Statement outlining how convenient pedestrian and cyclist connectivity to the surrounding community has been integrated into the design and layout of the proposed development. Issues such as the provision for bus access (e.g. safe school bus pick up/drop off area) should also be addressed in the statement. (page 462 Vol.1)

#### Ennis Municipal District Plan

The site straddles two delineated sites identified as key development sites. It is part of the transformation site TS5 – former Ennis National school site where it is sought to provide additional residential uses as well as recreational facilities and a focal

point for the area. Range of residential types. it is stated that having regard to its location largely within the defined town centre area, the site is capable of containing an element of town centre uses in terms of commercial and retail development as appropriate. Active public open space and local retail services will also be provided to support the new neighbourhood concept with local services easily accessible by active travel.

Site specific objectives and development assessment criteria relate to the site which is part of larger landbank subject to such assessment:

- **OP1** relates to a separate opportunity site - a small section is part of the same transformation site as the subject site . OP1 relates to the former Ennis national school and adjoining site on Kilrush Road identified as ideally positioned for both residential and retailing with the potential to transform and revitalise the western side of the town and to provide strong pedestrian linkages to the market area and the existing town centre so as to contribute significantly to the enhancement of the retail experience in Ennis. Primary use shall be for residential development, convenience and non-bulky comparison with the secondary town centre type uses permissible. Development proposals must incorporate a high standard of design layout and landscaping. Ease of movement is critical to its successful visual and functional integration in the urban pattern of development. It also aims to upgrade the public realm and to prioritise pedestrian and cycle access.
- Parking on this site can serve both the town centre and the new development. Any public parking spaces removed from Carmody Street, the Kilrush Road or Drumbiggle Road to accommodate the redevelopment of OP1 shall be replaced through provision on this site.
- Development proposals on this site shall be subject to Screening for Appropriate Assessment by the local authority and a Natura Impact Statement submitted should it be determined that an appropriate assessment is required. A full bat survey of any buildings proposed for demolition will be required, particularly in relation to Lesser Horseshoe bats. Any existing tree lines along the boundary of the site must be surveyed and integrated into a landscape plan for the overall site. The northern part of this site lies within a Zone of

Archaeological Potential and therefore site investigations will be required prior to development. A contaminated land assessment may also be required.

- The plan aims to upgrade the public realm and key junctions to prioritise pedestrian and cycle access to provide safe and convenient connection between the historic town core and new development sites. A Traffic and Transport Impact Assessment is required to accompany development proposals for this site. A key element of the future development of this site shall be the provision of a link road from the Kilrush Road to Drumbiggie Road to improve permeability and accessibility in the area. Parking on this site can serve both the town centre and the new development. Any public parking spaces removed from Carmody Street, the Kilrush Road or Drumbiggie Road to accommodate the redevelopment of OP1 shall be replaced through provision on this site. Development proposals on this site shall be subject to Screening for Appropriate Assessment by the local authority and a Natura Impact Statement submitted should it be determined that an appropriate assessment is required. A full bat survey of any buildings proposed for demolition will be required, particularly in relation to Lesser Horseshoe bats. Any existing tree lines along the boundary of the site must be surveyed and integrated into a landscape plan for the overall site. The northern part of this site lies within a Zone of Archaeological Potential and therefore site investigations will be required prior to development. A contaminated land assessment may also be required. The site is predominantly within Flood Zone C, but is shown partially within the CFRAM study modelled extents of Flood Zone A and B. The flooding across the site appears to be related to overland flows arising from the open channel section of the Cloghleagh Stream. Depths are shallow and the flow paths will be readily influenced by water movement around buildings. Any development masterplan should include a site-specific Flood Risk Assessment, which is likely to reduce the extent of the mapped flooding as this is based on an undefended scenario. It will be possible to manage any remaining flood risk through site layout (both horizontal and vertical use of space) and finished floor levels. See Volume 10c Strategic Flood Risk Assessment of this Plan for further details.

- **OP10 Waterpark House and Áras Uí Chocláin, Drumbiggle** This Opportunity Site comprises Waterpark House (former Ennis Town Council offices), the Buttermarket, associated grounds and Áras Uí Chocláin. Simms Lane separates Waterpark House and the Buttermarket from Áras Uí Chocláin. This Opportunity Site is zoned Mixed Use and there is excellent potential to develop strong pedestrian links from Waterpark House, via Buttermarket Street to Summerhill and the town centre. The redevelopment of this site in conjunction with the former Ennis National School and adjoining lands (OP1) presents an opportunity to regenerate the west side of Ennis, with OP1 providing new retail uses and this site accommodating complementary office and commercial uses. A planning application has recently been granted for residential development on a portion of the site at Butter Market Street (currently on appeal to An Bord Pleanála). The Buttermarket building (RPS 837) on the site is a Protected Structure and there are also a number of specimen trees located in the grounds of Waterpark House. These features must be retained and incorporated into future development proposals on the site. The specimen trees must be integrated into an overall landscape management plan for the site. OP10 is located in an Architectural Conservation Area and future development proposals must complement the built heritage of the area. Áras Uí Chocláin also has strong links with OP1 and may, in the longer term, be suitable for commercial development. In the event that this site is developed for commercial or mixed use activity, frontage to Simm's Lane, Buttermarket Street and Drumbiggle Road will be required.
- **OP10** is located in Flood Zones A, B and C, therefore a site-specific Flood Risk Assessment shall be submitted as part of any planning application made in relation to this site, which has regard to the information set out in the Strategic Flood Risk Assessment (Volume 10c of this Plan). Drainage plans for surface water run-off during operation must be submitted, ensuring that run-off is treated via appropriate sustainable urban drainage systems (SuDS). Development proposals on these sites must be in full compliance with the requirements of the Habitats Directive and a bat survey of the site, including inspections of buildings and Protected Structures, will be required, particularly in relation to Lesser Horseshoe bats.

## **6.2 National Policy and Guidance**

### **6.2.1 Project Ireland 2040 – supports National Planning Framework (February 2018) :**

This framework plan supports a strategy of carefully managing the sustainable growth of compact cities, towns and villages in a manner that will add value and create more attractive places in which people can live and work. Policy objectives relevant to this case include

NPO 3a – to deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.

NPO 33 – to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. NPO 35 – to increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

The approach of compact growth which sees the renewal of existing settlements, rather than continued sprawl, is a key priority of the NPF in order to maximise quality of life, improve access to services, ensure efficient use of land and allow for greater integration with existing infrastructure and public transport. Accordingly the preferred approach is to focus on the greater reuse of brownfield and infill lands within the built-up area of existing settlements and the development of sites in locations served by existing facilities and public transport.

**6.2.2 Rebuilding Ireland – Action Plan on Housing and Homelessness 2016:** This is a government initiative which identifies the critical need for accelerating housing supply.

**6.2.3 Housing for All (Government policy 2021):** identifies increasing housing supply as a critical action. It aims for a properly functioning housing sector and is inherently dependant on critical infrastructure including transport, utilities and communications all accompanying housing as supported by the targets of both the NPF and the Climate Action Plan.

- 6.2.4 Climate Action Plan 2023** refers to the key challenging issue of dispersed residential settlements and peripheral developments rather than focusing on central areas and over reliance on the private car.
- 6.2.5 National Sustainability Mobility Policy 2022** sets out a framework for active travel and public transport to meet climate targets and alternatives to the private car. It is based on an Avoid -Shift -Improve model.
- 6.2.6 Southern Regional Assembly, RSESS:** Ennis is a key town (aligned with NPO 7 of NPF) and in a category described as 'a large population scaled urban centre functioning as a self-sustaining regional driver'. It is described as an economic engine of the Mid-West.

The **10 Minute Town Framework and Methodology (July 2020)**. This study forms part of the Regional Action Plan for Interreg Europe MATCH-UP project and identifies infrastructural needs through assessing baseline travel data and potential catchments for walking and makes recommendations for travel modal shift in Ennis as well as Carlow and Tralee in the southern region. It is recommended as a strategy to include Provision of connections to existing walking and cycling facilities; Improvement to bus services with provision of local services within the town, increase in frequency and widening the public transport catchment through additional bus stops and new bus services in addition to initiatives to support travel behaviour.

- 6.2.7 Clare county Council - Ennis 2040 Economic and Spatial Strategy (May 2021).** This aims to create a long-term strategy for the sustainable development of the town. A key strategic objective is the 10-minute town (SO4) as part of the towns economic as well as spatial growth. It is stated that it's growth will be based on the '10 Minute Town' concept with the Town Centre at the heart of this highly accessible and revitalised Ennis - the focus for retail, residential, commercial, educational, leisure and cultural growth. Ennis will support, enhance and utilise its existing natural assets to lead the way as 'Ireland's First Climate Adaptive Town' and to create an accessible place of quality." Section 5 refers to accessible place of quality by way of improved accessibility and supporting concept of neighbourhoods with local access to day-to-day services by sustainable modes of transport and through prioritising walking and cycling and Section 6 refers to mobility and Infrastructure and the objective to improve public transport and reduced car usage. The proposed site is

included with the former national school as a key site in this strategy and identified as suitable for increasing residential density.

### **6.3 Section 28 Guidance and other relevant guidelines**

**6.3.1 Sustainable Residential Development and Compact Settlements (January 2024):** This guidance advocates compact development in central serviced locations. In respect of towns outside the metropolitan area of a city and typically 5000+, table 3.5 Density for key towns and large towns sets a policy objective density of 40-100dph in centres and urban neighbourhoods and 30-50 dph in suburban /urban extension locations. Table 3.4 sets a higher density of 30-150dph net for regional growth centres. A key element in urban expansion is:

- Sustainable and efficient movement: Ensuring places are well connected and accessible by sustainable modes. Also acknowledging that quality of journey is equally important and that places are perceived as safe and are not dominated cars.
- SPPR1 provides for separation distances of 16m between opposing windows permissible.
- SPPR 2 provides for open space standards of 20, 30, 40 and 50sq.m for 1 to 4 bed houses respectively and less if high quality semi-private open space – objective for overall high standard of amenity for residents.
- SPPR 3 – refers to car parking - in accessible locations car-parking provision shall be substantially with a max of 1.5 per dwelling.

### **6.3.2 Planning System and Flood Risk Management Guidelines (2009).**

**6.3.3 Design Manual for Urban Roads and Streets (2013).** This design guide promotes permeability and connectivity in housing layout, both new and retrospectively, in order to address car dependency through design. It advocates: connectivity between destinations to promote higher levels of permeability and legibility for all users, in particular more sustainable forms of transport. This will allow people to move from place to place in a direct manner with greater route choice. In general, greater levels



of connectivity are required between significant destinations, particularly those generating or attracting large volumes of traffic.

**6.3.4 Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual: A Best Practice Guide (2009)** – section 2.1 -2.4 advocate a plan-led and sequential approach to zoning of land for housing development. Connectivity via non car-based means is a core design principle as part of a consolidated approach around existing serviced urban centres. These have been revoked (January 2024)

**6.3.5 Lesser Horseshoe Bat Species Action Plan 2022-2026, Government of Ireland and Vincent Wildlife Trust** : The aim of the plan is to guide, inform and provide structure for the conservation management of this important species over the next five years. Section 4 summarises the Actions for roost recording and protection, roost buffers, roost monitoring, connectivity and awareness. New lighting guidelines are recommended for 2023.

## **6.4 Natural Heritage Designations**

**6.4.1** The nearest sites are:

- Newhall and Edenvale Complex SAC (site code 002091) (c. 2.4km)
- Pouladatig Cave SAC (site code 000037) 2.4km away.
- Lower River Shannon SAC (site code 002165) c. 840m away.
- The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) - approximately 3.4km away.
- Ballyallia Lake SAC 2.8km away.
- Ballyallia Lough SPA 3.2km away.

**6.4.2** Conservation objectives supporting document (2018) for lesser horseshoe bat (*Rhinolophus hipposideros*) for Newhall and Edenvale Complex SAC (site code 002091).

- Section 4.4 notes that Lesser Horseshoe Bats tend to forage in summer in broadleaved woodland and around riparian vegetation for each roost, a 2.5km zone is considered an appropriate distance to foraging areas for the purpose of

the current SSCO targets. The 2.5km zone around each known roost is mapped and potential foraging grounds within the zone are identified and mapped for each SAC. The target is that there is no significant decline in potential foraging habitat within 2.5km of qualifying roosts.

- Section 4.5 Linear features. This species follows commuting routes from its roost to its foraging grounds. Lesser Horseshoe Bats will rarely cross open ground and are particularly averse to doing so unless it is very dark (e.g. Schofield, 2008). Consequently, in order to link roosting and foraging sites, linear features such as hedgerows, treelines and stone walls provide vital connectivity for this species, most importantly within 2.5km around each roost (Schofield, 2008). Linear features such as tree lines are also sometimes used for foraging by lesser horseshoe bats. The target is that there is no significant loss of linear features within 2.5km of qualifying roosts.
- In respect of light pollution the target is that there is no significant increase in artificial light intensity adjacent.

## **7.0 EIA Screening**

### **7.1 Preliminary Examination Screening for Environmental Impact Assessment (EIA)**

7.1.1 An Environmental Impact Assessment Screening report was not submitted with the application. Under the provision of Planning and Development Regulations 2001 (as amended), mandatory EIA is required for the following types of development within Class (10)(b) of Schedule 5 Part 2:

- (a) Construction of more than 500 dwelling units,
- (b) Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)

- 7.1.2 In this case, it was initially proposed to construct 46 dwellings and then reduced to 39 both amounts being considerably below the threshold of 500 dwelling units noted above. The site has an overall area of approximately .3 hectares in an urban area which is characterised by mixed used town centre uses which could be classed as a business district. The site area is well below the lower thresholds of 10 ha for business district and significantly more below the 20 ha threshold for other types of urban area.
- 7.1.3 The site is a brownfield site and in semi-derelict condition and underused and targeted for redevelopment as part of an opportunity site. It is serviced with access to utilities and public transport and walking distance of other amenities in the town and its environs. The natural habitat environment is described in the NIS and associated documentation. The site has been subject to a Flood Risk Assessment which rules out any likely significant flood risk on the site or surrounding lands.
- 7.1.4 The DAU has flagged the proximity of significant sites of interest in the wider area in relation to the Lesser horseshoe Bat species among others and this has been addressed through survey work and further landscaping and lighting details. I am satisfied having regard to scale of development and site characteristics that these requirements have been substantially met in the submitted documents and assessment by the planning authority.
- 7.1.5 The site is within an Architectural Conservation Area and this has been addressed in specialist reports. The DAU has addressed potential archaeological impact. I further note that the site is not designated for landscape protection due to its natural heritage, nor is the proposed development likely to have any significant effect on any European Site (as discussed below in the AA section). There is potential hydrological connection to sensitive sites due to a culverted watercourse to the southeast of the site. This is not likely to give rise to a significant impact on nearby water courses (whether linked to any European site/or other) as also addressed in the AA section below.
- 7.1.6 The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood and I note capacity

as stated by Irish Water. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water supply and drainage services of Irish Water and Clare County Council, upon which its effects would be marginal. Detailed issues with respect to impact on any European site is addressed through appropriate assessment.

- 7.1.7 Having regard to the nature and scale of the proposed development in a serviced urban area and the absence of any likely connectivity to any sensitive location, I conclude at preliminary examination stage that there is no real likelihood of significant effects on the environment arising from the proposed development having regard to the criteria set out in Schedule 7 to the Planning and Development Regulations 2001 (as amended). The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on lands that are zoned for mixed uses in accordance with the provisions of the Clare County Development Plan 2023-2029, and the results of the strategic environmental assessment of this Plan, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site within the designated development area, which has access to water and drainage infrastructure, and the existing pattern of residential development in the vicinity,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case. (See also completed Form 1 and Form 2 in Appendix 1).

## 8.0 The Appeal

### 8.1 Grounds of Appeal

There are two separate appeals. One is from S. Loftus and others who are represented by an agent and the other is from Mary Burke and Pat Conboy who own no.2 Carmody Street. In summary the grounds raise the following issues of concern in the context of the proper planning and sustainable development of the area.

- **Contrary to zoning** regarding use:
  - Over **concentration of residential** use - does not meet with the development plan objective when considering all the other housing opportunities in the area.
  - The **special features** required for such an opportunity site are not being met.
  - Lost opportunity for Ennis.
- **Design and Visual Impact**
  - The revised design remains unacceptable.
  - At least two stories **too high**
  - Brick **finish** inappropriate and photomontages showing grey stone are misleading.
  - Detailed design issues roof pitch at 25%, brock finish, canopy highlights low pitch, roof material unsuitable.
  - The planning guidance is noted but is highlighted that the Building height guidelines state that **historic settings** can be sensitive

- **Carmody properties may be compromised** in the event of extending notwithstanding the daylight sunlight analysis. Range of concerns raised in group appeal by S. Loftus c/o Connellans and Associates and also particular concern about impact on no.2 as raised by MA. Burke and P. Conboy. (appellant party)
- **Impact on architectural heritage**
  - **Curtilage and setting of Waterpark House and Buttermarket Building** are impacted. E.g. As illustrated with photos when trees are without leaves.
  - The development will be **overly dominant** relative to the protected Structures as viewed from Drumbiggle Road.
  - View from Carmody street into Buttermarket shows protected structure relative to cottages to be demolished - the modern terrace will detract from this.
  - Laneway with stone wall is historic and should be retained.
- **Car Parking and traffic**
  - Site is needed as public **car park** for the town which is **deficient** in existing public car parking. The site provides such and was subject of CPO for this purpose as part of the vitality of the town this will be lost and replaced with a development demanding additional car parking above the level provided.
  - Lack of parking is aggravated by **lack of public transport**. Cars are needed for shopping in the rain.
  - No **entrance** to Drumbiggle Road – the provision of such would spread traffic and promote commercial life.
  - The proposed development will create a **traffic hazard**. No consent to provide the required visibility splay and sightlines at the entrance onto the L6-411.
  - The car parking along the lane will block no.2 Carmody Street
- **Water Quality**
  - There is concern about the **capacity** of the North Ennis Treatment Plan having regard to breaches recorded in EPA monitoring.

- The cumulative impact of housing development has not been considered in assessing the ecological impact - e.g. in the NIS. The Construction Management Plan and Surface water management plans are both generic and non- specific and therefore are not considered to adequately address environmental issues.
- This is contrary to the vision for Clare residents of a high quality of life through efficient and robust infrastructure while complying with European and National environmental legislation.

## **8.2 Applicant's Response**

8.2.1 The applicant submitted a detailed response on 13/6/2022 to the respective grounds and makes the following points.

- The proposal does not disregard the CDP objectives regarding respecting the built heritage of the area with particular regard to the status of Buttermarket Lane and the old laneway. The area is characterised by haphazard car parking and unkemptness and vulnerable to anti-social behaviour. The proposal clarifies car parking and traffic flow in an orderly manner and provides for encouraging pedestrian use while the café contributes to passive surveillance thereby reducing anti-social behaviour.
- Car parking is sufficient having regard to town centre location and access to services.(supported with 10 minute town data for Ennis) and the provision in the development plan (FI requestion ) for appropriate reduction and policy provisions for reducing car dependency. In this regard the number of units has been reduced to 37, secure bicycle parking is provided. A TTA confirms parking is appropriate for the area.
- In the interim, pending provision of accessibility measures as an alternative to cars there is capacity in the multi-storey car park to meet a shortfall of car parking.
- Street Parking: It is explained that the proposed on-street parking is within the development site boundary and contributes to an orderly management of parking. It is further pointed out that No.2 Carmody street to which the appellant refers,

does not have vehicular access from the lane. While the lane will be a shared surface it is not designed to obstruct no.2. there will be no change to the status for vehicular movement along the laneway to the rear of Carmody street.

- The residential component will bring passive surveillance at nighttime while the vacant boarded up properties will be replaced with a terrace of houses.
- It is disputed that development is premature due its reliance on public transport and lack of car parking . It will not exacerbate traffic along mill Road- Carmody Street given the plans for the area and strategic location of the site.
  - This is being actively pursued between Clare county council and the NTA and funded by the Active Travel Funding.(and in this regard I note the URDF schemes in respect of the public realm enhancement in the town ). The proposed development provides for a cycle path on the southern boundary.
  - There is significant public parking provision close to the site within the town centre the Friars Walk bus stop is within easy reach as are the bus and rail stations. (within 10 minutes)
- The café is not a token gesture – there are none in the immediate vicinity and the added provision for of meeting rooms makes it useful for business and make it business hub central to the development.
- The inadequacy of the NIS addressed in submission of 4/4/2022.
- The reference to Clareabbey WWTP is a typographical error. The PA has clarified the error in an email attached (as clarified in the planning authorities observations to the board.)
- in respect of the river Fergus data a copy of the last EPA inspection report indicating the sample taken was normal. This inspection was carried out after hotels pubs and other public establishments were allowed to reopen in July 2021 this inspection postdates the EPA report SV 17528; The annual report 2019 is the last available direct evidence of the performance of the Ennis N wastewater treatment plant. This inspection report was available to the appellant. a copy of a



pre connection agreement from Irish water confirming the connection for possible water and wastewater are feasible is also attached.

- The reference by the appellant to the SHD application 312194 is a pre application consultation and not a planning application therefore figures showing exceedance of the wastewater treatment capacity is incorrect.
- In respect to the status of the lower river Fergus and potentially deficiencies in the NIS is addressed by way of updated NIS (as readvertised) in the appeal response.
- As per the national planning framework objective 11 there is a presumption in favour of this exact form of development at a high density with appropriate parking close to the center of town on a brownfield site where residents have provided all necessary opportunities to choose to walk or cycle to various services and public transport. It is believed that the proposal provides a balanced response to these objectives.
- Design has mitigated risk of overshadowing.

### **8.3 Planning Authority Response**

In responses received on 9<sup>th</sup> and 17<sup>th</sup> June the planning authority made further comments on:

- Impact on built fabric
- Car parking – acceptable shortfall and alternatives due to existing parking provision and national policy.
- Buttermarket Lane will be shared surface with pedestrian priority. Condition 26 addresses this.
- Proximity to bus/train station and town centre assists in less car dependency.
- Cafe hub use accords with OP10
- Inadequacy of NIS: taking account of impacts and discharges from both treatment plants, no significant impact on QI or species of Conservation interest likely associated with WWTP. No likely change in aquatic habitat of SAC. Nor is impact likely on the SPA.

- The conclusion in the revised Nis regarding importance of site as a foraging area is considered reasonable. Mitigation measures acceptable.

## **8.4 Further response**

In a further response to the applicant's response, the character of the lane way is disputed with reference to endeavours by the appellant. Further details are provided in support of concerns about the capacity of the Ennis North Treatment plant and inadequacies of appropriate assessment by reference to OPR guidance.

## **9.0 Assessment**

### **9.1 Issues**

- 9.1.1 This appeal relates to the redevelopment of a brownfield site for the purpose of a mixed-use scheme at the southwestern periphery of Ennis town centre. Objections are centred on the predominance of housing and lack of parking and also the scale and design and impacts arising on visual and residential amenities. There are also concerns relating to the servicing of the site and loading on the drainage system.
- 9.1.2 In terms of objectives for the area, the range of assessment criteria is set out in site specific objective (OP1 /OP10) for the site at large which I note refers inter alia to the need for bat assessment and flood risk. These have been addressed in the application documentation as supplemented and assessed substantially to the satisfaction of the planning authority. As there is no substantive issue arising in terms of dispute or otherwise, I do not consider it necessary to revisit these matters in detail although the issue of bats is addressed in the appropriate assessment. Accordingly, having reviewed the contents of the file and inspected the site, I

consider the substantive issues for assessment can be addressed under the following headings:

- Principle of development
- Height, Scale and design:
  - impact on streetscape and architectural heritage.
  - Impact on amenities of existing properties
- Traffic Safety and car parking
- Drainage and ecology

Appropriate Assessment is addressed as a mandatory requirement in the next section.

## **9.2 Principle of development**

9.2.1 The case is made by the appellant that the predominance of housing in the proposed development and in the manner designed is contrary to the site objective for mixed uses and as expressed in the site specific objective in the CDP 2017-2023 – Vol. 3a: Ennis Municipal District which requires that developments shall make a significant positive contribution to the settlement in which they are located. It is pointed out that the site is in an optimum location for various forms of development and that the over-concentration of a single use fails to meet with the site criteria. It is submitted that there are other opportunity housing development sites preferable to this one and in this regard, I note the list of vacant sites in section 1.6.4 of the development plan.

9.2.2 The County Development Plan has changed since the application and appeal lodgement dates. The current plan is for 2023-2029 which includes Volume 3a Ennis Municipal District Settlement plan and sets the basis for assessment. Within Vol.3, the site is located in the Clonroad Beg neighbourhood and is zoned for mixed-use. The focus is on increased housing by addressing vacancy and redevelopment of infill sites. The subject site remains within an identified opportunity site.

9.2.3 I accept that the key location of the site provides for various forms of development and that it has a pivotal 'pillar' role in the regeneration of the area. However, in terms of criticism of the proposed use being contrary to the development objectives, I note

firstly that the OP10 in the current plan (Vol 3a) which relates to 'Warterpark House, the Buttermarket, associated grounds and Aras Ui Cochlain' is zoned for mixed use and relates to a wider area than that occupied by the subject site. I also note that the development incorporates a ground floor commercial element and is not therefore exclusively residential. In terms of land use, I consider the proposed use accords with the zoning objectives and does not compromise the realisation of the objectives for the area. I consider the planning authority's appraisal of compatibility with zoning to be reasonable. I refer in particular to the proposal in its capacity to address dereliction and vacancy by providing for uses that urbanise the area while contributing to vitality during day and night times.

9.2.4 I have also examined the principle of zoning in the context of the overall strategic development objectives for Ennis in the CDP and by reference to ministerial guidance and national policies as determined by the Climate Action Plan.

9.2.5 In the first instance, Ennis is designated as a key town, being both the largest settlement in Clare and the largest town in Munster. The core settlement strategy for Ennis, as governed by the climate action strategy in Chapter 2 of the CDP, is to pursue consolidation. Activating vacant units and achieving effective density and consolidation is an objective of the Council in the CDP (s.17.2.7). Objective CDP 4.1 (Vol 1) sets out the strategic settlement objective for Ennis and notably includes subsections:

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, and

l) to support increased levels of town centre living and to assess the potential of the development of a modern family-oriented town centre living pilot project during the lifetime of the Plan.

9.2.6 This is further detailed in the Ennis Municipal District Plan as set out in section 1.2 of Vol. 3a. Such policies adhere to the NPF and refer to the need to provide for public

transport. Such a strategy sets the basis for a higher density. I consider the proposal to be further supported by the emphasis of ministerial guidance on achieving viability of public transport and services. The Sustainable and Compact Settlements Guidelines for Planning Authorities state that 'in order to achieve compact growth, we will need to support more intensive use of existing buildings and properties, including the re-use of existing buildings that are vacant and more intensive use of previously developed land and infill sites, in addition to the development of sites in locations served by existing facilities and public transport.' I consider the principle of a mixed-use housing scheme accords with the principles set out in these Guidelines which advocate compact development in central serviced locations. I note for example, in addition to providing a café/ work hub in the town, the housing is within walking distance of the services and amenities provided in the town centre currently and that can and may be provided in the future thereby enhancing viability and provision of such services for residents in the town, its environs and its wider municipal district. This local convenience of the site is well illustrated in the 10-minute walk catchment maps as referred to in the policy section of this report and as submitted by the applicant..

- 9.2.7 The compatibility of the proposed scheme is of course predicated on meeting design criteria so as to ensure an appropriate interface with the immediate surrounding development while also achieving appropriate development standards.

### **9.3 Height, Scale and Design**

- 9.3.1 The appellants are of the opinion that the design as revised remains unacceptable in that it is two storeys too high and insensitive to its setting in terms of architectural heritage and impact on residential amenities. The applicant has prepared a comprehensive range of assessments of the physical bulk and design and its impact on the receiving environment in terms of streetscape, heritage, landscape and visual and residential amenities. These detailed assessments were on foot of a request for further information in order to address concerns raised in the assessment by the planning authority and by third parties. I have reviewed these and consider they make a cogent case in support of the design rationale. While the development will be of a larger scale than the immediate environs, I do not consider 4 storeys plus roof

level to be a significant departure from the denser urban form of the town or to be unduly obtrusive in its immediate context. The scale of the site and wider redevelopment objectives for the area also I accept allows for some innovation.

#### Impact on streetscape

- 9.3.2 The site is a classic urban block with complete perimeter street frontage on all of its four sides – each side with a different context due to road width, alignment and building typology. Each frontage in the scheme has been addressed in different ways and in a manner that I consider is cognisant of this setting. There are three elements to the proposal: the terrace of housing, the apartment block and the café/hub.
- 9.3.3 The terrace of 6 houses is the first element fronting Buttermarket Street on its southern side and this replaces a single storey terrace of four boarded-up cottages. The original wider plots of up to 7m with double fronted dwellings with some dormer elements and roof height at around 5m are being replaced with a finer grained layout with six 2.5 storey dwellings with a roof level attic, living space and south facing terrace to the rear. These are on narrower plots and have a significantly taller height of c.9.8m which includes the mono-pitched roof slope in the façade but presents as two storeys along the street. The footprint extends closer to Simms Lane than present and strengthens the street definition. As evident in the photomontage I do consider the proposal to result in any significant deviation from the traditional building format of the surrounding streets.
- 9.3.4 The second element relates to the apartment block on the substantially vacant part of the site. It presents as a four-storey elevation at the corner of Simms Lane – (a c. 6m wide carriageway with footpaths on each side of the road with the Buttermarket building and grounds of Waterpark house,) and Drumbiggle Road - a key radial access route to town. The parapet height of 20.8mOD is around 14m above the footpath due to the basement car park being partly above ground. There is a fifth roof level set back from the parapet that is flat roofed, so the building reads as four storeys from the immediate street. The main elevation of the apartment block, as viewed along Drumbiggle Road, steps down to three storeys with a receded roof level and then to two storeys where it also fronts Buttermarket Lane a narrower

street to the east and where the parapet rises to 15.3m OD. This is set back at a range of 3.2m from the boundary at a point where the lane is c. 2.7m wide and set back 4.6m from the boundary at the junction and where the lane widens to almost 4m. The roof is flat over the two-storey element and incorporates a communal roof terrace that is accessible from the main stairwell/lift of the apartment block at the western end of the corridor and adjacent secondary stairwell. The apartment block is of a contemporary style along Drumbiggie Road at a point where there is no strong or historic urban character given its significant realignment over the years and with lands on the opposite side being part of an identified opportunity site. Simms Lane has also been widened in parts incorporating perpendicular parking. The roof terrace extends c.9m along the main road (and over 21m along the Buttermarket Lane where it is wider and the Carmody Street plot gardens are at their deepest) up to 25m as measured from the original principal rear façade. The apartment block, while higher, is stepped back from this terrace and also from the terrace of predominantly commercial properties to the east along Carmody street. I consider the scale and character of Drumbiggie Road can absorb the overall height and bulk of the apartment block which steps from two to four storeys with an additional recessed roof level.

- 9.3.5 The third element is the two-storey block adjoining the two storey part of the apartment as it turns the corner onto Buttermarket Lane to the rear of Carmody St. and is shown as having a height in the order of 7.7m (13.8m OD parapet height) and has a flat roof. At ground floor, a café/ hub which incorporates workstations and meeting room facilities is proposed and has double frontage with access also from the courtyard to the west. Two apartments are proposed at first floor and these each have independent access from the somewhat newly aligned public street (Buttermarket Lane). This block is set back c. 5m from the eastern boundary fronting the lane and effectively widening it visually. The development is replacing a high boundary wall presently screening a vacant site and the rear curtilage of the cottages. I do not consider the scale or height of the two storey elements of various design to be excessive having regard, to the pattern of development and the

provision of a gap, setbacks in the building line frontage and introduction of hard and soft landscaping all combining to improve a back lane and its environmental quality.

- 9.3.6 The three elements combine to form a C shaped layout with strong definition to the north and south albeit providing for a wider through way along Buttermarket Lane which I consider is a positive aspect for the adjacent properties. The layout follows good design principles: it opens up the lane and with active frontage by way of own door apartment access, café access and meeting room windows it also introduces surveillance. (It is important to retain the active frontage which can be addressed by condition.) The set back provides for a footpath along the length of the lane and incorporates 3 parking bays and landscaping space all within the delineated site boundary. The landscaping in the form of trees along the street define the linear route with a vertical emphasis. The layout also provides for pedestrian routes through to the courtyard space linking Simms Lane and Buttermarket lane. The existing Buttermarket Lane frontage is limited by being primarily a narrow ancillary service lane to rear of the primarily commercial premises fronting Carmody Street and has no strongly defined character – it has what I would describe as a low environment quality- although I acknowledge some efforts at improved frontage. The proposal for the western side is more open and includes a landscaped communal space which integrates with the café and also provides vehicular access off Simms Lane to the semi-basement level car park. Simms Lane is defined on the western side by the Buttermarket Building an old stone building occupied as office space by the county council. This is set alongside the parkland grounds and curtilage of Water Park house and is accordingly a looser urban character. The strong corner statement marks the edge of the town centre along a key radial route while being then scaled down to integrate and assimilate with the existing built form. In this way I consider the proposed scale to provide for intensification without unduly compromising the character of the area either in terms of its townscape or architectural character.

#### Impact on architectural heritage.

- 9.3.7 The Buttermarket Building on the opposite side of Simms Lane is a protected structure (ROPS 837) and there are also a number of specimen trees on the grounds of Waterpark House to the west. There are no direct impacts on these structures or



grounds. I consider the approach to the streetscape with the courtyard as a foil to the solidity of the large stone building while also protecting light penetration is respectful to its curtilage and setting.

9.3.8 The main change is the demolition of the terrace of cottages in an Architectural Conservation Area. The applicant has submitted an architectural heritage impact assessment report, and this appraises the scheme by reference to the key conservation principles/objectives for such an area and concludes that there is no significant impact on the architectural heritage. In support of this I note that the historic maps trace the footprint of the original structures in the current urban block and it is evident that the road layout and footprint of development has altered considerably. The replacement of the single storey cottages with a terrace in an approximate position serves to reflect the historic streetscape in a modern idiom. The grain however has been altered by the narrowing of plots and modifications (by straightening and lengthening,) to the building line. While the higher building form provides a higher plot ratio in keeping with a densification approach, a stepping of the façade to reflect the historic building line would be more sympathetic and the Board may consider conditioning this realignment. Otherwise, the applicant proposes to conserve by record which I consider a reasonable approach.

9.3.9 In terms of materials and detailed finishes I consider the use of brick as part of palette of materials is acceptable and can be subject to agreement to ensure appropriate tones and quality are achieved. I consider the retention of the stonewall along the boundary would unduly compromise the development of the site and that the reuse of the stone is and appropriate means to both recycle material on site and defer to the built heritage.

9.3.10 I note that the parkland sylvan setting of Water Park house and grounds to the west is visually buffered from the site and the curtilage will not be unduly impacted in terms of setting. The proposed planting has the potential to mitigate any visual impact of the development.

9.3.11 On balance having regard to the altered urban fabric and nature of the proposal as varied in the different frontages and overall benefits of the site redevelopment I do

not consider that the proposal will give rise to any significant adverse impact on the architectural integrity of the area, protected structure or features therein. I concur with the judgment of the planning authority as expressed in the comments on 9<sup>th</sup> June 2022 in its conclusion that the proposal is well proportioned and attractive and would be compatible with the visual amenities and built heritage of the area.

#### Impact on amenities

- 9.3.12 The applicant submitted a Daylight and Sunlight Assessment report (See page 4 summary) which appraises the impact of the proposal on properties along the surrounding streets and notably identifies a comprehensive number of windows in Carmody Street properties for assessment and this is the main area of concern in the appeal. It also quantifies the quality of light into the proposed habitable space and open space. This report assessment is based on the BRE guidance and examines:
- the impact assessment on the surrounding environment and properties based on VSC, APSH, WPSH, and sun lighting analysis. The effects were assessed in the baseline state versus the proposed state.
  - Scheme performance: daylight and sunlight assessment of the proposed development which includes sun lighting to the proposed amenity areas and internal day lighting practice ADF brackets to the habitable rooms.
- 9.3.13 The impact assessment more precisely covers the following categories:
- effect on daylight (VSC) to surrounding properties e.g. The effect on the windows of the neighbouring properties (Buttermarket building, ButterMarket Street and Nos.1- 10 Carmody St.
  - effect on sunlight [APSH and WPSD] to surrounding properties. The effect on 92 windows of neighbouring properties was assessed:
  - Effect on sunlight to surrounding amenity spaces such as gardens and public spaces 2/3 and 6-7 Carmody St.
- 9.3.14 The scheme performs well in terms of daylight and sunlight. The daylight and sunlight assessment of the proposed development included an analysis of the levels of sunlight in proposed amenity spaces as well as access to daylight in the habitable

rooms of the proposed units across the lower ground floor ground floor and fresh floor of apartment block and housing units.

- 9.3.15 Section 1.2 of the report summaries the likely effects and quantifies incidences of breaches in standards These are substantially imperceptible. In two cases a very significant impact is identified: one relates to a window in respect of Sunlight and the other to a garden. Window No 3d is a south facing return ground floor window with a low baseline (5.5% APSH) and only 15.9% compliant whereas the garden is a property marked at No. 7 Carmody St and this is already overshadowed by the extensive development to the south. A 'not significant' impact relates to one of a pair of ground floor windows at 8b which is on the boundary facing the site. I am satisfied that the surrounding context was carefully considered to ensure all properties and amenity spaces that may potentially experience a level of effect, have been included in the study. Overall, out of the 92 windows assessed I consider the impacts to be minimal and within acceptable limits for an infill town centre site.

#### Density

- 9.3.16 In terms of density, the development as revised in further information amounts to an equivalent density of 130 units per hectare. This is high for a key town where the Compact guidelines guide in the order of 100 units per hectare for typical key towns. However, given the regional significance of the town as driver for growth and its size at over 25000, (key towns are typically 5000), the standalone nature of the site and the proposed layout which concentrates density in the southwest corner - a least intrusive location, I concur with the assessment of the planning authority. I therefore consider that the nature, scale, and density of proposal can be accommodated subject to meeting detailed design criteria in terms of impacts. The scale and set back allows for adequate levels of light penetration as demonstrated. I note that a few windows out the total of 92 assessed for sunlight will have some loss of light but I consider this to be countered by the considerable benefits of upgrading the immediate environs and public realm of Buttermarket Lane, for example, hard and soft

landscaping and footpath enhancement in addition to adding to the vibrancy of the area.

9.3.17 In terms of the wider impact of the nature of redevelopment proposed I accept that case made for the positive benefits are reasonable. By replacing and redeveloping a vacant and semi-derelict type low density development with active frontages on all sides, the design contributes to both an enlivenment of the streets and passive surveillance thereby facilitating an integration with the surrounding housing and connectivity to the town centre. This has considerable potential to enhance the endeavours by the owners/occupiers of Carmody Street Properties in respect of the laneway frontage and environment (as detailed in the further response submission of 27<sup>th</sup> June 2022). The proposed layout incorporates permeability which provides pedestrian access for adjacent residents and visitors as well as for future occupants of the site. Footfall generated by the mix of uses in the area is I consider a positive aspect of the redevelopment. This connectivity and mix of uses accords with the guidelines which advocate that planning authorities at settlement level should plan for an integrated network of well-designed neighbourhoods that can meet day-to-day needs within a short 10-to-15-minute walk of all homes. This will reduce the need for travel, supporting the transition to a lower carbon society. I consider the proposed development to be in keeping with the strategic aims of the Development Plan as supported by the National Planning Framework, the latest ministerial guidance and the Climate Action Plan insofar as the scheme is accessible with the potential to reduce car dependency and accordingly would be in keeping with the proper planning and sustainable development of the area.

9.3.18 The planning authority has however reduced the number of units by 2 along Buttermarket Lane to reduce the intensity of development. This is intended to be achieved by making it double height space rather than eliminating a floor and

reducing bulk. Having regard to the benefits of enlivenment of the area I consider, on balance that these should be reinstated.

- 9.3.19 I note that the open space provision and amenities for residents is in accordance with residential design standards as quantified and assessed by the planning authority and do not consider this aspect warrants further assessment.

#### **9.4 Car parking and traffic**

- 9.4.1 It is argued by the appellant that the site should be retained as a surface car park for shoppers in the town. This is based on Council plans for such over 20 years ago as referred to in correspondence attached in submissions on file to the planning authority on matters relating to council acquisition of properties on the site. This I consider would be contrary to the current objective and zoning for reasons already highlighted. I also note that the Spatial and Economic Plan for Ennis 2040 specifically identifies surface car parking as a spatial weakness in the town centre in addition to the lack of pedestrian facilities and quality of public realm- all issues positively addressed in the proposed design.

- 9.4.2 In terms of parking provision of 23 spaces in the basement and 3 on street within the curtilage, the development cannot provide one space for each unit exclusively. There is concern about the aggravation of traffic congestion given that exclusive car parking is not provided for every residential unit.

- 9.4.3 A maximum of 1.5 spaces is guided in the Compact settlement guidelines although assessment is merit based and similarly the development plan provides for reduced car parking. I note the planner's assessment concludes satisfaction that the site location and nature of development qualifies for this relaxation. This is also based on the availability of car parking along Simms Lane and in the area – a maximum of 6 on street space permits will however be potentially issued only for the houses as stated by the Municipal District Office. In the planning authority's response (17/6/22) to the appeal on this matter, the rationale for accepting reduced car parking is further

clarified by reference to on-street parking, (I am of the view that off-street is a typo error,) available on Simms Lane and its suitability for the ground floor apartments. This would appear to conflict with the restriction of permits by the District office. I further note the reference to a cumulative shortfall of 12 spaces and what I consider to be a reasonable contribution in lieu of this. (This should be increased to reflect a shortfall of 14 if the 2 apartments are reinstated by omission of the planning authority's condition no.2). The applicant appears to accept this restriction in a worst-case scenario and has further indicated an availability of spaces in a nearby private car park should additional spaces be required. I note the statement by the Roads Design department that development plan requirements have not been met as referred to in the FI request. However, the proximate location to planned bus service upgrades together with provision for secure bicycle parking (50 in basement in addition to 30 at ground level) and also the incorporation in the layout for a cycle lane fronting the site rather than a set down area, compensates for the reduced car parking. I consider this design approach and parking ratio in this case meets with the criteria for sustainable mobility (section 8.3.1 Vol 1) and accords with the definition of sustainable and efficient movement – a key priority in the recent S.28 guidance. I consider there is reasonable basis to permit reduced car parking as provided for.

- 9.4.4 With respect to capacity of the road network, which includes Mill Street/Carmody Street (one of the areas of concern), this has been addressed by survey and analysis. A Traffic and Transport Assessment was submitted as further information, and I note it was prepared in accordance with the TII Traffic and Transportation Assessment Guidelines. This confirms that the road network and the proposed junction arrangement is more than adequate to accommodate the worst-case traffic associated with the facility. This is based on new traffic surveys of the adjacent road network when schools were fully open. I consider this is reasonable given that it is a relatively small scale of development in the context of the busy road network and as reflected in the very low traffic generation of the development. It is also in a location immediately adjacent to the Town Centre where pedestrian and cyclist permeability is being enhanced and promoted and I note, facilitated by the proposed development

layout. I further note that there were no significant accidents on the affected stretches of road network surrounding the site at the time of report.

- 9.4.5 In terms of congestion, the overall approach to encouraging non-car-based movement potential minimises congestion. In terms of traffic safety, at a detailed level I note the proposed access junction is of more than adequate capacity to accommodate the worst-case scenario of traffic associated with the proposal during the years of opening and the design year 15 years following opening. I further note the Road Design office (FI report) is satisfied with sight distances as clarified by the applicant in further information.
- 9.4.6 In respect of concerns about obstruction of access to Carmody Street properties, I note that the parking proposals are within the site curtilage and that the public carriageway is not being narrowed. Accordingly, obstruction is a matter of parking traffic regulation under separate legislative provision. It would appear based on the drawings that the set back and footpath provision within the existing delineated curtilage, enhances access.
- 9.4.7 I further note the preference by the appellants for a Drumbiggle Road entrance. Aside from the additional junction arrangement it would create, the applicant explains how the Simms Lane access due to ground level allows for universal access while also allowing for maximising a southern aspect for the apartments. I do not consider this alternative suggested option to have significant merit.
- 9.4.8 I consider it reasonable to conclude that the proposed development will have only a negligible impact upon the established local traffic conditions and can easily be accommodated on the road network without any significant capacity concerns arising. I do not consider traffic hazard or related issues to constitute reasonable grounds for refusal.

## **9.5 Water Quality and Ecology**

- 9.5.1 The appellant flags an erroneous reference to discharging to Clareabbey Wastewater Treatment Plan and not the North Ennis WWTP and disputes the

accuracy of discharge data. Furthermore, capacity issues are raised and ultimately impact on water quality in breach of the WFD is a significant concern. This is raised primarily in the context of the inadequacy of the NIS and is addressed in the appropriate assessment section of this report. The planning authority confirms the error in referring to Clareabbey WWTP and is satisfied that there is no material issue arising from this reference. Ultimately Irish Water who operates under license and is accordingly regulated, has no objection to connection for the scheme to the public sewer in terms of its capacity. Nor is public water supply an issue. This would be of course subject to its conditions so ensure standards are adhered to. Save as determined by appropriate assessment, having regard to the brownfield nature of this serviced site and the comments of Irish Water/Uisce Eireann, I do not consider a refusal of permission is reasonable on grounds of water pollution.

9.5.2 I also note that there is a bat presence near the site as indicated by the Bat Survey however no evidence of roosting bats was observed on the proposed site, nor was there evidence of roosting activity in any of the structures or trees within the site boundary. The planning authority has I note addressed this presence and sought further information on which the DAU has commented further and has raised no objections subject to conditions. While foraging and commuting habitat was identified in the form of overgrown vegetation, it is not considered to be optimal for bats. A soprano pipistrelle roost site was observed in an adjacent building to the east of the site. It is stated in this regard that a Derogation license will be required for the proposed works as there is potential for disturbance impacts on this roost site. Construction disturbance as well as lighting and vegetation removal could affect this soprano pipistrelle roost. Mitigation measures provided include the derogation license, avoidance of the bat active season, following relevant guidelines the provision of bat tubes, a lighting plan with light spill mitigation and buffer zones/landscaping.

9.5.3 Based on the survey and the comments by the DAU and also having regard to the provision for mitigation measures through regulating light spill and landscaping in addition to other measures including regulation by a derogation license, I do not consider the redevelopment of the site to constitute any significant risk to any bats of



conservation interest. The matter of the Lesser Horseshoe Bat is addressed in the AA.

## **10.0 Appropriate Assessment**

### **10.1 Introduction**

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

1. Compliance with Article 6(3) of the EU Habitats Directive
2. Screening the need for appropriate assessment
3. The Natura Impact Statement and associated documents
4. Appropriate Assessment of implications of the proposed development on the integrity of relevant European sites.

### **10.2 Compliance with Article 6(3) of the Habitats Directive**

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

will not adversely affect the integrity of the European site before consent can be given.

- 10.2.2 The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

### **10.3 Screening the need for Appropriate Assessment**

#### **Background**

- 10.3.1 The applicant has submitted a Natura Impact Statement (NIS), and a Screening for Appropriate Assessment report, in addition to a Preliminary Ecological Assessment and Bat Assessment Report (as updated in February 2022) an Outdoor Lighting Report (updated) and a Flood Risk Assessment all as part of the planning application. The NIS was updated/corrected in further information and further clarified in the applicant's response to the appeal and commented on by the planning authority. All ecological studies and reports have been prepared by Ecofact Consultants, environmental scientists. Survey work has not however been attributed to individual experts although supporting data in Figures have been approved by William O'Connor.
- 10.3.2 The AA Screening Report was prepared by reference to best practice guidance issued by the EC and DoEHLG. In this regard I note survey work dates back to February 2021, for example in the preliminary ecological assessment, while the OPR guidance on AA was published in March 2021 and accordingly I do not consider it unreasonable for the applicant to adhere to the methodology used on commencement of the work and subsequent updates thereby maintaining a consistency in approach. The site features and characteristics of the proposed development are summarised in section 3 of the screening report and described in more detail in the Ecological Assessment.
- 10.3.3 Having reviewed the documents and submissions on file, I am satisfied that the information allows for a complete examination and identification of all the aspects of

the project that could have an effect, alone, or in combination with other plans and projects on European sites.

- 10.3.4 A description of the development is set out in section 2 of this report. In summary, the proposed development involves the development of a mixed-use scheme in the southwestern periphery of Ennis town centre on a brownfield urban site of .3 hectares within the development boundary of the town and with access to services. The site is described as a being in a built-up urban area with habitats identified as 'Spoil and Bare ground', 'Recolonising Bare Ground' and 'Building and Artificial Surface' based on Fossitt's classification. The absence of a watercourse on site eliminates an aquatic habitat for invertebrate species of interest. The site hosts some low impact invasive species, (Butterfly Bush).
- 10.3.5 To the south east of the site there is a culverted stream (Cloghleagh 27) as identified on the superimposed aerial photograph in Figure 3 of the Screening report with connectivity to the River Fergus as identified in the catchment image. The characteristics of both the stream and River Fergus are described in the documentation. The stream is identified as being culverted, but the nature of the culvert design is not provided but is outside the site but very close. The river habitat is described in detail and as being over 200 river meters downstream of this culvert.

#### **Potential effect Mechanisms for the project**

- 10.3.6 The screening report identifies the European Sites with potential pathways to the proposed development in order to establish the zone of influence of the proposal. It concludes that there is potential for likely significant effects. A source-pathway-receiver model was used to identify potential impact pathways linking the project site to the European sites. The potential pathways were restricted to hydrological and disturbance on site. The European Sites with potential likely significant effects are:
- The Lower River Shannon SAC and River Shannon and
  - River Fergus Estuaries SPA European Sites,
- given the potential for deterioration of water quality primarily through surface water runoff during construction and operation and via wastewater during operation which may have the potential to result in significant effects on the QI of these sites via a

nearby culverted tributary to the River Fergus. This is compounded by the presence of invasive species on site.

- 10.3.7 In the initial Preliminary Bat Assessment report, Table 1 lists all bats based in terms of suitability index for the study area and in this, the Lesser Horseshoe Bat (QI) has an index of 51 based on NBDC. There is limited roosting, commuting and foraging potential on site. Accordingly, while not specifically addressed in the AA screening report I consider the site works and disturbance regarding the LHB to constitute a potential mechanism of the project to be considered in respect of:
- Pouladatig Cave SAC (site code 000037)
  - Newhall and Edenvale Complex SAC (site code 002091)

#### **Screening for Appropriate Assessment – Test of likely significant effects**

- 10.3.8 The proposed development is examined in relation to any possible interaction with European Sites designated as Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

#### **Submissions and Observations**

- 10.3.9 DAU: comments, as noted (in section 4 of this report),.
- 10.3.10 One 3<sup>rd</sup> party appellant raised issues concerning drainage WWTP capacity and water quality and adequacy of the NIS. Objections in relation to impact on Natura sites are centred on impact on water quality via the discharge from the site and loading on a system that is potentially at capacity
- 10.3.11 The planning authority refers to the Newhall and Edenvale complex SAC and Pouladatig cave SAC which have been selected for lesser horseshoe bat because of the presence of important winter and summer roosts for the species. Damage or disturbance to these roosts or to the habitat immediately surrounding the roosts will lead to a decline in their condition. Given the separation distance between the proposed site and the designated sites there is no potential for any direct

disturbance effect on the roost sites. The planning authority is of the view that the subject site is located within these 2.5 kilometres radii for foraging catchment of roosts but is not mapped as good foraging territory in the conservation objective document. This is attributed to the brownfield nature of the site and the lack of substantial mature trees.

### **European Sites**

10.3.12 The development site is not located in or immediately adjacent to a European site.

Section 1 of the applicant's Screening for Appropriate Assessment presents all European Sites that are within 15km of the Proposed Development mapped format. Table 1 then lists in tabular form. In summary the sites are screened accordingly:

- Lower River Shannon SAC 002165 - 160m away. Due to the existence of a watercourse 270m from which the SAC is downstream and potential for deterioration in water quality as result of surface water run-off and via wastewater and following a most precautionary approach, a list of QIs are identified for further assessment. These are set out in table 2 of the report. I concur with screening out of there being any likely effect on Freshwater Pearl Mussel due to its location in the Cloon River and absence of connectivity.
- Ballyallia Lake SAC 000014 – 3.2km away - no potential hydrological connections to the QI Habitat ( natural eutrophic lakes . As there is no pathway, it is not within a likely zone of Impact.
- Newhall and Edenvale Complex SAC (002091) – 2.8km away. LHB is a QI but the site is outside the 2.5km foraging range and is described as being outside the likely zone of impact in the screening report.
- Pouladatig Cave SAC 00037 – 3.2km. Due to the distance and nature of the proposed works there is no potential for terrestrial impact on the Caves habitat .LHB is a QI but the site is similarly described as being outside the 2.5km foraging range and outside the likely zone of impact.

There are a number of other sites for which the LHB is a QI but they are significantly greater distances. Accordingly I consider it reasonable to screen out: Toonagh Estate SAC 002247, Poulmagordon Cave (Quin) SAC 000064, Old Domestic

buildings, Rylan SAC (002314), Newgrove House SAC (002157), Old farm buildings, Ballymacrogan SAC 002245, Moyree River System SAC 000057, Ballycullinan, Old Domestic building SAC 002264 and Old Domestic Buidling (Keevagh) SAC 002010.

- River Shannon and River Fergus Estuaries SPA 004077 – 5.9km away. Due to the proximity to Cloghleagh stream and vulnerability of groundwater there is potential for via leachate water quality impacts and potential for indirect effect on QI habitat for SCI Bird species Wetlands and Waterbirds.

10.3.13 In respect of the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA, the proximity to the site and the presence of a potential hydrological pathway established via groundwater leachate and via discharges to a tributary and via the WWTP, both of the European Sites are within the zone of influence. This has been identified in the screening report.

10.3.14 These sites are presented in the table below together with what I consider to be potential connections.

| European Site<br>(Site Code)<br>Distance      | Qualifying Interests (QIs)<br>*Denotes a priority habitat<br>At Risk Receptors in bold  | Connections (source, pathway, receptor) and effects   |
|---|---|---|
| Lower River Shannon SAC<br>(002165)<br>c.270m | Sandbanks which are slightly covered by sea water all the time [1110]<br><b>Estuaries [1130]</b><br><b>Mudflats and sandflats not covered by seawater at low tide [1140]</b><br><b>Coastal lagoons [1150]</b><br><b>Large shallow inlets and bays [1160]</b><br><b>Reefs [1170]</b> | Potential to generate contaminated surface run-off during construction and operational phases.<br>Potential to overload wastewater treatment plant and impact on water quality.<br>(it is identified that no downstream connection to the main designated area of interest in the River Shannon however may |

| European Site<br>(Site Code)<br>Distance | Qualifying Interests (QIs)<br>*Denotes a priority habitat<br>At Risk Receptors in bold   | Connections (source, pathway, receptor) and effects   |
|--|--|---|
|  | <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p><b>Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachium</i> vegetation [3260]</b></p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><b><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</b></p> <p><b><i>Lampetra planeri</i> (Brook Lamprey) [1096]</b></p> | <p>occur between Ennis WWTP and Clarecastle as noted in the NIS for the Ennis WWTP in 2009. The potential for significant impact relates to the potential presence of 'watercourses of plain to montane levels..(3260) near the Ennis WWT and possible sewage connection providing pathways for potential water quality.</p> <p>All QI Lamprey species, Salmon and Otter occur in the River Fergus so there is potential for invasive species and water quality impacts via surface run-off, ww discharge or vulnerable groundwater pathways.</p> <p>Vulnerable groundwater and proximity to stream as well as likely waste water discharge to R.Fergus may also provide pathway for downstream impacts (water quality and invasive</p> |

| European Site<br>(Site Code)<br>Distance  | Qualifying Interests (QIs)<br>*Denotes a priority habitat<br>At Risk Receptors in bold   | Connections (source, pathway, receptor) and effects   |
|---|--|---|
|   | <b>Lampetra fluviatilis (River Lamprey) [1099]</b><br><b>Salmo salar (Salmon) [1106]</b><br>Tursiops truncatus (Common Bottlenose Dolphin) [1349]<br><b>Lutra lutra (Otter) [1355]</b>   | species) on Estuaries 1130 and Mudflats... 1140   |
| River Shannon and River Fergus Estuaries SPA (004077) 5.9rkm downstream via the Cloghleagh stream | <b>Cormorant (Phalacrocorax carbo) [A017]</b><br><b>Whooper Swan (Cygnus cygnus) [A038]</b><br><b>Light-bellied Brent Goose (Branta bernicla hrota) [A046]</b><br><b>Shelduck (Tadorna tadorna) [A048]</b><br><b>Wigeon (Anas penelope) [A050]</b><br><b>Teal (Anas crecca) [A052]</b><br><b>Pintail (Anas acuta) [A054]</b><br><b>Shoveler (Anas clypeata) [A056]</b><br><b>Scaup (Aythya marila) [A062]</b><br><b>Ringed Plover (Charadrius hiaticula) [A137]</b><br><b>Golden Plover (Pluvialis apricaria) [A140]</b><br><b>Grey Plover (Pluvialis squatarola) [A141]</b><br><b>Lapwing (Vanellus vanellus) [A142]</b><br><b>Knot (Calidris canutus) [A143]</b><br><b>Dunlin (Calidris alpina) [A149]</b> | Potential to generate contaminated surface run-off during construction and operational phases. This could impact wetland habitat. (Wetland and Waterbirds)<br>Cormorant , Whooper Swan, Light Bellies Brent Goose, shelduck, Wigeon, Teal, Pintail, Shoveler, Scaup, Ringed Plover, Golden Plover, Grey Plover, Lapwing, Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redchank, Greenhsank, and Black-headed Gull all occurring in the SPA downstream may be significantly impacted due to water quality impacts affecting part of the |



| European Site<br>(Site Code)<br>Distance                     | Qualifying Interests (QIs)<br>*Denotes a priority habitat<br>At Risk Receptors in bold   | Connections (source, pathway, receptor) and effects |
|--|--|---|
|  | <b>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</b><br><b>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</b><br><b>Curlew (<i>Numenius arquata</i>) [A160]</b><br><b>Redshank (<i>Tringa totanus</i>) [A162]</b><br><b>Greenshank (<i>Tringa nebularia</i>) [A164]</b><br><b>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</b><br><b>Wetland and Waterbirds [A999]</b><br><b>Habitat</b> | watercourse where these species occur.              |
| Newhall and Edenvale Complex SAC (site code 002091)<br>2.8km | <b>Lesser Horseshoe Bat</b>  | In or proximate to foraging range – disturbance     |
| Pouladatig Cave SAC (site code 000037)<br>3.2km              | <b>Lesser Horseshoe Bat</b>  | In or proximate to foraging range – disturbance     |

**Likely Significant Effects on European Sites (alone) :**

Lower River Shannon SAC (site code 002165) and The River Shannon and River Fergus Estuaries SPA (Site Code: 004077)

10.3.15 The applicant's screening assessment had regard to SPA conservation interests and objectives and to the characteristics of both the project site in determining its importance as a habitat. It also considered the location of bird species and foraging needs and states that in addition to there being no direct loss of SAC or SPA habitat, the development site hosting substantially bare ground and scrub habitats, does not support SCI bird species. Effects relate to discharge of pollutants generated by run-off at the site during construction and operational phases and also disturbance and spread of invasive species on the site. Surface water discharging from the site to the watercourse has the potential to be contaminated without mitigation by materials such as hydrocarbons, cement-based material and construction emissions and silt and invasive species. Wastewater generated during construction has the potential to impact and effect water quality.

10.3.16 Effects are therefore based on the release of pollutants during construction and operational phases and with a hydrological connection provided by the watercourse near the site, the potential for overloading of the WWTP and the fact that the qualifying interests in both Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA are dependent on good water quality. Given the proximity of the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA and the presence of a hydrological pathways, both of these European Sites are within the zone of influence.

10.3.17 Accordingly, taking what I consider as a most precautionary approach in view of nature of the fairly standard construction methods and water quality protection measures, in the absence of mitigation there is potential for direct, indirect and impacts on these Natura sites and their QIs downstream of the stream. Further assessment is therefore required in relation to:

- Lower River Shannon SAC (site code 002165).

- The River Shannon and River Fergus Estuaries SPA (site code: 004077)

Pouladatig Cave SAC 00037 and Newhall and Edenvale Complex SAC (site code 002091)

10.3.18 The applicants screening has regard to conservation interests and objectives and to the characteristics of both the project site as a habitat, its distance from the Site and to the foraging range of the LHB (QI) and states that in addition to there being no direct loss of SAC habitats, the development site is outside the foraging range and the Sites are screening out accordingly.

10.3.19 In the later Bat survey report, no evidence of roosting bats was observed on the proposed site, nor was there evidence of roosting activity in any of the structures or trees within the site boundary. Foraging and commuting habitat was however identified in the form of overgrown vegetation, but it is not considered to be optimal for bats. My understanding of the impacts on bats is that such impacts relate to species other than the LHB as the site is more than 2.5km from the nearest SAC associated with the LHB. However, taking a precautionary approach and noting the planning authority comments about the site being in a relevant catchment and the potential for light spill into Water Park grounds proximate to the foraging catchment and possible construction and operational disturbances and the incorporation of mitigation measures to protect bats which may include the LHB, I consider the screening in of the following sites to be necessary:

- Pouladatig Cave SAC (site code 00037) and
- Newhall and Edenvale Complex SAC (site code 002091)

Other sites that were 'screened out'.

10.3.20 Having regard to the absence of any likely pathway, the separation distance and nature of the site and proposed development, I am satisfied that no additional sites

other than those listed above and assessed in the NIS and supporting documents need to be brought forward for inclusion in the AA.

### **AA Screening Conclusion**

- 10.3.21 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, could have a significant effect on the above named 4 European Sites in view of the Conservation Objectives . Appropriate Assessment is therefore required for these sites
- 10.3.22 In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information I conclude that the proposed development is likely to have a significant effect on the species and habitats of : Lower River Shannon SAC (site code 002165), The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) Newhall and Edenvale Complex SAC (site code 002091) and Pouladatig Cave SAC 00037 'alone' in respect of effects associated with water quality and dependent species and habitats, spread of invasive species and disturbance of foraging and commuting grounds for the Lesser Horseshoe Bat species.
- 10.3.23 It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is required on the basis of the effects of the project 'alone'.
- 10.3.24 No mitigation measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

## **Stage 2 Appropriate Assessment**

### **10.4 The Natura Impact Statement and associated documents**

#### **Key data and issues:**

- 10.4.1 The application documentation includes an NIS as amended which reflects the up to date water quality/WWTP details. Other relevant documents include the Preliminary Ecological Assessment, the CEMP (as clarified in further information), the Bat Assessment report and the Outdoor Lighting Report.
- 10.4.2 The planning authority response on 9/6/22 to appeal grounds addresses the concerns about inadequacies of the NIS in section 6 of its report. It confirms that the foul sewage from the site will be directed to the Ennis North WWTP and it is acknowledged that this was incorrectly identified as Clareabbey in the planner's report. [Note: I read 'hydraulic' as hydrological in the reference to pathways.] The planning authority highlights that numerous monitoring reports are available indicating the functioning status of this treatment plant and that have been reviewed to assess the potential for the increased loading to affect the operation of the plant or give rise to deterioration in the status of the receiving water body. The river catchment is as it is identified as 'area 27 Shannon Estuary North and sub catchment IE SH 27F010780. It is further highlighted that monitoring data for the lower River Fergus is also available and that this was examined by the planning authority for recent years assessing the nitrate ammoniacal nitrogen, dissolved oxygen saturation and biochemical oxygen demand for the waters at the Doora Bridge and Clarecastle bridge monitoring stations. Taking account of the existing discharges from both Ennis town and Clareabbey and observing the monitoring data, it is considered that there is no significant impact on the qualifying interests or species of conservation interest in the lower River Shannon SAC associated with the WWTP discharges (note: also, Irish water had no objection to the proposed development]. Arising from this assessment the planning authority is satisfied that there will be no change in the aquatic habitat for the species of conservation interest listed for the Lower River Shannon SAC [sea lamprey, brook lamprey, river lamprey and Atlantic salmon] associated with the proposed development. Similarly, the development is considered

to most unlikely impact qualifying interests of the River Shannon and River Fergus SPA either during construction or operation of the development.

- 10.4.3 The planning authority also comments on the conclusion reached about the importance of the site as foraging ground for the LHB and accepts that the site is not good foraging ground due to its brownfield nature and scrubland notwithstanding it being outside the mapped foraging area for the species as delineated in the Conservation objectives document (NPWS 2018) It is further accepted that the mitigation measures which are noted to reflect the revised boundaries treatment and layout in the revised plans will mitigate impacts.

**Assessment of likely potentially direct and indirect effects on integrity of European sites:**

- 10.4.4 The main aspects of the proposed development in the absence of mitigation that could adversely affect the conservation objectives of the sites are:
- Contaminated water mainly due to surface water run-off effect on Water Quality and impact on habitat and species through pollution during construction and operational phases. Also diffuse pollution to surface waters due to wastewater discharge from housing to receiving waters (via the WWTP) could provide a pathway for impact on habitats and species.
  - Dispersion of invasive species and impact on habitats
  - Disturbance of foraging ground and commuting routes of bats

Lower River Shannon SAC (site code 002165) and The River Shannon and River Fergus Estuaries SPA (Site Code: 004077)

- 10.4.5 The NIS identifies the relevant QIs and associated conservation objectives for each of the species and habitats screened in for assessment. The other QIs are also reviewed for completeness. There will be no direct impact on the habitats that are qualifying interests of the sites as the development lies outside the boundaries and the proposal does not provide or propose any access to any part of the designated sites or require resources from same. In this context it identifies likely effects of the

proposed development by way of connections to the sites at construction and operation phases.

- 10.4.6 All relevant Qis are summarised in Tables 1-4 in section 4 of the NIS. Screened in QIs for Lower River Shannon SAC include habitats classified as, estuaries, mudflats and Sandflats not covered by seawater at low tide, watercourses of plain to montane levels. The water quality reliant identified species are Sea Lamprey, Brook Lamprey River Lamprey, Salmon, and Otter. Each is examined in view of the targets and nature of proposal.
- 10.4.7 The habitat in the River Shannon and River Fergus Estuaries is Wetland and Waterbirds. A list of bird species in QI for this is provided in Table 4. Each is examined in view of the targets and nature of proposal.
- 10.4.8 In respect of the listed habitats and species for the SAC, mitigation is identified as being required to control surface run-off and contamination as well as biosecurity measures in order to prevent deterioration of water quality or invasive species impacts. Mitigation is also required to ensure wastewater is treated and discharged appropriately and that a suitable source of drinking water is used and does not deplete the SAC.
- 10.4.9 In respect of the SPA is mitigation is identified as being required to control surface run-off and contamination in order to prevent deterioration of water quality although invasive species is not considered a threat due to the distance, but best practice mitigation should be implemented. Mitigation is also required to ensure wastewater is treated and discharged appropriately and that a suitable source of drinking water is used and does not deplete the SAC.
- 10.4.10 At construction stage, measures for the protection of the environment and water quality have been incorporated into project through the outline CEMP (appendix 2) this is in addition to the preliminary version and the SWMP already submitted. In Table 7 section 7 of the NIS a summary overview of the mitigation measures are listed. It includes provision for a more detailed CEMP and scopes plans for Waste Management, Noise and Vibrations, and Dust to minimise impacts at construction

stage. A Surface Water Management Plan will ensure protection of surface water and control of run-off. The Surface Water Management Plan is to prevent adverse impacts from run-off and leachate on the nearby sensitive receptors such as the Cloghleagh Stream which connects to the River Fergus and which is underground near the site. Surface water drainage will be attenuated down to greenfield flow rates. Section 7.1.3 sets out detailed measures for water quality protection such as managing the site compound and the machinery/fuels, notable storage of and control of grey water and stockpiling - such measures ensuring there is no potential for water quality deterioration or effects on ecological receptors. In terms of disturbance of bird species work can be carried out outside the nesting season. However, disturbance or displacement of species associated with the SAC and SPA does not arise given the distances involved and the nature of the habitat environs of the site. There is very limited opportunity for foraging species due to the habitats - bare earth and scrub habitat as indicated in the surveys.

10.4.11 Other measures in section 7 include containing the footprint of construction to avoid drains etc. and use of measures to minimise risk of sediments release, chemical leachate or spill and potential contamination of run-off reaching watercourse or groundwater. In terms of biosecurity the invasive Butterfly Bush will be eradicated in line with best practice – draft plan is attached the outline CEMP in Appendix 2 of the NIS.

10.4.12 At operational stage It is confirmed that Irish Water has confirmed that both a water supply and wastewater connection are feasible without infrastructure upgrade. In this regard I note the Ennis North WWTP has been subject to screening for AA and that it is subject to the terms of its license regarding emission limits and regular monitoring. Such connections, to wastewater in particular and implementation of a



surface water management system will block pathways between the site and the aquatic receptors downstream in the Natura sites.

10.4.13 Section 8 of the NIS states the residual impacts for each QI. I consider it reasonable to conclude that no adverse impacts of the project alone is likely having regard to the targets for each QI/SCI and the range of measures as set out in section 7.

10.4.14 I am satisfied that the NIS includes control/mitigation measures for the construction and operational phases in order to mitigate issues related to the potential for run-off or contamination of watercourse and any associated risks to the hydrologically connected European sites. This I note is part of a wider range of measures to minimise disturbance of other species (not of special conservation interest). The provision for surface water management and attenuation design capacity will also inhibit excess run-off filtering directly to the watercourses.

10.4.15 I consider it reasonable that with the implementation of the proposed mitigation measures, many of which are Best Construction Practice, that any significant impacts on these European Sites can be avoided or minimised to a scale that is relatively imperceptible. .

10.4.16 Cumulative effects may arise in-combination with other plans and projects in the vicinity. The NIS has reviewed other developments in the area at the time of application. I further note the assessment of the proposal in the context of the county development plans at the time of application which is reasonable as it provided for development of the nature proposed. Subject to adherence with the mitigation measures outlined, I consider that the proposal will not give rise to in-combination adverse effects with other plans and projects.

Pouladatig Cave SAC 00037 and Newhall and Edenvale Complex SAC (site code 002091)

10.4.17 The bat assessment reports, as updated (and referred to in the NIS) have identified bat activity in the area and the NPWS conservation objective for the LHB as a QI for the nearest sites also maps foraging grounds in the vicinity of the site. This is commented on by the planning authority. In this regard potential disturbances due to  
**313570-22**

construction activity and operational stages are identified and mitigation measures appear to be relied upon to avoid/minimise disturbance. Applying, possibly, an abundance of caution, these sites have been screened in on my recommendation due to potential disturbance to foraging areas as intimated by the planning authority's reference to proximity. Mitigation measures proposed for bat species generally, but which may include the LHB include a derogation license, avoidance of the bat active season, following relevant guidelines the provision of bat tubes, a lighting plan with light spill mitigation and buffer zones/landscaping.

10.4.18 In relation to the Lesser Horseshoe Bat as a qualifying interest, the supporting documentation on the NPWS website provides insight into the conservation objectives for this species. The target is that there is no significant decline in potential foraging habitat within 2.5km of the qualifying roost. The sites by my measurement are in the order of 2.8km and 3.2km from development site and while the planning authority states that the nearest distance is 2.2km and that the development site is within 2.5km of the foraging catchment, I find this difficult to reconcile with the foraging catchment maps. Ultimately however the site I note is not included in the foraging areas as highlighted in green. Furthermore, I note in the NPWS documentation the weighted maximum foraging distance for lesser horseshoe bats was 2.02km. Notwithstanding the distance or forage ground mapping, the site simply does not have broadleaved woodland and riparian vegetation. Accordingly, I do not consider that the development of this site would amount to any likely decline in potential foraging habitat of significance to this species. While the Water park grounds west of the site may contain foraging ground this will not be disturbed by reason of the mitigation measure proposed for light spill and disturbance, resulting in no likely residual impacts on the LHB if any.

10.4.19 I consider it reasonable that with the implementation of the proposed mitigation measures, that any significant impacts on these European Sites can be avoided or minimised to a scale that is relatively imperceptible.

10.4.20 I am satisfied that it has been demonstrated based on the information in the submitted Natura Impact Statement and supporting documentation notably the Bat Survey and the ecological assessment that with implementation of mitigation

measures included in the supporting reports that the proposed development, individually or in combination with other plans and projects would not adversely affect the above-mentioned European Sites.

## **10.5 Appropriate Assessment Conclusions**

- 10.5.1 The proposed development has been considered in light of the assessment requirements of Section 177U and 177V of the Planning and Development Act 2000 as amended. Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that it would be likely to have a significant effect on Lower River Shannon SAC (site code 002165), the River Shannon and River Fergus Estuaries SPA (Site Code: 004077), Pouladatig Cave SAC 00037 or Newhall and Edenvale Complex SAC (site code 002091)
- 10.5.2 Consequently, as Appropriate Assessment was required of the implications of the project on the qualifying interests/special conservation interest of those sites in light of their conservation objectives.
- 10.5.3 I am satisfied that an examination of the potential impacts has been analysed and evaluated using the best scientific knowledge available. Where potential significant effects on European Sites have been identified, key design features and mitigation measures have been prescribed and incorporated into the development to remove risks to the integrity of the Sites.
- 10.5.4 Therefore, following an Appropriate assessment, it has been ascertained that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of the European sites Lower River Shannon SAC (site code 002165) or the River Shannon and River Fergus Estuaries SPA

(Site Code: 004077) , Pouladatig Cave SAC 00037 and Newhall and Edenvale Complex SAC (site code 002091) in view of their Conservation Objectives.

- 10.5.5 This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

## **11.0 Recommendation**

On the basis of the above planning assessment, and Appropriate Assessment, I recommend that permission should be granted for the proposed development in accordance with the recommended order below and the reasons and considerations contained therein.

### **Reasons and Considerations**

Having regard to the policies and objectives of the Clare County Development plan 2023-2029 in respect of both town centre regeneration for Ennis and housing provision and the site specific objectives in Volume 3a, as supported by national policy as set out in the national planning framework (2018), and Ministerial Guidance, Sustainable Residential Development and Compact Settlements (2024) both issued by The Department of Housing, Planning and Local Government, according to which new residential development should be increased in density and directed into locations with existing built up serviced areas, the nature and scale of the mixed used development is acceptable in principle. Furthermore having regard to the building pattern in the area and the scale and design of the proposal which includes a variety of heights and building forms appropriate to its context in an Architectural Conservation Area and to the environmental mitigation measures provided for , it is considered that, subject to compliance with the conditions set out below, that the proposed development at this location would contribute positively to

the vitality and regeneration of the area, would not seriously injure the visual or residential amenities of the area and would not result in a significant disturbance to bat species in the area and that the proposed development would be acceptable in terms of density of development, car parking provision and traffic safety, water quality and ecology. The proposed development would, therefore, be in accordance with the provisions of the county development plan and the proper planning and sustainable development of the area.

## **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and as amended by the further information received by the Planning authority on 23rd February 2022 and as amended by details received by An Bord Pleanála on 13<sup>th</sup> June 2022, 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 or as stipulated and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

2. Prior to the commencement of any house or apartment unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not

being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing

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

3. The proposed development shall be completed in accordance with a detailed phasing agreement which shall be submitted to the planning authority for agreement prior to the commencement of development. In this regard the following should be included in the phasing agreement:
  - (a) The central open space area associated hard and soft landscaping and play area shall be as received by the planning authority on the 23rd of February 2022 and shall be carried out within the first planting season following substantial completion of external construction works prior to the occupation of any of the apartments or cafe hub.
  - (b) The resurfacing of Buttermarket Lane shall be completed to the satisfaction of the planning authority prior to the occupation of any of the apartments or cafe /hub.
  - (c) The semi basement car park shall be completed in its entirety to the satisfaction of the planning authority prior to the occupation of any of the apartments or café/ hub.
  - (d) Details in relation to the provision of a future cycle lane along the Drumbiggie Road frontage.
  - (e) All other landscaping, boundary treatments, footpath and, lighting details (subject to bat conservation requirements), which shall be completed to the satisfaction of the planning authority prior to the occupation of any of the apartments or cafe /hub.

Following the completion of the terrace units work on any subsequent phases shall not commence until such time as the written agreement of the planning authority has been obtained prior to commencement of the next phase.

Reason: to ensure the provision of services for the benefit of the occupants of the proposed dwellings, in the interests of residential amenity and orderly development.

4. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Eireann/Irish Water.

Reason: In the interest of public health

5. The management and maintenance of the proposed development following completion shall be this responsibility of a legally constituted management company which shall be established by the developer. A management scheme providing adequate measures for the future maintenance of the development, including the external fabric of the buildings, internal common areas, hard and soft landscaping, access and path ways, parking areas, lighting, waste storage facilities and sanitary services shall be submitted to and agreed in writing with the planning authority before any of the residential or commercial units are made available for occupation. In this regard, the applicant shall submit details of:
  - a) the management company contract and drawings/ particulars describing the parts of the development for which the company would have responsibility,
  - b) the allocation and management of semi basement level car parking spaces, and
  - c) the provision of the proposed shared car scheme to serve the occupants of the proposed development including the operation and management thereof.

Reason: to provide for the future maintenance of this private development in the interest of visual amenity.

6. The café/hub unit shall comply with the following requirements:
  - a) The hours of operation of the unit shall be between the hours of 0800 hours and 2100 hours Monday to Sunday. Deviation from these times will only be

allowed where prior written agreement has been received from the planning authority.

- b) The café shall not be used as a fast food outlet.
- c) Details of signage and plant equipment shall be submitted for prior written agreement with the planning authority.
- d) The Buttermarket Lane entrance shall be for use of customers/patrons and not maintained solely as a fire escape/service entrance.

Reason: in the interest of the amenities of the properties and streetscape in the vicinity and to protect the amenity of the apartment roof terrace.

- 7. The proposed café/ hub and overhead apartments shall be provided with noise insulation to an appropriate standard having regard to the coexistence of the units in the same building.

Reason in the interests of residential amenity and to provide for a mix of uses in the site in accordance with mixed use designation in the Clare County Development Plan 2023-2029.

- 8. No deliveries should be taken at or dispatched from the premises outside the hours of 0700 to 2200 Monday to Saturdays nor at anytime on Sundays or public holidays. Deviation from these times shall only be allowed with prior written agreement from the planning authority.

Reason: to protect the residential immunities of the area.

- 9. No additional development shall take place above roof parapet level including lift motor enclosures air handling equipment storage tanks ducts or other external plant telecommunication aerials antennae or equipment unless authorized by a further grant of planning permission.

Reason: to protect the residential amenities of property in the vicinity and the visual amenities of the area.



10. The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme and timescale. A comprehensive boundary treatment and landscape scheme shall be submitted to and agreed in writing with the planning authority prior to commencement of development. The scheme shall include the following:

- (a) details of all proposed hard surface finishes, including samples of proposed paving slabs, materials for footpaths curbing and access surfaces within the development.
- (b) proposed locations of trees and other landscaping planting in the development including details of proposed species and settings
- (c) details of proposed outside furniture including bollards lighting fixtures and seating
- (d) details of proposed boundary treatments of the perimeter of the site including materials and finishes
- (e) details of incorporation into the finishes in the development, of the original limestone in the boundary wall to be demolished/dismantled on site.

Reason: in the interest of visual amenity

11. (a) All mitigation measures outlined in the submitted Natura Impact Statement as amended, the Bat Assessment Report and associated Outdoor Lighting Plan as amended and Preliminary Construction Environmental Management Plan shall be carried out as specified.

(b) In accordance with the mitigation measures as outlined and prior to the commencement of development, the applicant shall submit the following to the planning authority for written agreement: a waste management plan, a noise and vibration management plan, a dust management plan, a surface water management plan, an operational management plan and an invasive species survey and management plan

(c) An Ecological Clerk of Works with suitable experience shall be appointed to ensure all mitigation is carried out. The Ecological Clerk of Works shall

submit a quarterly report to the planning authority demonstrating compliance with mitigation measures and ecological considerations until such time that the post construction survey phase is complete.

Reason: in the interest of clarity and to mitigate potential environmental effects

12. the construction of the development should be managed in accordance with the construction and demolition management plan which shall be submitted to an agreed in writing with the planning authority prior to commencement of development. This plan should provide details of intended construction practice for the development including:

- (a) A construction traffic management plan
- (b) location of the site and materials compound including areas identified for the storage of construction refuse location of areas for construction office and staff facilities details of security fencing and hoardings details of onsite carparking facilities for site workers during the course of construction.
- (c) measures to obviate queuing of construction traffic on Drumbiggie Road and at the junction of Carmody St. and Drumbiggie Rd.
- (d) Measures to prevent the spillage or deposit of clay rubble or other debris on the public road network.
- (e) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works.
- (f) measures for containment of all construction related fuel and oil. In this regard bunds shall be roofed to exclude rainwater
- (g) arrangements for off-site disposal of construction and demolition waste and details of how it is proposed to manage excavated soil. All construction materials and substances shall be stored in a secure compound away from any water courses when not in use. This compound shall be fenced off and all chemicals shall be stored in suitable secured containers to avoid the potential for contamination.
- (h) any excavated topsoil that is to be reused should be stored on the site outside of a minimum 5 metre buffer zone from any water course/ drains on

the site and where this is stored during the construction phase it shall be covered to avoid excess sediment runoff or wind blow.

- (i) mobile plant such as fuel bowser should be banded to 100% capacity. Tanks for browsers and generators shall be double skinned and when not in use all valves and fuel trigger guns from fuel storage containers shall be locked.
- (j) Arrangements for all on site plant refueling. A spill kit and drip tray shall be on site at all times plant refueling procedures shall be detailed in the construction management plan.
- (k) procedures for plant inspection, maintenance and repairs. Machinery should be checked for leaks before arrival on site.
- (l) Noise management measures.
- (m) A record of daily checks that the works are being undertaken in accordance with the construction management plan should be kept for inspection by the planning authority.

Reason: in the interests of amenities, public health and protection of the environment.

13. Prior to the commencement of development, the developer or any agent acting on its behalf shall prepare a resource waste management plan and set as set out in the EPA's best practice guidelines for the preparation of resource and waste management plans for construction and demolition projects 2021 including demonstration of proposals to adhere to best practice the protocols. the RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. These details should be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records including for waste and all resources pursuant to the agreed or RWMP will be made available for inspection at the site offices at all times.

Reason in the interest of sustainable waste management.

14. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In this regard

- (a) The applicant shall submit to the planning authority for written agreement, a detailed surface treatment plan for the entire site including the resurfacing of Buttermarket Lane to the east of the site and addressing details of the existing drainage channel to the rear of Carmody St.
- (b) Prior to occupation of any unit the applicant shall submit for written agreement and approval , ccertification of the installation and commissioning of the storm sewers, hydrocarbon interceptors, attenuation area and hydro brake units which shall be inspected and certified by a suitably qualified person as being in compliance with the documentation submitted to the planning authority and in accordance with the manufacturer's instructions.
- (c) No surface water from roofs paved areas or otherwise shall discharged onto the public road and to the site access should be provided with adequately sized pipes and ducts to ensure that no interference will be caused to existing roadside drainage.
- (d) No surface water shall flow down the ramped access to the semi basement level off the car park.
- (e) SuDs shall be Incorporated in the hard landscaping areas.
- (f) The applicant shall demonstrate protection of attenuation tanks from root spread.
- (g) The applicant developer shall be responsible for the replacement of the existing footpath and kerbs around the full perimeter of the site where necessary and details in relation to the proposed footpath finish shall be submitted for agreement. Kerbs shall be of limestone with appropriate drops for crossing points and entrances.

Reason: To prevent flooding and in the interest of public health and ground water protection.

15. Detailed measures 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 incorporate the mitigation measures outlined in the submitted documentation and shall be implemented as part of the development. In this regard the following shall apply:

- a) three Integrated Bat tubes (3 Schwegler FR) with interconnecting holes shall be built in the northeastern structure closest to the boundary and amended plans shall be submitted for agreement with the local authority.
- b) Construction works shall be carried out outside the active bat season and otherwise in accordance with best practice to minimise disturbance.
- c) any envisaged destruction of structures or felling of trees that support bat populations shall be carried out only under licence from the National Parks and Wildlife Service and details of any such licence shall be submitted to the planning authority.
- d) The removal of the mature trees, demolition of buildings and structures shall be undertaken in line with industry best practice: Guidelines for the treatment of Bats during the construction of national road schemes (TII) and) Bat Mitigation Guidelines (NPWS, Irish Wildlife Manual 134, 2022).
- e) The lighting plan shall be modified in accordance with the prevailing best practice at the time of lodgement of final details with the Planning authority for written agreement. The public lighting shall be provided in accordance with a final scheme to reflect the details in Bat surveys. Such lighting shall be provided prior to the making available for occupation of any dwellings. An assessment of the lighting regime after installation shall be undertaken by a suitably qualified lighting expert and ecologist to ensure that the specification has been achieved and amended accordingly in the event of any unforeseen straying from the regime and in line with the recommendations included in the Bats and Lighting report by Bat Conservation Ireland.

Reason: In the interest of protection of bat species.

16. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation recording and protection of archaeological materials or features which may exist within the site. In this regard the developer shall

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operations (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably qualified archaeologist prior to commencement of development. The archaeologist should assess the site and monitor all site development works. The assessment shall address the nature and location of archaeological material on the site and the impact of the proposed development on such archaeological material.

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

Reason: to ensure the continued preservation (either in situ or be record) of places, cave, sites, features or other objects of archaeological interest.

17. A basic survey of footprint, form and layout of buildings/structures proposed for demolition shall be carried out and shall be submitted to the planning authority prior to commencement of development. Archive standard photographic survey of main features such as street elevation shall be prepared in accordance with the requirements of the planning authority.

Reason: In order to facilitate recording of the architectural heritage of the site in an Architectural Conservation Area.

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

Reason: In the interest of visual amenity.

19. The site entrances and junctions, raised tables, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

20. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

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

21. (a) The car parking spaces serving the development shall be provided with electric connections to allow for the provision of future electric vehicle charging points.

(b) The car parking spaces along Buttermarket Lane shall be within the site boundary and shall not interfere with the free flow of vehicular traffic as presently exist along this lane.

Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: in the interest of sustainable transportation and traffic safety.

22. A plan containing details for the management of waste (and in particular, recyclable materials within the development) including the provision of facilities for the storage, separation and collection of the waste and in particular recyclable materials shall be submitted to and agreed in writing with the planning

authority prior to commencement of development. Thereafter the waste shall be managed in accordance with the agreed plan.

Reason to provide for the appropriate management of waste and in particular recycled materials in the interest of protecting the environment.

23. Site clearance/development and building works shall be carried out in accordance with the agreed CEMP and 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 residential amenities of property in the vicinity.

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

Reason: In the interest of urban legibility

25. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in



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

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

26. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and landscaping commitments and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

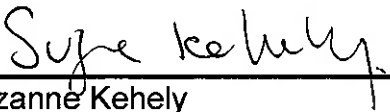
27. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of

development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

28. The developer shall pay to the planning authority a financial contribution of €14,000 in respect of the shortfall in car parking spaces as required in the Clare County Development Plan 2023-2029 and in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

  
Suzanne Kehely

Senior Planning Inspector

7<sup>th</sup> May 2024

Note: I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

# Appendix 1 - Form 1

## EIA Pre-Screening [EIAR not submitted]

|   |  |  |                                  |   |
|---|--|--|----------------------------------|---|
| <b>An Bord Pleanála<br/>Case Reference</b>  | 313570-22  |  |                                  |   |
| <b>Proposed Development<br/>Summary</b>   | Mixed Use development – demolition works and construction of 6 houses and 5 storey apartment block and café /hub |  |                                  |   |
| <b>Development Address</b>  | Buttermarket Street/Simm's Lane, Ennis, Co. Clare  |  |                                  |   |
| <b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b><br>(that is involving construction works, demolition, or interventions in the natural surroundings)  |  | <b>Yes</b>   | x                                |   |
|   |  | <b>No</b>  | No further action required       |   |
| <b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>   |  |  |                                  |   |
| Yes   |  | Class  | EIA Mandatory EIAR required      |   |
| No  |  | x  | Proceed to Q.3                   |   |
| <b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b> |  |  |                                  |   |
|   |  | <b>Threshold</b>   | <b>Comment<br/>(if relevant)</b> | <b>Conclusion</b>                           |
| No  |  | N/A  |                                  | No EIAR or Preliminary Examination required |
| Yes   |  | Class/Threshold... Class (10)(b) of Schedule 5 Part 2<br>Construction of more than 500 dwelling units, |                                  | Proceed to Q.4                              |

|  |  |   |  |  |
|--|--|---|--|--|
|  |  | Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.) |  |  |
|--|--|---|--|--|

|   |          |   |
|---|----------|---|
| <b>4. Has Schedule 7A information been submitted?</b> |          |   |
| <b>No</b>   | <b>X</b> | <b>Preliminary Examination required</b> |
| <b>Yes</b>  |          | <b>Screening Determination required</b> |

Inspector: S. Kehring

Date: 7-5-24

## Form 2

### EIA Preliminary Examination

|  |   |                              |
|--|---|------------------------------|
| <b>An Bord Pleanála Case Reference</b>   | 313570-22   |                              |
| <b>Proposed Development Summary</b>  | Mixed Use development – demolition works and construction of 6 houses and 5 storey apartment block and café /hub, in an Architectural Conservation Area . A Natura Impact Statement accompanies the application.  |                              |
| <b>Development Address</b>   | 484A North Circular Road, Dublin 1  |                              |
| <p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> |   |                              |
|  | <b>Examination</b>  | <b>Yes/No/<br/>Uncertain</b> |
| <p><b>Nature of the Development</b><br/>Is the nature of the proposed development exceptional in the context of the existing environment?</p>  | <p>The proposed development comprises the demolition of single storey buildings and wall and construction of a four-storey apartment block with recessed roof level/5th storey accommodation and a terrace of houses on a brownfield site in an urban area surrounded by a mix of developments. The proposed development would not be exceptional in the context of the existing urban environment.</p>   | No                           |
| <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>  | <p>During the construction phase the proposed development would generate waste during demolition, excavation and construction. However, given the moderate scale of the proposed building I do not consider that the level of waste generated would be significant in a local, regional, or national context. No significant waste, emissions or pollutants would arise during the construction or operational phase due to the limited size of the site and the nature of the proposed use. Disturbance of low-level invasive species can be addressed through mitigation.</p> | No                           |
| <b>Size of the Development</b>   | <p>The proposed development would consist of three buildings accommodating less than 40 residential</p>   | No                           |

|  |  |                     |
|--|--|---------------------|
| <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>   | <p>units and a café / hub facility with a semi basement for 23 cars and ancillary facilities. I do not consider this to exceptional in size in the context of the surrounding buildings.</p> <p>Owing to the serviced urban nature of the site and the infill character of the development, I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.</p>   | No                  |
| <p><b>Location of the Development</b></p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p> | <p>The application site is not located in or immediately adjacent to any European site.</p> <p>There are no waterbodies or ecological sensitive sites in the vicinity of the site - the nearest being a culverted stream. The site is located within a serviced urban area and the site will be connected to public surface and foul sewers. It also incorporates Surface water management Plan s among a range of measures to protect water contamination and there is no objection by Irish Water to connections subject to standard conditions. I do not consider that there is potential for the proposed development to significantly affect other significant environmental sensitivities in the area. The site is not a significant foraging area for bat species although precautionary mitigation measures are incorporated to address any potential impacts such as disturbance in neighbouring sites. Impacts on LHB are addressed in the appropriate assessment process.</p> | <p>No</p> <p>No</p> |
| <b>Conclusion</b>  |  |                     |
| <p><b>There is no real likelihood of significant effects on the environment. EIA not required</b></p>  |  |                     |

Inspector: S. Kehay Date: 7-5-24.

DP/ADP: See file copy for signed forms by ADP. Date: \_\_\_\_\_





## Form 2

## EIA Preliminary Examination

|   |   |                              |
|---|---|------------------------------|
| <b>An Bord Pleanála Case Reference</b>  | 313570-22   |                              |
| <b>Proposed Development Summary</b>   | Mixed Use development – demolition works and construction of 6 houses and 5 storey apartment block and café /hub, in an Architectural Conservation Area . A Natura Impact Statement accompanies the application.  |                              |
| <b>Development Address</b>  | 484A North Circular Road, Dublin 1  |                              |
| <b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b> |   |                              |
|   | <b>Examination</b>  | <b>Yes/No/<br/>Uncertain</b> |
| <b>Nature of the Development</b><br>Is the nature of the proposed development exceptional in the context of the existing environment?   | The proposed development comprises the demolition of single storey buildings and wall and construction of a four-storey apartment block with recessed roof level/5th storey accommodation and a terrace of houses on a brownfield site in an urban area surrounded by a mix of developments. The proposed development would not be exceptional in the context of the existing urban environment.  | No                           |
| Will the development result in the production of any significant waste, emissions or pollutants?  | During the construction phase the proposed development would generate waste during demolition, excavation and construction. However, given the moderate scale of the proposed building I do not consider that the level of waste generated would be significant in a local, regional, or national context. No significant waste, emissions or pollutants would arise during the construction or operational phase due to the limited size of the site and the nature of the proposed use. Disturbance of low-level invasive species can be addressed though mitigation. | No                           |
| <b>Size of the Development</b>  |   |                              |

|  |  |                     |
|--|--|---------------------|
| <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>   | <p>The proposed development would consist of three buildings accommodating less than 40 residential units and a café / hub facility with a semi basement for 23 cars and ancillary facilities. I do not consider this to exceptional in size in the context of the surrounding buildings.</p> <p>Owing to the serviced urban nature of the site and the infill character of the development, I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.</p>  | <p>No</p> <p>No</p> |
| <p><b>Location of the Development</b></p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p> | <p>The application site is not located in or immediately adjacent to any European site.</p> <p>There are no waterbodies or ecological sensitive sites in the vicinity of the site - the nearest being a culverted stream. The site is located within a serviced urban area and the site will be connected to public surface and foul sewers. It also incorporates Surface water management Plan s among a range of measures to protect water contamination and there is no objection by Irish Water to connections subject to standard conditions. I do not consider that there is potential for the proposed development to significantly affect other significant environmental sensitivities in the area. The site is not a significant foraging area for bat species although precautionary mitigation measures are incorporated to address any potential impacts such as disturbance in neighbouring sites. Impacts on LHB are addressed in the appropriate assessment process.</p> | <p>No</p> <p>No</p> |
| <p><b>Conclusion</b></p>   |  |                     |
| <p><b>There is no real likelihood of significant effects on the environment. EIA not required</b></p>  |  |                     |

Inspector: S. Keeney

Date: 30-4-24

~~DP~~/ADP: Stephen Fay

Date: 30.4.2024.

|  |  |   |  |  |
|--|--|---|--|--|
|  |  | <p>Construction of more than 500 dwelling units,</p> <p>Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)</p> |  |  |
|--|--|---|--|--|

|   |          |   |
|---|----------|---|
| <b>4. Has Schedule 7A information been submitted?</b> |          |   |
| <b>No</b>   | <b>X</b> | <b>Preliminary Examination required</b> |
| <b>Yes</b>  |          | <b>Screening Determination required</b> |

Inspector: S. Kehring

Date: 30-4-24

# Appendix 1 - Form 1

## EIA Pre-Screening

[EIAR not submitted]

|   |  |   |   |
|---|--|---|---|
| <b>An Bord Pleanála<br/>Case Reference</b>  | 313570-22  |   |   |
| <b>Proposed Development<br/>Summary</b>   | Mixed Use development – demolition works and construction of 6 houses and 5 storey apartment block and café /hub |   |   |
| <b>Development Address</b>  | Buttermarket Street/Simm's Lane, Ennis, Co. Clare  |   |   |
| <b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b><br>(that is involving construction works, demolition, or interventions in the natural surroundings)  |  | <b>Yes</b>  | x   |
|   |  | <b>No</b>   | No further action required                  |
| <b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>   |  |   |   |
| <b>Yes</b>  |  | Class   | EIA Mandatory<br>EIAR required              |
| <b>No</b>   |  | x   | Proceed to Q.3                              |
| <b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b> |  |   |   |
|   |  | <b>Threshold</b>                                      | <b>Comment<br/>(if relevant)</b>            |
| <b>No</b>   |  | N/A   | No EIAR or Preliminary Examination required |
| <b>Yes</b>  |  | Class/Threshold... Class (10)(b) of Schedule 5 Part 2 | Proceed to Q.4                              |