



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313652-22

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<b>Development</b>	Alter boundaries and extend access road to development permitted under P19-28 to construct 3 additional dwelling houses and detached sheds and ancillary works.
<b>Location</b>	Ballaghafada East, Clarecastle, Co. Clare.
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	22205
<b>Applicants</b>	Easy Build Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Permission
<b>Type of Appeal</b>	Third Party v Permission
<b>Appellants</b>	Eimear Ni Chleirigh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> December 2022.
<b>Inspector</b>	Suzanne Kehely

## 1.0 Site Location and Description

- 1.1. This appeal site is a backland type site to the rear of one of a row of detached dwellings on the western side of the Kildysart Road (R473). A row of houses, as part of a small housing development off the same road, backs onto the site to the south. The Ballybeg stream and extensive sloping embankment is to the west of the site. The surrounding lands are undeveloped. The OPW flood maps show lands along the Ballybeg stream as 'Land Commission Benefited Lands'. The general terrain of the site and undeveloped lands is moderately lower-lying scrub and pastureland relative to the developed sites and with the wider terrains sloping generally down to the stream and its lower-lying northern embankment.
- 1.2. There is a shed and container on the site and access is via a track from the Kildysart Road between two houses. Visibility at this junction is good. There is a footpath and street lighting.
- 1.3. The boundaries between the site and surrounding dwellings are defined by a mix of low dry-stone walling and modern concrete walls in addition to hedging/scrub along the more mature boundaries.
- 1.4. The building typology is a mix of detached single /one and half storey gabled fronted dormer dwellings as well as more recent contemporary two storey semidetached dwellings and terraces with dormer room over in the denser Inis Clar development to the south.

## 2.0 Proposed Development

- 2.1. The application seeks to add three large, detached houses to a site where permission has been granted for a single dwelling but not developed. The houses are:
  - two storey with a format of a dormer roof level over a ground floor and provide 5 bedrooms .
  - 12.7m in width and up to 13.9m in depth.
  - 7.6m above ground – to ridge height.

- 2.2. The submitted drawings show proposed changes in the ground level. Some ground is lowered at the eastern end and ground is then raised in level at a point deeper into the site to the rear of properties in Inis Clar.
- 2.3. A 3.5m high shed (2.8m x 4.03m) is also proposed in the back garden of each dwelling.
- 2.4. The site layout plan shows an access road of 6.5m in width with a shared access roadway design in accordance with A1.9 of the CDP and Traffic Management guidelines. It shows a carriageway of 5m and footpath of 1.5m along the northside of the access for about 90m before switching to the opposite side at a point where a pedestrian crossing is marked. The site layout shows changes and proposals for boundary treatment. It is not clear what is proposed to the rear of the sites otherwise it is proposed to:
- replace the dry stone wall with a 2.4m high rendered and capped wall between points I and J. (set back from junction). Letter of consent attached.
  - construct a 2.4m high concrete post fence behind walls of dwelling to the north between point B, C and D.
  - use stone faced walls where they face open space.
  - construct concrete block walls between rear gardens.
  - use timber fence (1.1m) around front gardens.
  - erect a timber post and rail fence (1.4m) with landscaping between the site and the stream embankment to the north.
- 2.5. New connections to water and wastewater are proposed. Surface water is to discharge to public sewer/drain.
- 2.6. A Flood Risk Assessment report accompanies the application and conclude on the basis of surveys, flood levels, Flood zones, impacts and mitigation that overall the proposed development is acceptable in terms of flood risk.
- 2.7. Letters of consent to boundary realignment/works are provided.
- 2.8. A Part V – section 97 Notification of a decision to grant certificate Decision order 75796 is attached in respect of the four dwellings on the site. Dated October 2018.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Clare County Council by order dated 29<sup>th</sup> April 2022 decided to **GRANT** permission subject to 22 conditions and are most relating to adherence to plans and provision of services to an acceptable standard. In addition to normal development management condition, site specific conditions include:

- Conditions 2 and 3: s. 48 contribution and security
- Condition 6: specifies boundary finishes – use of stone and no timber fence in front etc.
- Condition 7 requires landscaping details and specific planting.
- Condition 18 restricts commercial guests.
- Conditions 21 requires precautions for spread of non-invasive species.

### 3.2. Planning Authority Reports

3.2.1. Planning Report: The planning history (PA ref. 21/921) is noted with particular reference to a previous refusal and issues re vehicular access/entrance, surface water, FRA, AA screening and absence of bat survey. These matters are assessed by reference to:

- Provisions of the current development plan and notably the residential zoning of site and availability of services.
- The proposed realignment of a wall and RDO comments.
- Upgrading works of Ballybeg culvert and impact and need for FRA. notwithstanding the site location outside Flood zone A. The FRA is noted and the site is acceptable in terms of flood risk.
- Drainage proposals and possibility of addressing by condition.
- Density of 10.5 houses per hectare height of 7.6m and
- overall character not being detrimental to visual amenities.

3.2.2. The report notes the objections regarding residential amenity and considers that the overall layout, raising of floor levels for houses 3 and 4, separation distance, nature of use and also absence of designated scenic views would not result in housing that could be reasonably considered detrimental to amenities.

3.2.3. The need for EIA is excluded at a preliminary stage and the need for AA is excluded by reference to the DAU comments and potential impacts on European sites.

### **3.3. Technical Reports**

3.3.1. Road Design Office:

- Satisfied sightlines and sight stopping distances are achieved in line with DMURS. Specification of corner radii and turning and gradients are set out in addition to construction standards for road materials, drainage, car parking, footpaths (which shall be dedicated to the council on completion), lighting and landscaping from a road safety perspective).
- A supplementary note refers to the planning history and the proposal to now realign the wall to the south in drawing 1847 (P) 01 which is noted to indicate the necessary widths and allow for shared surfaces.
- Taking in charge conditions are also set out, e.g. detailed construction standards.
- The timber fencing is of concern and stone walling is recommended.

### **3.4. Prescribed Bodies**

DAU Nature Conservation :

- In respect of the Newhall and Edenvale Complex SAC Site code 002091 and the location of the site within the 2.5km foraging range, the DAU strongly recommends all existing native hedge, trees and scrub on the boundaries are retained and in addition there would be sig. supplementary planting at the rear as it is submitted 'this will address retention of bat foraging habitation, retention of riparian corridor and aid water quality'.
- In respect to the Lower River Shannon SAC 002165 (900m away) and the 1.2km proximity to the River Shannon and Fergus Estuaries SPA 004077 and its liability to flooding in this area the council must ensure the proposed development will not negatively impact on the European site in particular the potential impacts on water quality or hydrology.

Irish Water: No objections subject to conditions.

IAA: No observations.

### 3.5. Third Party Observations

- 3.5.1. There were two objections lodged by neighbouring residents. Issues relate mainly to overlooking and **loss of privacy** in private homes, **construction disturbance** and loss of **habitat for bats**.

### 4.0 Planning History

- 4.1. There is an extensive planning history set out by the planning authority . There is an **extant permission** (P19/28 attached to file in pouch at back) for a single dwelling house and connection to public services. Condition 7 in respect of landscaping requires planting of clusters of native trees throughout the site. Otherwise conditions are of a fairly standard nature. Previous to this, applications for multiple dwellings were either withdrawn or refused on grounds of access/traffic hazard, haphazard and piecemeal nature of development potentially compromising other development lands.

### 5.0 Policy Context

#### 5.1. Clare County Development Plan 2023-2029 (effective 20<sup>th</sup> April 2023)

The site is zoned – Existing Residential in the Ennis and Environs Map . It is within the Clarecastle Settlement and its northwestern boundary is adjoined by Agricultural zoned lands

- LDR1 Killadysert Road refers to a nearby site identified for a low-density residential development and where existing trees and hedgerow surrounding the site are required to be retained. Further requirements include a buffer zone to protect this vegetation to be incorporated into any future development proposals for this site. Development proposals must also demonstrate, through a light spill modelling study, that lighting within the development will not increase the ambient light levels beyond the perimeter of the development footprint. External lighting is required to be provided in accordance with guidelines contained in Recommendations for Site Development Works in Housing Areas published by

DoEHLG and any subsequent publication or successor to this document. Street lighting proposals are required to have regard to Bat Conservation Ireland; Guidance Notes for: Planners, engineers, architects and developers (Bats and Lighting) together with Bat Conservation Trust; Bats and artificial lighting in the UK, Bats and the Built Environment – Guidance Note 08/18.

#### 5.1.1. Bats

- CDP11.42 - It is an objective of Clare County Council: a) To require proposals for development that include the provision of external lighting, to clearly demonstrate that the lighting scheme is the minimum needed for security and working purposes; b) To ensure that external lighting and lighting schemes are designed so that the incidence of light spillage is minimised ensuring that the amenities of adjoining properties, wildlife and the surrounding environment are protected; and c) To require that external lighting is designed taking the Bat Conservation Ireland Guidance Notes for: planners, engineers, architects and developers on bats and lighting into consideration, together with EUROBATS Guidelines for consideration of bats in lighting projects

Section 15.2.10 refers to bats as part of promoting and protecting biodiversity

- CDP15.12 - It is an objective of Clare County Council: a) To protect and promote the sustainable management of the natural heritage, flora and fauna of the County both within protected areas and in the general landscape through the promotion of biodiversity, the conservation of natural habitats, the enhancement of new and existing habitats, and through the integration of Green Infrastructure (GI), Blue Infrastructure and ecosystem services including landscape, heritage, biodiversity and management of invasive and alien species into the Development Plan; b) To promote the conservation of biodiversity through the protection of sites of biodiversity importance and wildlife corridors, both within and between the designated sites and the wider Plan area; c) To support the implementation of the All Ireland Pollinator Plan, National Biodiversity Action Plan and National Raised Bog SAC Management Plan; d) To ensure there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5km of known roosts; e) To implement and monitor the actions as set out in the Clare County

Biodiversity Plan; and f) To promote biodiversity net gain in any new plans/projects/policies to promote development that leaves biodiversity in a better state than before.

- CDP15.13 - It is an objective of Clare County Council: d) To ensure that any new lighting proposals and upgrades to existing lighting infrastructure are designed in a manner which considers any sensitive species within the area, such as bats and their roosts;
- CDP15.14 - It is an objective of Clare County Council: (a) To ensure that development proposals support and enhance the connectivity and integrity of habitats in the Plan area by incorporating natural features into the design of development proposals. (b) To ensure that the potential impacts upon the migratory routes of fauna including birds and bats and the movement of species between European Sites are fully considered within the relevant ecological assessment. These assessments shall fully consider flight collision risks, habitat fragmentation and barrier risk as required in Clare County Development Plan 2017-2023 (effective until 19<sup>th</sup> April 2023)

## **5.2. National Planning Framework (February 2018),**

- 5.2.1. 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.

## **5.3. NPWS & VWT (2022) Lesser Horseshoe Bat Species Action Plan 2022- 2026. National Parks and Wildlife Service, Department of Housing, Local Government and Heritage, Ireland,**

- 5.3.1. Section 4.3 outlines Connectivity and section 4.3.1 sets out guidance for Landscape. The objective is Maintaining the genetic diversity of the lesser horseshoe bat in Ireland which is crucial for its long- term survival. The retention of existing linear landscape features within at least 2.5km but preferably 5km of lesser horseshoe bat roosts with 20 bats or more is essential to counteract the documented genetic differentiation that has already occurred within the species throughout its Irish distribution. This is best achieved by implementing a landscape-scale project across



all six counties by which groups of landowners are brought together to retain or create connectivity on a scale that provides a network of sites that link foraging areas and maternity, hibernation, satellite, transition and night roosts. The targeting of this connectivity needs to be based on the results of additional modelling, similar to the research undertaken by VWT in 2020 described earlier in this plan.

#### **5.4. Design Manual for Urban Roads and Streets (updated 2019)**

- 5.4.1. This design manual emphasises the need for creating streets and spaces and provides for shared spaces such as road as part of efficient land use where traffic speeds are low.

#### **5.5. Natural Heritage Designations**

- 5.5.1. The nearest relevant sites are:

- Newhall and Edenvale Complex SAC (site code 002091) c. 1.6km to the southwest.
- Lower River Shannon SAC (site code 002165) c .1km to the east.
- The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) - approximately 1.2km away.
- Pouladatig Cave SAC (site code 000037) 3.9km to the west.

- 5.5.2. Conservation objectives supporting document 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 (Bontadina et al., 2002). 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 to qualifying roosts or along commuting routes within 2.5km of those roosts.

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

5.6.1. An Environmental Impact Assessment Screening report was not submitted with the application. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- 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.)

5.6.2. It is proposed to construct 4 dwellings and an access road. The number of dwellings proposed is of a significant magnitude below the threshold of 500 dwelling units noted above. The site has an overall area of 0.379ha and is located alongside a built up area within a residential zone and not in a business district. The site area is therefore well below the applicable threshold of 10 ha. The site is overgrown scrubland with a shed and is elevated above a tributary of the River Shannon and within a potential foraging zone for bats at 1.6km from an SAC. A Flood Risk Assessment concludes that proposed development is not a flood risk. The introduction of a small-scale residential development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not

designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site as discussed below as per AA screening and there is no hydrological connection present such as would give rise to significant impact on nearby water courses whether linked to any European site/or other. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Clare County Council, upon which its effects would be marginal.

5.6.3. 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 'Existing Residential' under the provisions of the Clare County Development Plan, and the results of the strategic environmental assessment of the Clare County Development Plan, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site as part of the existing built-up urban area, which is served by public infrastructure, and the existing pattern of residential development in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the measures proposed to ensure no connectivity to any sensitive location,
- 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 Preliminary Examination EIAR Screening Form).

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. Eimear Ni Chleirigh LLB, LLM of 68 Inis Clair has submitted an appeal which is based on the following grounds:

- Concerns about proximity of southwestern elevation to garden boundary and overlooking from first floor bedroom windows into garden and property and loss of privacy.
- Location of patio area to the rear of site no4 is potentially a nuisance interfering with use and enjoyment of home.
- No.4 will impact on visual amenities of home and garden.
- The location of the shed will impact on amenities – due to usage and proximity to quiet garden.
- The development and plantation concealing the construction will intercept right to light.

### **6.2. Planning Authority Response**

6.2.1. In a letter dated 13<sup>th</sup> June 2022 the PA comments on the appeal grounds. The letter clarifies the scope of the proposal and notably refers to the acceptable nature of the proposal having considered the road layout and traffic safety, the principle of the development, the location not being in a flood risk zone and potential impacts regarding the location of the site and its relationship with surrounding properties. The statement of overdevelopment is disputed.

### **6.3. Applicant's Response.**

In a letter received on 23<sup>rd</sup> June 2022 the agent for applicant makes the following points in response:

- In the development plan, the site is zoned for residential development for some time and there are protected views relevant to the site.

- The separation distances are in compliance with the CDP and are more than adequate and such that there is unlikely to be any significant or invasive overlooking. The finished floor level of no.68 is 1.445m below that of no 68 Inis Clair.
- Overlooking is more prevalent from nos. 67 and 69 of the appellant's property than any for the proposed development.
- The patio in site 4 is designed to capture sun light and is unlikely to be any significant source of nuisance.
- The shed is very modest in scale and 15sq.m. below the threshold for what is ordinarily exempted. It is intended for storage of garden maintenance equipment and garden furniture. The ridge height is 3.568m and the floor level is similarly 1.445m below that of the appellants dwelling.
- Given the orientation and northeast siting of the adjacent development relative the appellant the issue of affecting light is dismissed as being ludicrous.
- The need for housing in the Ennis area is emphasised as is the suitability of the site in zoned lands.

## 7.0 Assessment

### 7.1. Issues

- 7.1.1. As this is a residential zoned site in a serviced area, the principle of infill housing by way of replacing one permitted dwelling with four dwellings is I consider not in question. It is a small landholding that is not governed any other site-specific strategic development objective. The issue of bats is raised in the application and in this regard, I note the extensive development policy and objectives seeking to protect bats through development management, for example by protecting foraging areas and their connectivity. This was considered by the planning authority, and I am satisfied that the planning authority has substantially addressed this within the context of the development plan objectives. This issue however is considered under the Appropriate Assessment section of this report given the mandatory requirements for such and the proximity to a foraging area for bats and the Lesser horseshoe Bat species being a qualifying interest of European sites. With respect to the DAU comments regarding flooding I note that this has been addressed by the planning

authority with the benefit of a Flood Risk Assessment submitted by the applicant and I am satisfied this matter needs no further appraisal. Otherwise, the issues in this appeal relate primarily to impact on **residential amenities** by reason of overlooking, overshadowing, disturbance and aspect. **Appropriate Assessment** is also a mandatory consideration.

## **7.2. Residential Amenity**

- 7.2.1. The appellant lives in a relatively new house to the southwest of the development site and would be adjoined by plot no 4 where a dwelling is proposed to the northeast. The appellant is concerned about the proximity of the southwestern elevation to the garden boundary and overlooking from first floor bedroom windows into the garden and loss of privacy. I note that the dwelling in site no.4 is at distances of 6m – 18.9m at its nearest and furthest points from the side boundary wall of the appellant's property and this increases to over 11m – 18.9m at 1<sup>st</sup> floor level. The proposed first floor windows are over 23m from the corner of the appellant's dwelling. There are no directly opposing windows between habitable rooms as the first-floor windows are oriented to the side and across the back garden which is already overlooked at an oblique angle by the adjoining dwelling to the appellant property. The layout plan shows some boundary planting and in the event of supplementary planting, this would serve mitigate loss of privacy. I also note the appellant's garden extends to 16m in width providing ample space for screen planting if so desired. I further note the lower ground level as clarified in the applicant's response being in the order of 1.4m below that of the appellants property. I concur with the planning authority that overlooking is within acceptable limits. I would also disregard objections in relation to overshadowing due to site layout and orientation.
- 7.2.2. The proposed patio is identified as a source of nuisance by the appellant. I note this is to the rear of the proposed dwelling at a point where the garden is deeper as it ranges from 11m-16m and see no grounds that this would be an unreasonable use of garden space. The provision of a patio in a garden is, in any event, ordinarily exempted development. I see no reason to de-exempt it in this case.

- 7.2.3. Similarly the appellant is concerned about the proposed shed in the northwest corner of site 4 and its 2m distance from the side boundary. I note the proposed shed is modest in size and positioned alongside a landscaped area and do not consider this to be unreasonable or to be of a nature that could be a source of significant nuisance. It is a very modest structure with a floor area of 2.4m x3.6m and height of 3.568m and intended to be used for garden equipment / furniture as clarified by the applicant. It is significantly less than what would ordinarily be exempted development. Its use as a habitable room could be restricted by condition. However, in this regard I note it is not plumbed and is small in nature.
- 7.2.4. Ultimately, I consider the layout and orientation of the proposed dwellings to be such that the separation distances comply with normal standards for housing development and could not be reasonably construed as substandard or to be of a nature that would seriously injure residential amenities of existing neighbouring dwellings. The matter of how someone uses property in a way that disturbs the peace is a civil matter.
- 7.2.5. I consider a sufficient balance has been struck between the reasonable protection of amenities and privacy of adjacent dwellings and protecting the character of the area in the provision of housing in this residentially zoned area with access to urban infrastructure. In such circumstances, the proposal accords with proper planning and sustainable development.

## **8.0 Appropriate Assessment**

### **8.1. Introduction**

- 8.1.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.
- 8.1.2. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to

the management of a European site but likely to have a significant effect on the site in view of its conservation objectives.

8.1.1. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:

- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

## **8.2. Consultations**

8.2.1. The DAU made observations on the proposal to the planning authority on 12<sup>th</sup> April 2022 and states that:

- In respect of the Newhall and Edenvale Complex SAC Site code 002091 and the location of the site within the 2.5km foraging range, the DAU strongly recommends all existing native hedge, trees and scrub on the boundaries are retained and in addition there would be sig. supplementary planting at the rear as it is submitted ‘this will address retention of bat foraging habitation, retention of riparian corridor and aid water quality’.
- In respect to the Lower River Shannon SAC 002165 (900m away) and the 1.2km proximity to the River Shannon and Fergus Estuaries SPA 004077 and its liability to flooding in this area the council must ensure the proposed development will not negatively impact on the European site in particular the potential impacts on water quality or hydrology.

## **8.3. Screening for Appropriate Assessment**

8.3.1. The applicant did not prepare an Appropriate Assessment Screening Report or a Natura Impact Statement as part of the subject application. The site is not located within any Natura 2000 site. The development, the subject of this application and



appeal is not directly connected with or, from my examination of Map 2 of Conservation objectives supporting document for – lesser horseshoe bat (*Rhinolophus hipposideros*) for Newhall and Edenvale Complex SAC (site code 002091), necessary to the management of a European site. The following Natura 2000 Sites are noted as occurring within a 5km radius of the site:

- Newhall and Edenvale Complex SAC site code 002091 c, 1.6km to the south west
- Lower River Shannon SAC 002165 to the east c 1km
- The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) - approximately 1.2km away.
- Pouladatig Cave SAC 000037 3.9km to the west.

8.3.2. The site is within the foraging range for the lesser Horseshoe Bat – the QI species of the Newhall and Edenvale Complex, SAC. As the site includes scrubland and is potentially part of a wider foraging area, I consider it reasonable to assess the potential AA impacts associated with the proposed housing development.

8.3.3. The stream to the west of the site feeds into the Ballybeg stream which flows southwest into Ballybeg Lough and then into Killane Lough. A surface water connection to the River Shannon Natura 2000 sites is not obvious. The EPA maps show a connection and flow from Lough Killane to River Fergus. Ultimately, this water body is part of the Lower River Shannon catchments and appears to flow into it at a distance of over 7 km downstream south of the site. As the site is connected to a public sewer and is to incorporate, sustainable urban drainage systems as is required in the Development Plan (CDP2.11 section A1.5 Sustainable Urban Drainage Schemes and also as referred to in the Taking In Charge report and also a condition of the extant permission) , I do not consider it necessary to assess potential AA impacts associated with the proposed additional 3 dwellings. I am generally satisfied that the potential for likely significant effects on the qualifying interests of the Lower River Shannon SAC (Site Code: 002165) and The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) can be excluded given the distance to the sites, the nature and scale of the development.

8.3.4. In view of the site separation distance and location outside the foraging range for this site I am similarly generally satisfied that the potential for likely significant effects on the qualifying interests of Pouladatig Cave SAC can be excluded.

**8.4. Qualifying Interests for Natura 2000 Sites within Zone of Influence**

8.4.1. The subject development site is a semi-rural site alongside urban development but also part of wider agricultural lands to the north and west and within 1.6km of the Newhall and Edenvale Complex SAC to the west of the site. The appeal site comprises a scrubland with a shed and permission for a dwelling house with extensive landscaping. It is not located within any designated site. The potential value of the site is being part of a foraging area for the Lesser Horseshoe Bat species.

8.4.2. The following table sets out the qualifying interests for the identified Natura site:

European Site	Qualifying Interests
Newhall and Edenvale Complex SAC Site Code: 002091	<ul style="list-style-type: none"> <li>• [8310] Caves</li> <li>• [1303] Lesser Horseshoe Bat (<i>Rhinolophus hipposideros</i>)</li> </ul>

8.4.3. **Newhall and Edenvale Complex SAC:** The NPWS website describes this site as being ‘situated approximately 4 km south of Ennis in Co. Clare. It consists of three distinct locations which are used, at various times throughout the year, by the Lesser Horseshoe Bat. The surrounding areas of mature mixed woodland, parkland and lakes provide ideal foraging habitat and shelter for the bats throughout the year and are included within the site. Bats have been recorded at this site since 1983 and the population is estimated at more than 500 individuals. The site is of international importance for Lesser Horseshoe Bat, and ranks as one of the most important sites in Europe for the species.’

**8.5. Conservation Objectives:**

8.5.1. The Conservation Objectives for the lesser horseshoe bat is set out in a supporting document (2018) on the NPWS website.

European Site	Conservation Objectives
<p>Newhall and Edenvale Complex SAC Site Code: 002091</p> <p>Located approx. 2.8km to the South of the site</p>	<p>The NPWS has identified a site-specific conservation objective 'to maintain the favourable conservation condition of Lesser Horseshoe Bat' in Newhall and Edenvale Complex SAC. This is defined by way of a list of attributes and targets in relation to target population per roost, and no decline in winter roosts, summer roosts and auxiliary roosts. It also aims to maintain the extent of potential foraging habitat with no significant decline within a 2.5km range. This is based on the normal foraging pattern in woodlands/scrub within 2.5km of the roosts. Map 2 illustrates this zone and identifies potential foraging grounds.</p> <p>An aim is to protect linear features with no significant loss within 2,5km range of qualifying roosts. Linear features such as hedgerows treelines and stone walls provide vital connectivity.</p>

## 8.6. Potential Significant Effects

- 8.6.1. In terms of an assessment of significance of effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I consider that in order for an effect to occur, the only potential pathway is reducing the foraging area. In this case I have examined map2 of the NPWS publication, Newhall and Edenvale Complex Sac Conservation Objectives Lesser Horseshoe Bat and note that the site, while in the foraging range, is not part of the foraging grounds (mapped as green). I also note that the extant permission provides for boundary planting (and will retain linear route along the site boundary as recommended in the DAU's submission). I further note that in the subject case the additional houses while reducing the planting area within the garden of the extant dwelling house permission will not be a significant loss. In overall terms, I do not consider the loss of vegetation beyond that permitted and outside the designated mapped foraging grounds area at 1.6km from the European site to amount to a

significant loss and therefore cannot be reasonably interpreted as undermining a target which seeks 'no significant loss'. Accordingly I am generally satisfied that the potential for likely significant effects on the qualifying interests of this European site can be excluded given the distance to the sites and the nature and scale of the development.

- 8.6.2. I also say this in the context of the NIR as par to the appropriate assessment of the Ennis development plan which has factored in the foraging requirements for this bat species in assessing the impact of designating development sites. A key consideration is retention of connectivity and foraging areas which is being maintained. I would also comment that the removal of the stonewall as part of a domestic boundary realignment is connected to an urban residential road is not a likely interruption to connectivity of bat foraging. Of note, the riparian corridor is not being impacted.

### **8.7. In Combination / Cumulative Effects**

- 8.7.1. Given the nature of the proposed development, being the construction of a 3 houses in addition to a single dwelling serviced site, I consider that any potential for in-combination effects can be excluded. In addition, I would note that all other projects within the wider area which may influence foraging for the Lesser Horseshoe Bat species in the area via woodlands and linear rivers are also subject to AA.

### **8.8. Conclusion on Stage 1 Screening:**

- 8.8.1. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying Interests and the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude on the basis of the information available, that the ecology of the species is functionally linked to the proposed site via the foraging range provided in the area. There is, therefore, a potential impact pathway connecting the designated site to the development site.
- 8.8.2. However, given the nominal scale of the proposed development, the provision and the distance between the site and the Natura 2000 site, the proposed development,

either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for this site.

## 9.0 Recommendation

GRANT permission based on the reasons and considerations and subject to the conditions set out below.

## 10.0 Reasons and Considerations

Having regard to the residential zoning objective for the site, provision for infill development in the Ennis Municipal District Area as part of the Clare County Development Plan 2023-2029, the pattern of development in the area and the scale, nature and design of the development, it is considered that, subject to compliance with the conditions set out below, the development would constitute an appropriate form of infill development at this location, would be acceptable in terms of scale and design and would not seriously injure amenities of the area or of property in the vicinity. The proposed development would therefore be in accordance with 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, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement

of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The layout shall be amended as follows:

(a) The access road shall be set back at least 1m from the northeastern boundary so as to provide a landscaping strip alongside the access road. The front garden depths for sites 1, 2 and 3 shall be reduced accordingly. Under no circumstances should the rear building of the proposed dwelling be moved closer to the respective rear garden boundaries.

(b) Clarification of plans indicating preservation of the boundary hedgerow and vegetation on the site in conjunction with proposed planting in such a manner as to ensure its value as a habitat for wildlife species including bats is protected.

(c) The timber fences (T3) proposed as boundary walls in the front gardens and alongside the access road from points C-D-E as marked on Drawing no.1847(P)01 received by the planning authority on 8<sup>th</sup> March 2022 shall be replaced with concrete walls faced with stone.

Revised Plans indicating the above measures shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** To ensure protection of a feature of importance and enhance foraging areas for wildlife in the area and to control light spill in the interest of biodiversity and in the interest of visual amenity

3. The proposed garden sheds shall not be used as habitable accommodation.

**Reason:** In the interest of clarity

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

**Reason:** In the interest of visual amenity.

5. The following shall apply in respect of boundary treatment:

(a) Screen walls shall be provided along the boundaries of the site with existing dwelling properties, public space and along the access road and in this regard the following shall apply:

- i) All walls along the access road shall be faced in local stone. The 1.4m high timber and post rail shall be replaced accordingly.
- ii) Along point D-C as per Drawing no. 1847(P)(01) received by the planning authority on 8<sup>th</sup> March 2022 the boundary wall shall consist of a 2.4m high block wall which shall be stone faced on the public side

(b) The timber and post fence between the front curtilages of the dwellings shall be replaced by a 1.2m high concrete wall, capped and rendered or painted decorative metal railing.

(c) Save where otherwise stipulated or unless otherwise agreed in writing with the planning authority, all boundaries between dwellings shall be of block construction, plaster and capped and 1.8 metres in height.

Details of the layout, heights, materials, and external finishes of the screen walls and front boundaries and garden boundaries shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of construction of the dwellings.

**Reason:** In the interest of residential amenity, orderly development and traffic safety.

6. The in-curtilage car parking spaces serving the dwelling house shall be provided with electric connections to the exterior of the house to allow for the provision of future electric vehicle charging points. 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.

7. The site shall be landscaped, using only indigenous deciduous trees and hedging species and in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Existing boundary screening shall be suitably strengthened. Any plants which die, are removed or become seriously damaged or diseased, within a period of 4 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of visual amenity.

8. The internal access road serving the proposed development including turning bay, pedestrian crossing, junction layout, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

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

9. Prior to the making available for occupation of any house, the access road serving the development shall be widened and constructed to at least base wearing course and realigned wall(s) as indicated on drawing 1847(P)01 which shall be stone faced on the public side, together with landscaping in accordance with condition 2 of this permission, shall be in place.

**Reason:** To ensure timely and satisfactory provision of such site development works.



10. Public lighting shall be provided in accordance with a scheme which shall be submitted in writing with the planning authority prior to commencement of development.

**Reason:** To control light spill and in the interest of amenity and public safety.

11. All service cables associated with the proposed development shall be located underground.

**Reason:** In the interest of orderly development.

12. Water supply and drainage arrangements, including the disposal of surface water, shall incorporate SuDS and shall comply with the requirements of the planning authority for such works and services. Details shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of public health.

13. The applicant or developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.

**Reason:** In the interest of public health.

14. Proposals for estate/street name and house numbering and associated signage shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

15. The open spaces shall be developed for public amenity and shall be kept free of any development and shall not be incorporated into house plots. Works shall be completed prior to any of the dwellings being made available for occupation and shall be maintained as such until taken in charge by the local authority.

**Reason:** In the interest of amenity.

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

**Reason:** In order to safeguard the residential amenities of the area.

17. The development hereby permitted shall be carried out and completed at least to the construction standards as set out in the Recommendations for Site Development Works for Housing Area issued by the Department of Environment and Local Government (1998) and the planning authority's Taking -In -Charge policy. Following completion the development shall be maintained by the developer in compliance with these standards until taken in charge by the county council.

**Reason:** To ensure that the development is carried out and completed to an acceptable standard of construction.

18. Prior to the commencement of development, the developer or any agent acting on its behalf shall prepare a Resource Waste Management Plan (RWMP) 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 and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP shall be submitted to the planning authority for written agreement prior to commencement of development.

**Reason:** In the interest of sustainable waste management.

19. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development

including hours of working, noise management measures, off-site disposal of construction /demolition waste, details of management of excavation soil, details of fencing /hoarding, means to ensure surface water run-off is controlled such that no silt or other pollutant enter the surface water sewers or drains, measures to avoid the spread of non—native invasive plant species.

**Reason:** In the interest of amenities, public health and safety and protection of biodiversity.

20. 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.

21. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure 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.

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Suzanne Kehely

Senior Planning Inspector

3<sup>rd</sup> July 2023