



An
Bord
Pleanála

Inspector's Report ABP-313734-22.

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| Development | House. |
| Location | Monparson, Mourneabbey, Mallow, Co Cork. |
| Planning Authority | Cork County Council. |
| Planning Authority Reg. Ref. | 22/4558. |
| Applicant(s) | John Gerard O'Connor |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse. |
| Type of Appeal | First Party |
| Appellant(s) | John Gerard O'Connor. |
| Observer(s) | None. |
| Date of Site Inspection | 22/09/2022. |
| Inspector | A. Considine. |

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Monparson, Mourneabbey, which lies approximately 7km to the south of the town of Mallow in Co Cork. The irregularly shaped site is located within a very rural area, approximately 200m from Mourneabbey and 600m from the N20, national primary road. There is evidence of development pressure along this local road with a number of one-off houses in the immediate vicinity of the site.
- 1.2. The subject site has a stated area of 0.474 hectares, is currently greenfield and under grass, although there are areas of stoned / gravelled hard surfacing evident across extensive areas of the site, with some dumping of tyres evident. The irregularly shaped site is bound to the north by the local road while all other boundaries follow the flow of the Clyda River, which is a tributary of the Blackwater. The boundaries of the site comprise extensive and mature trees and hedgerows. The existing riparian corridor also includes extensive vegetation which is mixed with areas of stockpiled stone and bunding along the river bank. The site is flat and generally level and extends to approximately 40m at its widest from the road to the north and the river bank to the south.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices to construct a two-storey dwelling, domestic garage, sewerage system, site entrance and all associated works, all at Monparson, Mourneabbey, Mallow, Co. Cork. A Natura Impact Statement will be submitted to the planning authority with the application.
- 2.2. The application included the following documents:
 - Plans and particulars
 - Cover letter
 - Completed planning application form
 - Letter from the applicant
 - Completed supplementary application form and evidence of residency
 - Site Characterisation Report

- Flood Risk Assessment
- Appropriate Assessment Screening and Natura Impact Statement Report

- 2.3. The proposed house comprises a two-storey house, which will provide for accommodation over two floors. The house is orientated on the site so that the northern gable presents the elevation to the public road and the southern gable, which will be single storey comprises the elevation to the river. The front of the building presents to the east. The ground floor area provides for an open plan kitchen / diner with a living room located off this space, a utility room, playroom and a bedroom. The first-floor area provides for 3 further double bedrooms including one which will be en-suite and a family bathroom.
- 2.4. The house will have a stated floor area of 229m² and will be finished in smooth plaster with natural stone proposed around the double height porch, with extensive glazing, and the single storey living room area. The roof will be finished in black slate and windows will be selected uPVC. The finished floor level of the house is indicated at 100.25m and the house will rise to a maximum height of 8.62m.
- 2.5. The development includes the construction of a domestic garage at the roadside boundary area of the site, which will have a floor area of 35m² and will rise to a maximum height of 4.705m. The house will be served via a private WWTP and the submitted plans indicate that there is an existing well on the site which will be used to supply water to the house. I would note that the Site Characterisation Report submitted with the application advises that a new well will be bored. The development will include cutting into the sloping site in order to provide the reduced finished floor level.
- 2.6. Unsolicited further information was submitted following a submission by Inland Fisheries Ireland who raised questions regarding the existing bund on the site. The applicant advises that the removal of the bund would likely cause harm / disturbance in the sensitive riparian zone as significant earthworks would be required to move it. It is further submitted that the buffer zone of 10m can be increased by the repositioning of the house and garage if required. The flood issues raised have been addressed in the FRA submitted.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for the following stated reasons:

1. Given the proximity of the proposed site to the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code: 002170), the proposed development would be contrary to policy HE2-1 of the County Development Plan 2014. The mitigation measures outlined in the Natura Impact Statement do not provide adequate protection of the SAC. There are also concerns that given the presence of flood prevention measures, the site has been susceptible to flooding in the past and future flooding cannot be ruled out.
2. The subject site overlaps with the River Blackwater SAC. Having regard to Objective DB-01 for Mourneabbey, as set out in the Kanturk-Mallow Municipal District Local Area Plan, it is considered that given the site overlaps with the SAC, that to permit a dwelling at this location would materially contravene Objective DB-01 for Mourneabbey and would therefore be contrary to the proper planning and sustainable development of the area.
3. The subject site is located on lands that are designated as being within Flood Zone A in the Municipal District Local Area Plan. Given that the applicant has failed to submit a justification test for the proposed development, it is considered that the development of a dwelling house at this location is contrary to the Ministerial Guidelines 'The Planning System and Flood Risk Management – Guidelines for Planning Authorities' as well as Objective WS 6-1 and WS 6-2 of the Cork County Development Plan 2014 and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports and the County Development Plan policies and objectives. The report notes that pre-planning discussions were held with the applicant where it was noted that the site was within a flood zone. The applicant was advised to select a more appropriate site.

The planning report raises concerns in terms of the location of the site within a Rural Area under Strong Urban Influence and Town Greenbelts. It is noted that the applicants' family home is located c1.4km to the north of the site although it is unclear as to the ownership of the site – with the applicant advising that it is in his ownership on the application form and that it is family land on the Supplementary Application Form. Compliance with the requirements of the stated CDP objective – RCI 4-2 of the 2014 plan requires clarification.

The report further raises concerns as to the justification for the application at this site as the applicant has advised that he is not engaged in farming or has a rural occupation that would require him to live in the local rural area. In addition, the POs report notes the provisions of the Kanturk-Mallow MD LAP which includes development objective DB-01 for Mourneabby which advises that consideration will be given to the development of limited number of individual dwellings outside the SAC during the Plan period. The site overlaps the SAC and it is concluded that a grant of permission would conflict with this objective.

Concerns are raised regarding the massing and scale of the house and the proposals to relocate over 66m of roadside boundary, contrary to the objectives of the CDP 2014.

Having regard to the flood risk associated with the site, together with the concerns of the County Ecologist and Area Engineer, and the lack of a JT in the FRA, it is considered that the proposed development would be contrary to the principles set out in the flood risk management Guidelines.

The report concludes that while issues relating to settlement location policy and design and siting could potentially be resolved through a request for FI, as there is a

fundamental objection to the proposed development and having regard to Section 5.7 of the Ministerial Guidelines 'Development Management – Guidelines for Planning Authorities' 2007, the applicant should not have to suffer unnecessary delay or expense if refusal is likely.

The Planning Officer recommends that permission be refused for the proposed development for three reasons as detailed above in Section 3 of this report. The Board will note that the Case Planners report was endorsed by the A/SEP. This recommendation formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. Other Technical Reports

Area Engineer: The report raises a number of concerns with regard to the proposed development particularly with access, sightlines and drainage. The report recommends that an alternative site be sought due to the issues of potential flooding. Further information is required.

Ecologist: The Ecologist submitted a report which has regard to the submission of IFI in relation to the installation of flood prevention structures, and notes that the planning status is unclear and that the structures may be unauthorised. Concern remains that flood risk exists. Concerns are also raised with regard to the layout of the site and the proximity to the SAC. Mitigation measures outlined in the NIS are considered to be insufficient to prevent effects on the river.

Refusal is recommended.

Environment Officer: The report notes that the site suitability assessment indicates that the proposed treatment system should satisfactorily provide high quality effluent discharge to groundwater. While the site is located adjacent to the SAC, the AA screening and NIS report provided, indicates that it is not believed that the proposed treatment plant should have any impact, positive or negative on the QI objectives of the SAC.

The report recommends conditions to be included.

Liaison Officer: No comment.

3.2.3. **Prescribed Bodies**

Inland Fisheries Ireland: The report notes no objection in principle to the proposed development but raises concerns with regard to the proximity of the proposed development to the watercourse, and that part of the site lies within the SAC. The report notes that there is significant stockpiling of quarried stone on the site and that a significant amount of bunding has taken place along the left-bank of the river at the western end of the plot. Concern is raised that the high bunding was put in place in relation to previous flood issues either perceived or encountered on site and may be there to modify the natural flood channel profile and floodplain of the watercourse with potentially negative impacts on aquatic and riparian habitat downstream.

It is requested that the PA be satisfied that the design and completion of any required riparian landscaping should be cognisant of the need to preserve both the ecological quality and connectivity of the riparian corridor in order to safeguard the existing fisheries resource. Designs in line with achieving same should be submitted.

3.2.4. **Third Party Submissions**

None.

3.2.5. **Public Representative Submissions**

The Board will note reference to submissions from two Councillors, however, there is no detail of a submission relating to the subject case. The reference relates to correspondence associated with the previous application.

4.0 **Planning History**

The following is the relevant planning history pertaining the subject site:

PA ref: 21/6757: Permission sought for a two-storey dwelling, garage and WWTP on the site which was withdrawn prior to a decision issuing.

Lands to the west:

PA ref: 21/4950: Permission granted for alterations to site boundaries permitted under PA ref. 19/5567.

PA ref: 19/5567: Permission granted for a two-storey dwelling, entrance and WWTP on site approximately 200m to the west.

PA ref: 18/4604: Extension of Duration of permission granted for the construction of a dormer dwelling and WWTP on the site approximately 275m to the east of the subject site.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

- 5.1.1. The National Planning Framework – Project Ireland 2040 is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.
- 5.1.2. National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, ie. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations. In rural areas elsewhere, it refers to the need to facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Sustainable Rural Housing Development Guidelines 2005

- 5.2.1. The Rural Housing Guidelines seek to provide for the housing needs of people who are part of the rural community in all rural areas and makes a distinction between 'Urban Generated' and 'Rural Generated' housing need. Chapter 4 of the guidelines

relates to rural housing and planning applications and states that in areas under significant urban influence, applicants should outline how their proposals are consistent with the rural settlement policy in the development plan. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply, including 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

- 5.2.2. The Guidelines further require that new houses in rural areas be sited and designed in a manner so as to integrate well with their physical surroundings and generally be compatible with water protection, roads, traffic and public safety as well as protecting the conservation of sensitive areas.

5.3. **Development Plan**

- 5.3.1. The Board will note that the Elected Members of Cork County Council made the Cork County Development Plan 2022-2028 and adopted the Plan on the 25th of April 2022. The Plan came into effect on the 6th of June 2022. It is noted that the application, the subject of this appeal, was submitted under the provisions of the previous 2014 County Development Plan. The Board will note that the adoption of the 2022 Cork County Development Plan replaces this policy document.

- 5.3.2. Chapter 5 of Volume 1 of the CDP deals with Rural (including rural housing) and the subject site is located within a rural area which is identified as being under strong urban influence and within the Greater Cork Ring Strategic Planning Area. Specific policies are noted in relation to housing in such areas whereby applicants are required to satisfy a number of criteria. The following objectives are considered relevant in relation to the subject site. full details of the objectives are provided in the appendix to this report:

- CDP Objective 2-4: Greater Cork Ring Strategic Planning Area
- CDP Objective RP 5-1: Urban Generated Housing
- CDP Objective RP 5-4: Rural Area under Strong Urban Influence and Town Greenbelts.

- 5.3.3. Further to the above settlement location policy objectives, the following objectives of the 2022 CDP are also considered relevant:

- Chapter 11 – Water Management
 - CDP Objective WM 11-2: Surface Water Protection
 - CDP Objective WM 11-11: River Channel Protection
 - CDP Objective WM 11-12: Surface Water Management
 - CDP Objective WM 11-13: Flood plains and Wetlands
 - CDP Objective WM 11-14: Strategic Flood Risk Management
 - CDP Objective WM 11-15: Flood Risk Assessments
 - CDP Objective WM 11-16: Flood Risks – Overall Approach
 - CDP Objective WM 11-17: Development in Flood Risk Areas
- Chapter 14 – Green Infrastructure & Recreation
 - CDP Objective GI 14-1: Countywide Green and Blue Infrastructure Objectives
 - CDP Objective GI 14-9: Landscape
 - CDP Objective
- Chapter 15 – Biodiversity & Environment
 - CDP Objective BE 15-2: Protect sites, habitats and species
 - CDP Objective BE 15-6: Biodiversity and New Development
 - CDP Objective BE 15-7: Control of Invasive Alien Species
 - CDP Objective BE 15-8: Trees and Woodlands

5.3.4. The subject site is also located within the Municipal District of Kanturk – Mallow. Chapter 2 of Volume 3 of the 2022 CDP deals with this area. The Plan identifies that one of the key attributes of the Kanturk Mallow District is the River Blackwater. This river is designated as a Special Area of Conservation under the Habitats Directive. The SAC incorporates the main channel of the Blackwater and its tributaries. It is designated for the protection of a diverse range of freshwater woodland and coastal habitats and their associated species. In planning for the future development of the area the Council has a legally binding obligation to protect the favourable conservation status of the River Blackwater Special Area of Conservation. In

practical terms the status of the site, and conservation objectives for it, means that significant improvements are required to water quality within the catchment to meet stringent water quality standards.

- 5.3.5. In addition to the above, the Plan identifies that the Clyda River forms part of the Blackwater River SAC and that the protection of water quality and the maintenance of natural hydrological processes in such rivers and streams is fundamental to protecting the favourable conservation condition of the habitats and species for which the SAC is designated.

5.4. **Natural Heritage Designations**

The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) which is located within part of the subject site.

5.5. **EIA Screening**

- 5.5.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required. The proposed development comprises the construction of house in rural Co. Cork, on a site of 0.474ha and is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.

- 5.5.2. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

- 5.5.1. Having regard to:

- (a) the nature and scale of the development, and
- (b) the location of the development partly within a sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),
- (c) the submission of an NIS

It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The appeal is summarised as follows:

- AEE undertook a screening for AA for the site as well as an FRA.
- Cross sections of the River Martin¹ were used to inform a 1D model representative of the river channel. For all return periods, the river was found to remain in its corridor at the subject site, placing the site in Zone C for planning purposes.
- The finished floor level of the dwelling and garage allows 650mm freeboard against the 1% AEP flood to include climate change.
- The proposed WWTP system lies above all future flood return periods.
- The development does not obstruct or divert natural surface flows and will not impact surrounding developments.
- From the perspective of flood risk, there is no foreseeable impact to the SAC.

¹ The submission advises that the River Martin is also called the Clyda River. The River Martin however, is noted to be a tributary of the River Lee and is located further south of the subject site. I would note that there is some confusion in this regard as the river has both names associated with it depending on the maps viewed.

- The proposed development is deemed suitable regarding the relevant objectives within the Cork CDP and the relevant guidelines.
- As a result of proposed mitigation measures, the NIS is able to conclude that the proposed works will not result in impacts on the integrity of the SAC or any other Natura 2000 sites.
- It was deemed that removing the historic bund along the river would cause a pollution event and potential disturbance. It is recommended that the bund be left as it is.
- Anecdotal evidence from the applicant and his family would indicate that they never observed flooding on the site, which includes the time with no bund.

There is a letter from the applicant advising that the site has been in family ownership since 1990 and there was never an issue related to flooding. Although the council maps indicate that the site is flood zone A this is not a true reflection on the site and is incorrectly assessed / zoned.

In addition to the above, there is a letter of support from Cllr Liam Madden/

6.2. **Planning Authority Response**

The Planning Authority submitted a response to the first-party appeal noting that all relevant issues have been covered in the technical reports already forwarded to the Board and the PA has no further comments to make.

6.3. **Observations**

None

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development the subject of this application and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Flood Risk Assessment
3. Visual Impacts
4. Other Issues
5. Appropriate Assessment

7.1. Principle of the Development:

- 7.1.1. The proposed development seeks to construct a house with services on this rural site within the townland of Monparson, Mourneabbey, Mallow, Co Cork, approximately 7km from the centre of the town of Mallow. The Planning Authority considered the proposed development under the provisions of the 2014 Cork County Development Plan. The Board will note that the Elected Members of Cork County Council made the Cork County Development Plan 2022-2028 and adopted the Plan on the 25th of April 2022. The Plan came into effect on the 6th of June 2022. It is noted that the application, the subject of this appeal, was submitted under the provisions of the previous 2014 County Development Plan. The Board will note that the adoption of the 2022 Cork County Development Plan replaces this policy document.
- 7.1.2. The Plan, together with the Sustainable Rural Housing Guidelines, provide clear guidance that there is a presumption against the development of one-off houses except where the proposal constitutes a genuine rural generated housing need based on social and / or economic links to the particular rural area. Should the Board be minded to grant planning permission in this instance it should be satisfied that the

appellant adequately complies with the requirements of these stated policies, as well as National Policy Objective 19 of the National Planning Framework.

7.1.3. Objective 19 of the National Planning Framework seeks to ensure that in rural areas under urban influence, the provision of single housing in the countryside will be based on the core consideration of demonstratable economic or social need to live in a rural area..... having regard to the viability of smaller towns and rural settlements. I note that this area of the county is identified as a rural area under strong urban influence in the County Development Plan, 2022, as well as being located within the Greater Cork Ring Strategic Planning Area. Applications for one off houses in such locations are subject to specific policies which require applicants to satisfy a number of criteria, Policy Objective RP 5-4: Rural Area under Strong Urban Influence and Town Greenbelts of the 2022 Cork County Development Plan refers.

7.1.4. Therefore, applicants are required to satisfy the Planning Authority that their proposal constitutes an exceptional rural generated housing need based on their social and / or economic links to a particular local rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

- a) Farmers, including their sons and daughters who wish to build a first home for their permanent occupation on the family farm.
- (b) Persons taking over the ownership and running of a farm on a full-time basis, who wish to build a first home on the farm for their permanent occupation, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.
- (c) Other persons working full-time in farming (or part – time basis where it can be demonstrated that it is the predominant occupation), forestry, inland waterway, or marine related occupations, for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- (d) Persons who have spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation.

(e) Returning emigrants who spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation, who now wish to return to reside near other immediate family members (mother, father, brother, sister, son, daughter or guardian), to care for elderly immediate family members, to work locally, or to retire. It is not necessary for the applicant to show that they have already returned to Cork, provided they can show that they genuinely intend taking up permanent residence.

7.1.5. With regard to the above, I would note that the applicants' family are not farmers in the local area. It would appear that the family resides in a one-off house in the rural area, approximately 1.4km to the north of the subject site, for many decades. The information submitted notes that the applicants' family purchased the subject appeal many years ago. In this regard, I do not consider that the applicant, notwithstanding him living in the local area for the majority of his life, can comply with the requirements of parts (a), (b) or (c) of the above Policy Objective RP 5-4. I also note that the applicant appears to be living in the family home and therefore, he is not considered a returning emigrant – part (e) of the said policy. However, consideration can be given to the proposed development on the basis of the provision of part (d) of the policy as he is a person who has spent a substantial period of his life (i.e. over seven years), living in the local rural area in which he proposes to build a first home for his permanent occupation.

7.1.6. I would acknowledge the issues raised in the PAs report regarding the ownership of the site, however, in principle, it would appear to me that the applicant complies with the local settlement location policy for the construction of a house on the site as he grew up within 1.4km of the site. The applicant works for Jacobs Engineering in Cork. He has advised that he does not work, either full time or part time, within the local area. Having regard to the information presented, I acknowledge that the applicant has resided in the local rural area for many years. However, the applicant has not demonstrated a sufficient economic or social need to live in this rural area, as set out in Policy Objective RP 5-1: Urban Generated Housing of the Development Plan and Policy Objective 19 of the National Planning Framework.

7.1.7. As such and given the location of the site within a rural area under strong urban influence, I am not satisfied that the proposed development complies with the

principle of the policy objectives of the County Development Plan as they relate to rural housing, Objective 19 of the National Planning Framework and the guidance provided within the Sustainable Rural Housing Guidelines. The Board will note that this issue might be deemed a new issue as the PA did not include it as a reason for refusal in its notification of decision to refuse to grant permission.

7.2. Flood Risk Assessment

- 7.2.1. The Board will note that the Planning Authority refused planning permission for three reasons, including a reason relating to flood risk. In addition, I note the submission of a site-specific FRA which was prepared as part of the application for of the subject site. The SSFRA report comprises stages 1, 2 and 3 of flood risk assessment in terms of identifying flood risk, initial flood risk assessment and detailed flood assessment. The report describes the relevant hydrological and geological characteristics in the vicinity of the site and sets out the relevant objectives of the FRM guidelines, noting the key principles are to avoid the risk where possible, substitute less vulnerable uses where avoidance is not possible and mitigate and manage the risk, where avoidance / substitution is not possible. The principal sources of flooding are described as are the Flood Zones representing the likelihood of flooding and notes the requirements of the Justification Test for vulnerable developments in Flood Zones A and B.
- 7.2.2. While the 2017 Local Area Plan for the area identifies the site as being located within Flood Zone A and in an area which is vulnerable to flooding, the applicants FRA concludes that the subject site is located within Flood Zone C and that a Justification Test is not required. I would note that the Area Engineer of Cork County Council and the County Ecologist have serious concerns at this conclusion and notes that no Justification Test was carried out as required in the Planning System and Flood Risk Management – Guidelines for Planning Authorities, 2009. While the first party appeal submission also advises that the landowner has not observed flooding at the site, including a period when there was no bund in place, the site remains within a Flood Zone A area in accordance with the LAP.
- 7.2.3. Stage 1 of the Flood Risk Assessment concluded that there is a possible risk to the site from fluvial flooding. The Stage 2 assessment notes the topography of the site which is flat and not elevated from the riverbank, although the riverbank itself is

considered to be significant. The assessment also concludes that risk from groundwater and pluvial flooding is remote, and no mitigation measures are suggested.

- 7.2.4. A Stage 3 FRA is set out in Section 5 of the report and aims to provide a quantitative appraisal of flood risk at the site. The assessment applies a climate change allowance of 20% to ensure future occupants are not subject to unacceptable risks. Section 6 of the FRA presents the flood modelling carried out for the site, which concludes that the river would likely remain within its corridor along the site boundary. Cross sections of the river notes that the river widens as the bank levels lower along the site towards the western boundary and the Mannings equation was used to determine flood depth for each return period. While climate change raises levels by 20-30cm, it does not affect channel integrity. The finished floor level of the proposed house provides 650mm freeboard against the 1%AEP flood, including climate change, and 420mm against the 0.1%AEP flood. In this regard the FRA places the site within Zone C for planning purposes.
- 7.2.5. The report also addresses the wastewater treatment system which will be placed above the 1% and 0.1%AEP future predicted flood envelope, meaning risk of submergence is remote. The proposed development will not obstruct or divert any significant surface water flows at the site and rainfall runoff from the house and garage area will be to a soakaway. There are no impacts foreseen on the Blackwater (Cork/Waterford) SAC. Ultimately the FRA concludes that the development is acceptable in terms of flood risk. The Board will note that no justification test was undertaken based on the conclusion of the location of the site within Flood Zone C.
- 7.2.6. I accept that the development has been designed in order not to increase flood risk. While I acknowledge the content of the submitted FRA, I note that there is no reference to the existing bunding which has been put in place at the site, at some time from 1990 (as indicated in the first party appeal submission referring to the ownership of the land). While I further acknowledge the assessment provided, I do not accept that the site can be determined to be located within Flood Zone C and that no justification test is required. The site surface has been altered, with the introduction of gravel to provide for hard standing for the previous storage of truck containers (as evidenced in the satellite images from Google Maps and from site inspection).

7.2.7. In light of the above, and in terms of the justification test criteria of the FRM Guidelines, I consider the following is relevant:

1. The subject lands have been zoned or otherwise designated for the particular use or form of development in an operational plan, which has been adopted or varied taking account of these guidelines:

The subject site is not zoned, being located in the open countryside area of Co. Cork. The site lies immediately adjacent to a river forms part of the Blackwater River SAC. Evidence at the site indicates that bunding was provided at the site at some point in the past 25 years and the reason for this has not been established. The site is primarily located within an area which has been identified as being a Flood Zone A and B. As such, I would not accept that the land has been appropriately zoned or designated for residential use.

2. The development has been subject to an appropriate flood risk assessment that demonstrates:

(i) The development proposal will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk:

(ii) The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible;

(iii) The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management and provisions for emergency services access; and

(iv) The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.

7.2.8. In terms of a consideration of part 2 of the JT Criteria, the Board will note that as the FRA considers the site to be located within Flood Zone C and does not address the presence of existing bunding at the site, the FRA has not presented mitigation

measures other than to ensure that the development will not be located within the 1% and 0.1%AEP future predicted flood envelope. It is further noted that standard soakpits will be employed to address surface water management on the site and due to contours, it is anticipated that the development will not divert any significant surface water flows at the site. It is also noted that the proposed 10m buffer to be maintained between the development area and the river cannot be achieved in the vicinity of the entrance to the site and therefore, I am not satisfied that it can be concluded that the development, if permitted, will not have a negative impact in the immediate vicinity of the site and will not exacerbate or add to flooding risk in the area.

- 7.2.9. I concur with the Planning Authority's recommended reason for refusal of the proposed development in terms of flood risk.

7.3. Visual Impacts

- 7.3.1. The subject site is located within a rural landscape, where CDP Objective GI 14-9: Landscape is considered relevant. The Plan seeks to protect the visual and scenic amenities of County Cork's built and natural environment, as well as protecting seeking to discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments. The subject site lies within a low-lying area adjacent to the Clyda River which includes extensive lengths of both treelines and hedgerows. In the context of CDP Objective GI 14-9: Landscape, I would note that the proposed development includes a landscaping plan which sets out the proposals for the site. The proposed development proposes the removal of approximately 70m of roadside boundary in order to accommodate the proposed new entrance (in the general vicinity of the existing access).
- 7.3.2. The proposed layout of the site provides for the house to present the gable to the public road. Given the nature of the existing roadside boundary, I would accept that there will be some views into the site and towards the house available, particularly from the west. The house is to be located at a point where the existing boundary hedgerow is low and, in this context, the building will be highly visible from the public road. The landscaping of the site should the Board be minded to grant permission, will be critically important in order to ensure that the house assimilates into the

landscape. In addition, should permission be granted for the removal of the hedgerow as proposed to facilitate the new entrance, visual impacts of the building from the east will also arise.

- 7.3.3. In the absence of an appropriate landscaping plan, I suggest that the visual impacts associated with the proposed development might reasonably be considered to adversely impact the visual and scenic amenities of the natural environment in this area of County Cork. However, as the site is not located within a High Value Landscape, I accept that the matter might be appropriately addressed by way of conditions relating to landscaping.

7.4. Other Issues

7.4.1. Roads & Traffic

The proposed development is to be accessed via the local road network in the area, and directly off the L-5378-0. While there is an existing entrance to the site, this access provides for somewhat restricted sight distances due to the existing site boundaries. The development proposes to create a new entrance which will involve the removal and setting back of the existing roadside boundary in order to achieve 90m sight distance in both directions. The existing entrance appears to be located to the west of the proposed new entrance.

Other than the potential visual impacts arising from the removal of extensive lengths of the existing roadside boundary, in the order of approximately 70m, I do not consider that the proposed development will give rise to a significant increase in the volume of vehicular traffic as to warrant a refusal of planning permission. I have no objections to the proposed development in terms of roads and traffic.

7.4.2. Water Services & Site Suitability Issues

In terms of site suitability, the Board will note that the application advises that the proposed house is to be served by a connection to a new well and a proposed proprietary treatment system. The site characterisation form submitted with the application has had regard to the 2021 EPA Code of Practice.

The information provided on the planning authority file with regard to the proposed development suggests that the sites suitability with regard to the treatment and disposal of wastewater has been fully considered. The applicant submitted a completed site suitability assessment regarding the suitability of the proposed site in terms of the treatment and disposal of wastewater generated on the site.

The site characterisation assessment, submitted as part of the planning application, notes that bedrock was identified in the trial pit, which was dug to 1.7m bgl, with the water table identified at 1.45m. The assessment identifies that the site is located in an area which is categorised as being a locally important aquifer (LI) with extreme vulnerability. A Groundwater Protection Repease of R2¹ is indicated. The bedrock type is described as 'DORS Devonian Old Red Sandstone' while the soil type is identified as AminSW-Shallow well drained mineral and subsoil as Till derived from Devonian Sandstone. The site lies within the Glenville Groundwater Body which is noted to have poor status.

*T tests were carried out on the site at a level of between 0.6m – 0.7m bgl at the base of the hole and yielded an average T value of 165.87. The result of the subsurface percolation value is calculated at 56.28min/25mm. No *P tests were carried out. The report concludes recommending a tertiary treatment system and infiltration / treatment area which will have an area of 18m² and will have a trench invert level of 0.15m. The system will discharge to groundwater with a hydraulic loading rate of 50l/m²/d.

The Board will note the concerns raised by the Cork County Council Area Engineer with regard to potential flooding at the site. In addition, I note that the proposals regarding the proposed provision of a sand polishing filter as part of a tertiary infiltration area. The Board will note that the applicant proposes a system for a PE of 6 and an infiltration / treatment area of 18m² on the site which has a percolation value of 56.28. The 2021 CoP, Table 10.1 sets out the requirements for infiltration / treatment area and trench length design for tertiary treatment per PE. Given the information within the Site Characterisation Report, it would appear that the infiltration / treatment area of 18m² is significantly undersized.

In terms of the above, I am not satisfied that overall, if permitted, the development is acceptable in terms of site suitability for the treatment and disposal of wastewater arising from the development.

7.4.3. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.4.4. Residential Amenity Issues

Having regard to the rural location and the separation distance between the subject site and the nearest house to the west, together with the landscaping proposals for the site, I note no objections to the proposed development in terms of potential impacts on existing residential amenity.

8.0 Appropriate Assessment

8.1. Introduction

8.1.1. 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. The site is partially located within the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) and the development the subject of this application and appeal is not directly connected with or necessary to the management of this, or any other European site. The applicant submitted an AA Screening and a Natura Impact Statement.

8.2. AA Screening Report

8.2.1. The application was accompanied by an Appropriate Assessment Screening Report, dated January 2022 and prepared by Ash Ecology & Environmental. This report assesses whether effects to the Natura 2000 network are likely to occur as a result of the project. The report sets out the methodology employed and provides a

description of the project proposed as well as including a description of the existing habitats present on the site.

- 8.2.2. The AA Screening Report submits that the zone of influence extends to 15km from the boundary of the development. The report identifies the only relevant Natura 2000 site within the identified zone of influence as being the Blackwater River (Cork/Waterford) SAC (Site Code: 002170). The report notes that the proposed works will occur partially within the site, amounting to approximately 700m². The report advises that the River Martin forms part of the Blackwater River (Cork/Waterford) SAC and as such, the screening report concludes that the potential impacts include water quality affecting the River Martin and habitat loss within the SAC.
- 8.2.3. The Board will note that the River Martin (as referred to in the AA, is actually a tributary of the River Lee and that the Clyda River forms part of the Blackwater River (Cork/Waterford) SAC. The report, however, acknowledges that the site is directly connected to the Blackwater River (Cork/Waterford) SAC. The Screening Report considers that no other SAC or SPA lies within the zone of influence of the project and focuses its assessment on the Blackwater River (Cork/Waterford) SAC.
- 8.2.4. The Report presents details of the relevant SAC, including details of the qualifying interests of Blackwater River (Cork/Waterford) SAC. An Assessment of Potential Impacts is presented in Section 3.2.1 of the document, page 13, and considers the impact of the proposed development in terms of the potential habitat loss, disturbance and / or displacement of species, habitat / species fragmentation, changes in population density of Otter, changes in water quality including flood risk and the introduction / spread of invasive species.
- 8.2.5. The Conclusion of Stage 1 Screening notes that as the site contains a small area of the Blackwater River (Cork/Waterford) SAC, this site may be impacted during the construction of the dwelling by reason of water quality impacts and disturbance to Otter. In addition, the introduction of invasive species is noted as a potential impact and that a full AA will be required with regard to the SAC. The report includes a Natura Impact Statement at Section 4 of the document.

8.3. **Natura Impact Statement**

8.3.1. The Natura Impact Statement submitted by the applicant is included in Section 4 of the AA document. The NIS seeks to examine the potential impacts of the proposed development on the following European Site:

- Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

Section 4.2 sets out the characteristics of the SAC, with Table 2 of the document identifying the qualifying species and habitats and Table 5 detailing their conservation objectives for the SAC.

8.3.2. Having reviewed the NIS and supporting documentation, including the Ecological Impact Assessment submitted following the request of the planning authority further information, together with relevant submissions, and having undertaken a site inspection, I am satisfied that a Stage 2 Appropriate Assessment is required for the following European Site on the basis of the proximity of the sites to the appeal site and the potential for impacts to water quality arising and on species:

- Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

8.3.3. I am satisfied that the submitted NIS, together with the additional information submitted in the FRA, provides adequate information in respect of the site, clearly identifies the potential impacts, and uses best scientific information and knowledge. Table 6 of the NIS sets out the potential pressures and threats on the QIs and Section 4.4 considers the in-combination effects of plans and projects. Section 4.5 sets mitigation measures to be employed in terms of habitat loss / alteration, disturbance to Otter, introduction / spread of invasive species, and impacts on water quality. The NIS concludes that, with the implementation of the mitigation measures described in section 4.5, the proposed works will not adversely affect the integrity of the Blackwater River (Cork/Waterford) SAC, or any other Natura 2000 site. I am satisfied that the information is sufficient to allow for Appropriate Assessment of the proposed development.

8.4. **Consultations and Observations**

8.4.1. The AA Screening Report submitted with the application list all data sources and guidance documents used.

8.4.2. With regard to consultations, the Board will note that significant issues relating to AA were raised by the Cork County Ecologist, while the Area Engineer raised concerns in terms of flooding.

8.4.3. In addition to the above, Inland Fisheries Ireland submitted a report which raises concerns in terms of the bunding which has been put in place (the time this was put in place is unknown). The report considers that that the high bunding was put in place in relation to previous flood issues either perceived or encountered on site and may be there to modify the natural flood channel profile and floodplain of the watercourse with potentially negative impacts on aquatic and riparian habitat downstream. The planning status of this bunding is also questioned.

8.5. Screening for Appropriate Assessment:

8.5.1. I have presented a summary of the AA Screening report submitted with the application above. The purpose of AA screening, is to determine whether appropriate assessment is necessary by examining:

- a) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and
- b) the likely effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives and considering whether these effects will be significant.

8.5.2. The AA Screening Report submits that the zone of influence extends to 15km from the boundary of the development. The report identifies one relevant Natura 2000 site within the identified zone of influence as being the Blackwater River (Cork/Waterford) SAC (Site Code: 002170).

8.5.3. In terms of AA, the Board will note that while partially located within the SAC, the development is not directly connected or necessary to the management of a European Site. I am satisfied that the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) is the only Natura 2000 site as being within the zone of influence of the project, for the purposes of AA Screening.

8.6. Conclusion on Stage 1 Screening:

- 8.6.1. Having regard to the information submitted as part of the application, together with the information available on the NPWS website, the scale and nature of the proposed development and likely effects, the location of the site within the SAC and the functional relationship between the proposed works and the European site, its conservation objectives and taken in conjunction with my inspection of the site and the surrounding area, I am satisfied that there is potential for the development to give rise to potential impacts in terms of water quality of the Blackwater River (Cork/Waterford) SAC during the construction phase of the development. Potential impacts on qualifying features, conservation interests and conservation objectives are primarily related to loss of habitat, water quality and disturbance of Otter.
- 8.6.2. In light of the above, a stage 2 Appropriate Assessment was carried out in relation to the Blackwater River (Cork/Waterford) SAC (Site Code: 002170). The potential impacts (direct / indirect and in-combination effects) of the development on the site are examined in light of each of the site’s conservation objectives.

8.7. Stage 2 Appropriate Assessment

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

| European Site | Qualifying Interests |
|---|---|
| <p>Blackwater River (Cork/Waterford) SAC (Site Code: 002170) Located within the site</p> | <ul style="list-style-type: none"> • Estuaries [1130] • Mudflats and sandflats not covered by seawater at low tide [1140] • Perennial vegetation of stony banks [1220] • Salicornia and other annuals colonising mud and sand [1310] • Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330] • Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] • Water courses of plain to montane levels with the <i>Ranunculum fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation [3260] • Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0] |

| | |
|--|--|
| | <ul style="list-style-type: none"> • 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] • <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] • <i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092] • <i>Petromyzon marinus</i> (Sea Lamprey) [1095] • <i>Lampetra planeri</i> (Brook Lamprey) [1096] • <i>Lampetra fluviatilis</i> (River Lamprey) [1099] • <i>Alosa fallax fallax</i> (Twaite Shad) [1103] • <i>Salmo salar</i> (Salmon) [1106] • <i>Lutra lutra</i> (Otter) [1355] • <i>Trichomanes speciosum</i> (Killarney Fern) [1421] |
|--|--|

Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

8.7.2. The River Blackwater is one of the largest rivers in Ireland, draining a major part of Co. Cork and five ranges of mountains. The site consists of the freshwater stretches of the River Blackwater as far upstream as Ballydesmond, the tidal stretches as far as Youghal Harbour and many tributaries, the larger of which include the Licky, Bride, Flesk, Chimneyfield, Finisk, Araglin, Awbeg (Buttevant), Clyda, Glen, Allow, Dalua, Brogeen, Rathcool, Finnow, Owentaraglin and Awnaskirtaun. The portions of the Blackwater and its tributaries that fall within this SAC flow through the counties of Kerry, Cork, Limerick, Tipperary and Waterford. Nearby towns include Rathmore, Millstreet, Kanturk, Banteer, Mallow, Buttevant, Doneraile, Castletownroche, Fermoy, Ballyduff, Rathcormac, Tallow, Lismore, Cappoquin and Youghal.

8.7.3. The site is also important for the presence of several E.U. Habitats Directive Annex II animal species, including Sea Lamprey (*Petromyzon marinus*), Brook Lamprey (*Lampetra planeri*), River Lamprey (*L. fluviatilis*), Twaite Shad (*Alosa fallax fallax*), Freshwater Pearl Mussel (*Margaritifera margaritifera*), Otter (*Lutra lutra*) and Salmon (*Salmo salar*). The Awbeg supports a population of White-clawed Crayfish (*Austropotamobius pallipes*). This threatened species has been recorded from a number of locations and its remains are also frequently found in Otter spraints, particularly in the lower reaches of the river. The freshwater stretches of the Blackwater and Bride Rivers are designated salmonid rivers. The Blackwater is noted for its enormous run of salmon over the years.

8.7.4. Overall, the River Blackwater is of considerable conservation significance for the occurrence of good examples of habitats and populations of plant and animal species that are listed on Annexes I and II of the E.U. Habitats Directive respectively. Furthermore, it is of high conservation value for the populations of bird species that use it. Two Special Protection Areas, designated under the E.U. Birds Directive, are also located within the site - Blackwater Callows and Blackwater Estuary. Additionally, the importance of the site is enhanced by the presence of a suite of uncommon plant species.

8.8. Conservation Objectives:

8.8.1. The Conservation Objectives for the relevant designated site are as follows:

| European Site | Conservation Objectives |
|---|---|
| <p>Blackwater River (Cork/Waterford) SAC (Site Code: 002170)</p> <p>Located approx. 20m to the South of the site</p> | <ul style="list-style-type: none"> • The NPWS has identified a site-specific conservation objective to maintain the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ Austropotamobius pallipes (White-clawed Crayfish) [1092] ○ Lampetra planeri (Brook Lamprey) [1096] ○ Lampetra fluviatilis (River Lamprey) [1099] ○ Salmo salar (Salmon) [1106] ○ Estuaries [1130] ○ Mudflats and sandflats not covered by seawater at low tide [1140] ○ Perennial vegetation of stony banks [1220] ○ Salicornia and other annuals colonising mud and sand [1310] ○ Mediterranean salt meadows (Juncetalia maritimi) [1410] ○ Trichomanes speciosum (Killarney Fern) [1421] ○ Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] • The NPWS has identified a site-specific conservation objective to restore the favourable conservation |

| | |
|--|---|
| | <p>condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets:</p> <ul style="list-style-type: none"> ○ Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] ○ Petromyzon marinus (Sea Lamprey) [1095] ○ Alosa fallax fallax (Twaiite Shad) [1103] ○ Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] ○ Lutra lutra (Otter) [1355] ○ Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] ○ Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] <ul style="list-style-type: none"> ● The status of Taxus baccata woods of the British Isles [91J0] as a qualifying Annex I habitat for the Blackwater River (Cork/Waterford) SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this habitat. |
|--|---|

8.9. Potential Significant Effects

8.9.1. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 site, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies within the boundaries of a European Site, direct effects are anticipated. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site includes a stated area of approximately 700m² of designated habitat associated with the Blackwater River (Cork/Waterford) SAC (Site Code: 002170). The NIS advises that the proposed works will only involve working on recolonised bare ground with some scrub and grassy verges, habitats that could be considered to be of low species diversity in this instance. The report

further notes that the small area of the Blackwater River SAC within the site will be left 'as is' and a 10m riparian buffer kept along the river Martin ensuring no impacts to sensitive or designated habitats.

While I acknowledge the content of the NIS, I note that the proposed development does in fact propose works within the designated area which will include the removal and setting back of the existing roadside boundary to the east of the site, and the creation of the access driveway. While I acknowledge the small area affected, this remains a direct loss of protected habitat associated with the SAC, which has not been appropriately considered.

In addition to the above, the Board will note the concerns raised regarding the existing stockpile of stone along the river bank to the western area of the site. There is no reference to this feature other than the applicants' submission that they have not had issue with flooding on the site in the past and that the removal of same is likely to result in a polluting event. When this bunding was put in place, and its purpose, is not clear. No consideration of the impact the bunding has had on the natural flood channel profile or floodplain of the watercourse has been provided and I cannot conclude that this feature has not had negative impacts on aquatic or the riparian habitat downstream. I would also note the concerns of the County Ecologist in terms of the planning status of the installation.

- **Disturbance and / or displacement of species:** The site lies within a rural environment, and within an area which has experienced pressure for on-off housing. The site directly bounds the Clyda Rive which is a tributary of the Blackwater River (Cork/Waterford) SAC (Site Code: 002170), which includes a number of protected species. The submitted AA notes that QIs which could be impacted by the project include freshwater habitats and species, which are known to occur within the Clyda River and areas downstream including:

- Freshwater Pearl Mussel
- White-clawed Crayfish
- Atlantic Salmon
- Brook Lamprey

- River Lamprey
- Sea Lamprey and
- Water Courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation (Floating River Vegetation)

due to impacts on water quality and impacts to suitable riverine habitats and hydrological processes.

- Impacts to Otter would also include decline in water quality and disturbance.

The site itself appears to have been altered to include the introduction of a gravel finish where trucks / trailers have been stored in the past. Following my site inspection, I would consider that the site includes riparian habitat along the river bank. I would note that the development seeks to retain said riparian habitat and submits that no development will occur within 10m of the river bank.

I have noted above that part of the proposed works to provide access to the site will involve works to the site boundary and within the riparian habitat / protected habitat. While I acknowledge that the AA advises that no Otter holts were identified during the site survey, in the context of the works to the boundary which cannot occur without impacting within 10m of the river bank, I cannot conclude that there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 sites have been designated.

- **Water Quality:** The proposed development relates to the construction of a house on a rural site. The development includes a proposal to a private wastewater treatment system and percolation area to serve the house. The Board will note that a Site Characterisation Report was submitted with the application which identified the water table at a level of 1.42m bgl. The percolation value recorded was calculated at 56.28min/25mm. The Board will note that the proposed infiltration / treatment area proposed to serve the development is undersized in the context of the 2021 Code of Practice

guidelines. I also note that the underlying aquifer is identified extremely vulnerable. Based on the information available, it is not clear if a grant of planning permission will give rise to impacts on the ground water in the vicinity of the site, and the SAC with regard to water quality.

The development site includes an area of the Blackwater River (Cork/Waterford) SAC and is bound along all but the northern boundary by the Clyda River, a tributary of the Blackwater River. The development proposes to retain a 10m buffer between the river bank and the development site is identified as being located within a Flood Zone A. The site includes bunding which does not appear to have planning permission and it is unclear as to the reasons for the building of this feature. The development proposes to install soakaways to deal with surface water, but I note the concerns of the Councils Area Engineer that they may become redundant in the event of a flood event at the site. I also note the proposals to install a silt fence / haybale barrier between the construction area and the river. However, the proposed mitigation measures identified, the buffer of 10m does not appear to be achievable with the site layout proposed, together with the provision of the access driveway, which is located immediately adjacent to the river.

In light of the above, I agree with the County Ecologist and Area Engineer that the measures proposed to mitigate against impacts to water quality in the Clyda River and ultimately the Blackwater River (Cork/Waterford) SAC are insufficient. I am therefore satisfied that it cannot be concluded that the development, if permitted, is unlikely to impact on the overall water quality of the Blackwater River (Cork/Waterford) SAC (Site Code: 002170).

Having regard to the above, I cannot be satisfied that the potential for likely significant effects on the qualifying interests of the Blackwater River (Cork/Waterford) SAC can be excluded. The subject site includes an area of designated habitat and the removal of the roadside boundary and the creation of the driveway in this area cannot accommodate the required 10m buffer area. There is therefore a direct hydrological connection.

8.10. In Combination / Cumulative Effects

8.10.1. In terms of potential in-combination / cumulative impacts associated with the proposed development, I note Section 4.4 of the NIS which has considered other relevant plans and projects in the region and an assessment for such cumulative impacts was undertaken by the applicant. The assessment considered the following plans:

- Cork County Development Plan 2022-2028
- County Cork Biodiversity Action Plan 2009-2014
- Cork County Development Plan 2014 Volume Three: SEA Statement and Natura Impact Report
- Cork County Development Plan Review Habitats Directive Screening Assessment Report (August 2017)
- Kanturk Mallow Municipal District Local Area Plan, Volume 2 Environmental Reports (August 2017)
- River Basin Management Plan 2018-2021
- Natura Impact Statement of RBMP 2018-2021

8.10.2. Given the nature of the proposed development, being the construction of a house, and while I cannot conclude that the development itself will not have an effect on water quality in the Blackwater River (Cork/Waterford) SAC, I would note that all other projects within the wider area which may influence conditions in the SAC via rivers and other surface water features are also subject to AA.

8.11. Mitigation Measures

Mitigation and best practice measures are proposed, Section 4.5 of the submitted NIS document, to address the potential adverse effects of the development to ensure that the development will not adversely affect the identified European Site or the conservation status of protected habitats and species it supports. The applicant advises that the content of the AA as it relates to mitigation measures also forms the 'Construction Environmental Method Plan'.

The NIS also includes environmental measures which deal with reduction and prevention of suspended solids pollution and the reduction or elimination of pollution from other substances in terms of refuelling and hazardous material storage and noise control associated with the construction phase. I also note the submission of a Flood Risk Assessment and a Site Characterisation Report for the site. A soakaway will serve for site drainage.

The NIS concludes that following the implementation of the mitigation measures, there is no potential pathway for adverse indirect impact via ground water and there will be no potential for adverse effects on the Blackwater River (Cork / Waterford) SAC.

8.12. Overall Appropriate Assessment Conclusion

8.12.1. Having regard to the nature of the subject development site, the nature of the proposed development and its location partially within the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code: 002170), together with the details presented in the Natura Impact Statement, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, I do not consider it reasonable to conclude on the basis of the information on the file, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the following Natura 2000 site, or any other European site, in view of the sites Conservation Objectives:

- Blackwater River (Cork/Waterford) SAC (Site Code: 002170)

8.12.2. In arriving at this conclusion, the Board will note that I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Site. The mitigation measures outlined in the Natura Impact Statement do not provide adequate protection of the SAC, with direct impacts and loss of habitat arising. In addition, I am concerned that works have taken place at the site in the form of bunding, for which Appropriate Assessment would have been required in the first instance, and that this element has not been appropriately addressed in the submitted NIS.

8.12.3. It is, therefore, reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site and would, therefore, be contrary to the proper planning and sustainable development of the area.

9.0 Recommendation

9.1.1. Having regard to the information submitted in support of the appeal and development the subject of the appeal, and while I would accept that the applicant has lived in the local area for a significant number of years, I recommend that the proposed development be refused for the following stated reasons.

10.0 Reasons and Considerations

1. The site of the proposed development is located within an 'Area Under Strong Urban Influence', as set out in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April 2005. Furthermore, the subject site is located within an area that is designated under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements. Taking account of the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has adequately provided a genuine and demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria, as set out in the Guidelines and in national policy, for a house at this rural location. Furthermore, the proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would contravene the provisions of the

National Planning Framework. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the proposed site partially within the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code: 002170), the proposed development would be contrary to policy Objective BE 15-2 of the County Development Plan 2022 which requires the protection of all natural heritage sites which are designated or proposed for designation under European Legislation, National Legislation and International Agreements, including Special Areas of Conservation. The mitigation measures outlined in the Natura Impact Statement do not provide adequate protection of the SAC, with direct impacts and loss of habitat arising.

It is therefore considered that the Board is unable to ascertain, as required by Regulation 27(3) of the European Communities (Natural Habitats) Regulations, 1997, that the proposed development will not adversely affect the integrity of a European Site and it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

3. The subject site is located on lands that are designated as being within Flood Zone A in the County Development Plan 2022-2028. Notwithstanding their submission of the Flood Risk Assessment and having regard to the lack of clear details relating to the bunding which exists on the site, for which no planning permission or Appropriate Assessment has been identified, the Board is not satisfied that the site can appropriately be considered as being within Flood Zone C as indicated. Given the presence of flood prevention measures, the Board is satisfied that the site has been susceptible to flooding in the past and future flooding cannot be ruled out.

In the absence of a justification test for the proposed development, it is considered that the development of a dwelling house at this location is

contrary to the Ministerial Guidelines 'The Planning System and Flood Risk Management – Guidelines for Planning Authorities' as well as Objectives WM 11-15, WM 11-16 and WM 11-17 of the Cork County Development Plan 2022-2028 and would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine
Planning Inspector
15/03/2022