



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314425-22

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<b>Development</b>	The construction of 27 houses and all associated site works.
<b>Location</b>	Anglers Walk, Rhebogue, Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	22630
<b>Applicant(s)</b>	McCarthy & Woulfe Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	McCarthy & Woulfe Limited
<b>Observer(s)</b>	<ol style="list-style-type: none"><li>1. Emily Kearns</li><li>2. Brian Hodkinson</li><li>3. Gráinne Cross Kennedy</li><li>4. Noreen Roe</li><li>5. Noelle &amp; Barry McInerney</li><li>6. Linda Hayes</li></ol>

**Date of Site Inspection**

23<sup>rd</sup> February 2023

**Inspector**

Liam Bowe

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## 1.0 Site Location and Description

- 1.1. The subject site is located in the Rhebogogue area of Limerick City suburbs, approximately 2.1km to the northeast of Limerick City centre. The site lies to the north Angler's Walk housing development, which lies to the north of Rhebogogue Road, at the edge of a predominantly residential area. There is a row of houses (No.'s 35-44, Angler's Walk) immediately to the south of the appeal site and a cluster of six houses immediately to the northwest of the appeal site. There is a pedestrian walkway / cycleway immediately to the northwest and the grounds of St. Patrick's GAA are located further to the northwest. The River Shannon is located immediately to the north of the appeal site.
- 1.2. The site is accessible via Rhebogogue Road to the south. The site will then be accessed over the existing estate road and entrance which serves the residential development at Angler's Walk.
- 1.3. The appeal site has a stated area of 1.827 hectares and is currently greenfield in nature. The appeal site is comprised of one field in its entirety and the westerly sections of two other large fields. The fields were in an unkept and overgrown condition on the day of my site inspection. The land falls in a south to north direction. The eastern site boundary is open and the remaining site boundaries comprise a mixture of block walls, hedgerows, and palisade / paladin fencing.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the construction of 27 no. houses. The appeal site forms part of the overall site at Angler's Walk residential development where 53 no. houses are presently constructed / occupied as well as further houses to the south and east within River Road, Brook Road, Brook Place, Cois Abhainn, and Rhebogogue Meadows housing developments. The development will be accessed via the existing access to Angler's Walk, which is presently located to the south of the appeal site at its junction with Rhebogogue Road at Rhebogogue, Limerick.
- 2.2. The development comprises the construction of 26 no. 3-bed semi-detached houses, and 1 no. 3-bed detached house. The development comprises 4 no. different dwelling types. All houses are 2-storeys with a maximum height of 8.603m. The

semi-detached houses have gross floor areas of approx. 104.4m<sup>2</sup> and 106m<sup>2</sup>, and the gross floor area of the detached house is 106m<sup>2</sup>. The design of the scheme is typically suburban in style. The external finishes include painted render, some clay brick and black roof tiles. Private open space has been provided to the rear of each dwelling. Amenity space is proposed centrally within the scheme and at the north-eastern corner of the site.

- 2.3. Vehicular access is provided via the existing estate road. 2 no. car parking spaces are provided on-site per dwelling along with an additional 9 no. visitor car parking spaces and 30 no. bicycle spaces.
- 2.4. Ancillary site development works include the provision of a compensatory flood zone, road infrastructure, drainage and stormwater network, bicycle storage and landscaping. The existing western boundary, which comprises a hedgerow, would be retained; part of the northern boundary to the rear of proposed houses would be a 2m high block wall; the remaining part of the northern boundary which comprises a hedgerow, would be retained; and the eastern site boundary would be open. The development would be served by a mains water supply and public sewer.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. By order dated 27<sup>th</sup> July 2022 Limerick City & County Council issued a Notification of Decision to Refuse Permission for the proposed development for the following reasons:

1. The site of the proposed development is located in close proximity to the Lower River Shannon SAC site code 2165. In the absence of a Natura Impact Assessment the Planning Authority considers that the applicant has failed to demonstrate to the satisfaction of the Planning Authority that the proposed development would not adversely affect the qualifying interests of the Lower River Shannon SAC as listed in Annex I/II of the EU Habitats Directive. Accordingly, the development would be contrary to the proper planning and sustainable development of the area.

2. The site is located in close proximity to a Recorded Monument, LI005-024, classified as a castle. In the absence of an Archaeological Assessment the Planning Authority considers that the applicant has failed to demonstrate to the satisfaction of the Planning Authority that the proposed development would not adversely affect said recorded monument and therefore would be contrary to the proper planning and sustainable development of the area.
3. In the absence of a Traffic Assessment and Stage 1 and 2 Road Safety Audit, the Planning Authority considers that the applicant has failed to demonstrate to the satisfaction of the Planning Authority that the proposed development would not endanger public safety by reason of a traffic hazard and therefore the development would be contrary to the proper planning and sustainable development of the area.
4. The proposed development is located within Flood Zone A and B as identified in Strategic Flood Risk Assessment prepared to inform the Limerick Development Plan 2022-2028 and as such in an area of high risk to flooding. Therefore, it is considered that the proposed development is premature pending the coming into effect of this plan, and it is considered that the proposal is contrary to the Planning System and Flood Risk Management, Guidelines for Planning Authorities 2009. The development would therefore be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Report**

The Planning Officer in the report dated 26<sup>th</sup> July 2022 stated the relevant development plan policies, planning history, summarised the third party submissions, and summarised the responses from the internal and statutory consultees. The Planning Officer outlines concerns regarding impact on the SAC, proximity to a recorded monument, absence of traffic impact assessment and flood risk. The report recommended that permission be refused on these issues, which is reflected in the decision of the Planning Authority.

Screening for AA and Stage 2 Appropriate Assessment was not completed due to the stated absence of an NIS and, therefore, adverse effects on the Lower River Shannon SAC could not be ruled out.

### 3.2.2. **Other Technical Reports**

**Roads Department** – The Senior Executive Technician’s report dated 27<sup>th</sup> June 2022 sought further information in relation to traffic and pedestrian issues (including a Traffic Assessment and Stages 1 & 2 Road Safety Audit), public lighting, and surface water disposal.

**Archaeologist** – The Archaeologist’s report dated 4<sup>th</sup> July 2022 highlighted the proximity of a recorded monument and the large development site and, consequently, sought an Archaeological Impact Assessment as further information.

**PEPM Department** - The report dated 23<sup>rd</sup> June 2022 highlighted the location of the development site within Flood Zones A and B and considered the proposal for raising the level of the development site and the provision of compensatory storage to be acceptable.

**Environment** – No objection. Condition recommended.

### 3.3. **Prescribed Bodies**

**Department of Housing, Local Government & Heritage** – The observations from the DAU dated 7<sup>th</sup> July 2022 advised that there is potential for the development to have a significant impact on the qualifying interests in the nearby Lower River Shannon SAC.

**Uisce Eireann** – The observations dated 4<sup>th</sup> May 2022 advise that the applicant is required to engage with UE through the submission of a Pre-Connection Enquiry (PCE) in order to determine the feasibility of connection to public water / wastewater infrastructure.

### 3.4. **Third Party Observations**

- 3.4.1. Submissions were received from Gráinne Kennedy, Alan Kennedy, Colin Scanlan, Kevin & Deirdre O’Grady, Noreen Roe, Michael Cross, Aidan Fitzgerald, Peggy

Cross, Barry & Noelle McInerney, Emily Kearns, Brian Hodkinson, John Cross, Rich Hawk, Linda Hayes, Sinead Carey, James Cross, Joan Cross, and Michael Power. The issues raised are similar to those referenced in the appeal. These include concerns regarding flooding, a right of way, impacts on the special area of conservation, increase in traffic, and impact on privacy.

## 4.0 Planning History

### 4.1. Appeal Site:

4.1.1. **P.A. Ref. No. 21/1526:** Permission granted for raising land levels with soil and stone sourced from land in Rhebogue Hill, grade and level the soil to form a uniform garden surface with topsoil laid to seed to grow grass.

**P.A. Ref. No. 21/197:** Permission refused for raising land levels with soil and stone sourced from land in Rhebogue Hill, grade and level the soil to form a uniform garden surface with topsoil laid to seed to grow grass because it was considered contrary to Objective IN O35: Minimise threat and consequences of flooding.

**P.A. Ref. No. 20/827:** Permission granted for 2 no. houses and ancillary site works on an existing serviced road.

### 4.2. Adjacent Site:

**ABP-312559-22:** Permission granted to the north of the appeal site for ground investigation works to inform the option selection and design of the proposed Limerick City and Environs Flood Relief Scheme.

## 5.0 Policy Context

### 5.1. National Planning Framework – Project Ireland 2040 (DoHP&LG 2018)

5.1.1. The National Planning Framework addresses the issue of ‘making stronger urban places’ and sets out a range of objectives which it considers would support the creation of high quality urban places and increased residential densities in appropriate locations while improving quality of life and place.

5.1.2. Table 2.1 sets out a summary of the key national targets. With regards to Limerick city and suburbs it sets an additional population target of 50,000 – 55,000 to provide



an overall population of 145,000 by 2040. It also states that to create compact, smart and sustainable growth 50% of new housing should be provided within the cities and suburbs and 30% elsewhere within the existing urban footprint. The National Planning Framework includes a specific Chapter, No. 6, entitled 'People Homes and Communities'. It includes 12 objectives among which:

**National Policy Objective 13** - In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

**National Policy Objective 27** seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.

**National Policy Objective 33** seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

**National Policy Objective 35** - Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-base regeneration and increased building heights.

**National Policy Objective 57** - Enhance water quality and resource management by "ensuring flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities."

## 5.2. **Housing for All - A New Housing Plan for Ireland** (September 2021)

- 5.2.1. A multi-annual, multi-billion euro plan which will improve Ireland's housing system and deliver more homes of all types for people with different housing needs. The

overall objective is that every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price,
- built to a high standard and in the right place, and
- offering a high quality of life.

### **5.3. Rebuilding Ireland – Action Plan for Housing and Homelessness 2016**

5.3.1. The Plan provides a multi-stranded, action-oriented approach to achieving many of the Government's key housing objectives. It aims to significantly increase the supply of social housing, to double the output of overall housing from the current levels to at least 25,000 per annum by 2020, to service all tenure types, and to tackle homelessness in a comprehensive manner. The Plan is comprehensive and addresses all aspects of the housing system under five Pillars:

- Address Homelessness,
- Accelerate Social Housing,
- Build More Homes,
- Improve the Rental sector, and
- Utilise Existing Housing.

### **5.4. Section 28 Ministerial Guidelines**

5.4.1. Having considered the nature of the proposal, the receiving environment, the documentation on file, including submission from the planning authority, I am of the opinion, that the directly relevant Section 28 Ministerial Guidelines are:

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009).
- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009).

- Appropriate Assessment of Plans and Projects in Ireland – Guidelines for Planning Authorities (2009).
- Design Manual for Urban Roads and Streets (DMURS December 2013) (as updated) (Including Interim Advice note Covid-19 May 2020).
- Childcare Facilities – Guidelines for Planning Authorities 2001 and Circular PL3/2016 – Childcare facilities operating under the Early Childhood Care and Education (ECCE) Scheme.
- Urban Development and Building Height, Guidelines for Planning Authorities (2018) (the ‘Building Height Guidelines’).
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020) (the ‘Apartment Guidelines’).
- Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities (May 2021).

Other relevant national guidelines include:

- Framework and Principles for the Protection of the Archaeological Heritage Department of Arts, Heritage, Gaeltacht and the Islands 1999.

## **5.5. Southern Regional Assembly Regional Spatial & Economic Strategy (RSES)**

- 5.5.1. A key component of the RSES is to strengthen the settlement structure of the Region and to capitalise on the individual and collective strengths of the three cities (Cork, Limerick and Waterford), the metropolitan areas, and a strong network of towns, villages and rural communities.
- 5.5.2. The site is located within the ‘Limerick-Shannon Metropolitan Area’. The RSES incorporates Metropolitan Area Strategic Plans (MASP) to ensure coordination between local authority plans. A key component of the RSES is building partnerships and a collaborative approach between the cities and metropolitan areas to realise combined strengths and potential, and to support their development as a viable alternative to Dublin.
- 5.5.3. The MASP notes that Limerick City is the largest urban centre in the Mid-West and the country’s third largest city. Limerick City and Shannon are interdependent, with

their complementary functions contributing to a combined strength that is a key economic driver for the Region and Ireland. Limerick Regeneration, the amalgamation of Limerick City and County and the Limerick 2030 initiative have all contributed to enhancing Limerick's growth potential. There is capacity to build on recent successes and add to the ambitious vision for this Metropolitan Area.

## 5.6. Limerick Development Plan 2022-2028

- 5.6.1. The Board will note that the subject application was considered under the Limerick City Development Plan 2010-2016 (as amended) and the Southern & Environs Local Area Plan 2021-2027. In the interim, the Board will note that the elected members of Limerick City & County Council adopted the Limerick Development Plan 2022-2028 at a full Council Meeting on the 17<sup>th</sup> of June 2022 and the Plan came into effect on the 29<sup>th</sup> of July 2022, six weeks after the date of adoption. Therefore, the 2022 Development Plan is the relevant policy document pertaining to the subject site.
- 5.6.2. The Plan is set out over 6 Volumes with Volume 1 comprising the Written Statement and Volume 2 dealing with Settlements. The remaining volumes deal with Record of Protected Structures and ACAs, Environmental Reports, Designated Sites & RMPs and accompanying strategies such as the Housing Strategy, Retail Strategy etc.
- 5.6.3. The subject site lies in the suburbs to the southwest of Limerick City Centre, on lands primarily zoned '**Open Space and Recreation**'. It is the stated objective of this zoning 'to protect, provide for and improve open space, active and passive recreational amenities.' The stated purpose of this zoning is stated in the Plan as follows:
- "To provide for active and passive recreational resources including parks, sports and leisure facilities and amenities including greenways and blueways. The Council will not normally permit development that would result in a loss of open space."
- 5.6.4. The south-eastern part of the site where house no.'s 1-4 are proposed is on lands zoned '**New Residential**'. It is the stated objective of this zoning 'to provide for new residential development in tandem with the provision of social and physical infrastructure.' The stated purpose of this zoning is stated in the Plan as follows:

“This zone is intended primarily for new high quality housing development, including the provision of high-quality, professionally managed and purpose built third-level student accommodation. The quality and mix of residential areas and the servicing of lands will be a priority to support balanced communities. New housing and infill developments should include a mix of housing types, sizes and tenures, to cater for all members of society. Design should be complimentary to the surroundings and should not adversely impact on the amenity of adjoining residents. These areas require high levels of accessibility, including pedestrian, cyclists and public transport (where feasible).

This zone may include a range of other uses particularly those that have the potential to facilitate the development of new residential communities such as open space, schools, childcare facilities, doctor’s surgeries and playing fields etc...”

#### **5.6.5. Objective EH O36 Preservation of the Archaeological Heritage**

It is an objective of the Council to seek the preservation of all known sites and features of historical and archaeological interest. This is to include all the sites listed in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act 1994. The preferred option is preservation in situ, or at a minimum preservation by record.

#### **5.6.6. Objective CAF O20 Flood Risk Assessments**

It is an objective of the Council to require a Site-Specific Flood Risk Assessment (FRA) for all planning applications in Flood Zones A and B and consider all sources of flooding (for example coastal/tidal, fluvial, pluvial or groundwater), where deemed necessary.

#### **CAF O25 Strategic Flood Risk Assessment**

It is an objective of the Council to have regard to the recommendations set out in the Strategic Flood Risk Assessment prepared to support the Plan.

### **5.7. Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is the Lower River Shannon SAC (Site Code: 002165) which is located immediately to the

north of the site. The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) lies approximately 2.7km to the west of the site.

## **5.8. EIA Screening**

The project falls under Class 15, Schedule 7 of the Planning and Development Regulations 2001, as amended. The project is below the threshold for triggering the need to submit an EIAR and having regard to the nature of the development comprising a significantly sub-threshold residential development on appropriately zoned lands where public piped services are available 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. The grounds of appeal are submitted by the first party, McCarthy & Woulfe Ltd. The main points made can be summarised as follows:

- Submits an Appropriate Assessment Screening & Natura Impact Statement, an Archaeological Assessment, and a Traffic Assessment & Road Safety Audit in response to the notification of decision to refuse permission.
- States that a Flood Risk Assessment prepared by Hydro Environmental Ltd. was submitted as part of the planning application and states that the PEPM Department, Limerick City & County Council raised no objection on the grounds of flooding. Includes a response from Hydro Environmental Ltd. to the notification of decision to refuse permission.

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

The Planning Authority has not responded to the grounds of the appeal.

### 6.3. Observations

6.3.1. There are 6 observers noted in relation to the subject appeal, including:

1. Emily Kearns

- Contends that the area and site are prone to flooding (submits photographs showing flooded areas).
- Highlights that there is a right of way at the rear of their property.
- Concerned about impact on Lower River Shannon SAC and native wildlife.
- States that the site is located within Flood Zone A and B per the SFRA in the Limerick Development Plan 2022-2028.
- States that there was no traffic assessment carried out.
- Highlights that there is a recorded monument in close proximity to the site.

2. Brian Hodkinson

- Contends that the proposed development will have an adverse effect on the Lower River Shannon SAC.
- States that the site is partly on a flood plain.
- States that no archaeological assessment was carried out.
- Contends that the provision of 2 no. car parking spaces per house disregards commitments to reduce transport emissions.
- States that there was no traffic assessment carried out.
- Contends that the issue of a right of way across the site has not been addressed.
- States that there is Japanese Knotweed present on the site.

3. Gráinne Cross Kennedy

- Opposes the proposed development on the grounds of obstructing the right of way to her land.

#### 4. Noreen Roe

- States that the site is located within Flood Zone A and B per the SFRA in the Limerick Development Plan 2022-2028 (submits photographs showing flooded areas).
- Concerned about the impact of increased traffic.
- States that the area is a SAC and a recorded monument.
- Highlights that there is a right of way on the land.

#### 5. Noelle & Barry McInerney

- Concerned about the impact of increased traffic (includes photographs showing parking in the estate).
- States that previous applications to build a nursing home and houses have been refused.
- States that the site is located within Flood Zone A and B per the SFRA in the Limerick Development Plan 2022-2028.
- Highlights that there is a right of way on the land.
- States that there is a recorded monument in close proximity to the site.

#### 6. Linda Hayes

- States that the site is a flood plain and floods every winter.
- States that the site is zoned open / green area.
- States that the site is a conservation area.
- Highlights that there is a right of way on the land.

6.3.2. An observation was received from the Development Applications Unit of the Department of Housing, Local Government & Heritage. The main points made can be summarised as follows:



- Reiterates its comments issued to LCCC about the proximity of the site to the SAC, the identification of the surrounding lands to the northeast being prone to flooding, and the proposal to excavate an area to the northwest for compensation storage.
- Believes that there is potential for the development to have a significant impact on the qualifying interests of the nearby Lower River Shannon SAC and requests that an AA Screening report and, if necessary, an NIS produced.

## 7.0 Assessment

I consider that the main issues in the assessment of this appeal are as follows:

- Principle of Development
- Traffic Safety
- Archaeology
- Flood Risk
- Other Issues

### 7.1. Principle of Development

- 7.1.1. The site is in an area that is primarily zoned 'Open Space and Recreation' under the Limerick Development Plan 2022-2028. As stated earlier in this report, it is an objective of this zoning under Section 12.3 of the of Limerick Development Plan 2022-2028 'to protect, provide for and improve open space, active and passive recreational amenities.' The south-eastern part of the site where house no.'s 1-4 are proposed is on lands zoned 'New Residential'. It is the stated objective of this zoning 'to provide for new residential development in tandem with the provision of social and physical infrastructure.'
- 7.1.2. Under the Land Use Zoning in Section 12.4 of the Plan, residential use is 'Generally Not Permitted' within an area with an 'Open Space and Recreation' land use zoning. Residential use is 'Generally Permitted' within an area with a 'New Residential' land use zoning.

- 7.1.3. The Board should note that the proposed development was assessed by the planning authority under the previous development plan for Limerick City where the lands at the location on the appeal site where the housing development is proposed was zoned for 'Residential' use. Furthermore, the lands where the compensatory flood area is proposed was zoned for 'Public Open Space'. The planning application was lodged with Limerick City & County Council on 3<sup>rd</sup> June 2022 and the notification of decision was issued on 27<sup>th</sup> July 2022. The zoning of a significant part of the lands that is the subject of this appeal changed to 'Open Space & Recreation' when the new plan came into effect on 29<sup>th</sup> July 2022.
- 7.1.4. Under this appeal, I am satisfied that 23 no. houses (house no.'s 5 - 27 per Site Layout Plan drawing no.1 submitted to the planning authority on 3<sup>rd</sup> June 2022) of the 27 no. houses proposed would be sited on lands that have a land use zoning of 'Open Space & Recreation' under the current Plan. As it states in the Plan that residential use is 'Generally Not Permitted' in an area with this land use zoning, I consider that the proposed development would materially contravene this zoning objective in the Plan.
- 7.1.5. In conclusion, I consider that there is no evidence to suggest at this early stage of the life of the new Development Plan that there would be a requirement to permit the development of lands designated as 'Open Space & Recreation' for residential purposes. I, therefore, recommend to the Board that permission be refused on the basis that the proposed development would materially contravene this zoning objective.

## **7.2. Traffic Safety**

- 7.2.1. The proposed development would utilise the existing road infrastructure and network at this suburban location in Limerick City. The public roads at the location of the site take the form of a typical urban streets that would be associated with a residential area. On the day of my site inspection, I noted that there are public footpaths and public lighting running to the western and southern boundaries of the site.
- 7.2.2. One of LCCC's reasons for refusing permission for the proposed development was on the basis that no Traffic Assessment and Stage 1 and 2 Road Safety Audits were submitted with the planning application and, therefore, the planning authority

considered that the applicant failed to demonstrate that the proposed development would not endanger public safety by reason of a traffic hazard. I also note that concerns have been raised by a number of the observers about the likelihood of an increase in traffic movement as a result of the proposed development causing road safety issues.

- 7.2.3. In response to the reason for refusal, the first party has submitted a Traffic & Transport Assessment (TTA) prepared by CST Group as part of this appeal to the Board. Within this, the first party is attempting to demonstrate that the proposed site access and existing junctions would have adequate capacity to carry the traffic generated by the proposed development and future growth in road traffic in the area. The TTA specifically analyses the junction of Angler's Walk and Rhebogue Road. The Board should note that the basis of the analysis was a 2007 traffic count, although the author of the TTA emphasises the relevance of the count as no new development has taken place in Angler's Walk since that date.
- 7.2.4. The predicted trip generation of the proposed development is outlined in Table 5.1 of the TTA with a total of 46 additional trips predicted. This, combined with predicted traffic growth, is fed in a PICADY analysis of the junction for the years 2026, 2031 and 2041 both with and without the proposed development. The analysis demonstrates that the existing junction is predicted to operate well below capacity both with and without the proposed development up to 2041. I note and agree with the methodology and conclusions of this TTA.
- 7.2.5. On the day of my site inspection, I used and observed the use of the junction of Angler's Walk and Rhebogue Road and, on the basis of my observations, I do not consider that the form and scale of development proposed would lead to a traffic safety issue at this location. I consider that the proposed development will generate additional vehicular traffic but I also consider that the level generated would be acceptable for a number of reasons as follows:
- The site will consolidate this part of the settlement and is located within an established residential area.
  - Footpaths and other pedestrian facilities are already in place adjacent to the western edge of the southern boundary of the site and adjacent to south-western corner of proposed house no.22 at the western boundary of the site.

- The local road network benefits from proximity to the Dublin Road and associated bus services, which is within c.10-minute walking distance from the site.

7.2.6. Car parking requirements for new developments are outlined in Table DM 9(a) of the Limerick Development Plan 2022–2028, where a maximum of 2 spaces per 3-bed house is required. The total requirement per the County Development standards would be 54 no. spaces. A total of 63 no. car parking spaces are proposed. If the Board is minded to grant permission, I recommend that the 9 no. visitor spaces can be omitted and areas where they are provided can be incorporated into the public open space or used to provide additional bicycle parking bays.

7.2.7. Cycle parking requirements for new residential developments are outlined in Table DM 9(b) of the Limerick Development Plan 2022–2028, where a minimum of 2 spaces per house is required and 1 additional space for visitors per 2 houses is also required. Therefore, under the current revised proposal for 27 no. residential units, the total requirement per the County Development standards would be 68 no. spaces. The first party has only provided 30 no. bicycle parking spaces. If the Board is minded to grant permission for the proposed development, I recommend that a condition be attached to such a permission requiring the provision of on-site cycle parking in accordance with the requirements of the County Development Plan.

7.2.8. In conclusion, I am satisfied that the proposed development can be accessed in a safe manner from the existing street network at this location in Limerick City. There are existing footpaths to / from the appeal site linking it with both the existing residential development in the area and the bus stops on the Dublin Road. There is likely to be some inconvenience for established road users during the construction phases, but this would be very much short term given the nature and scale of development proposed. Overall, I do not consider that there would be any serious traffic concerns arising from the proposed development and I, therefore, have no reason to recommend a refusal of permission to the Board due to reasons of traffic and transportation provision.

### 7.3. Archaeology

- 7.3.1. One of the reasons of the planning authority issued in the notification of decision to refuse the proposed development was on the basis of the absence of an archaeological assessment and the applicant failed to demonstrate to the satisfaction of the planning authority that the proposed development would not adversely affect Recorded Monument (LI005-024), classified as a castle.
- 7.3.2. I note Limerick City & County Council's archaeologist's report highlighting the proximity of this recorded monument to the proposed development and, given the significance of the monument, seeking an Archaeological Impact Assessment by means of a further request. I also note that, in the absence of an archaeological assessment, the planning officer included this as a reason for refusal in her recommendation, which was reflected in the notification of decision that Limerick City & County Council issued.
- 7.3.3. Existing archaeological features to the northwest of the appeal site are a mill (LI005-118)<sup>1</sup> and a castle (LI005-024). I have examined the National Monuments Service (NMS) maps for records of monuments and places of archaeological interest. This clearly identifies the aforementioned recorded monuments in proximity to the appeal site. Furthermore, I consider that the statutorily protected archaeological zone of influence associated with the mill extends into the appeal site and into an area of the appeal site where development works are proposed. This archaeological zone of influence is clearly presented on the NMS's digitised map and the archaeological zone of influence extends over a significant part of the southern section of the appeal site.
- 7.3.4. Under this appeal, the first party stated that they would normally expect this assessment to be sought as further information by the planning authority and they have now submitted an Archaeological Assessment, prepared by Aegis Archaeology, for consideration. This report identifies the castle as being located immediately to the west of the appeal site. However, this is a suggested location as the original map produced by the NMS suggested that it was located further to the north.

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<sup>1</sup> Date of upload / revision: 3 April 2023 per the National Monuments Service (NMS) digitised maps for records of monuments and places of archaeological interest.

- 7.3.5. The report predicts that the proposed works may have a negative impact on potential unrecorded subsurface archaeological remains. As mitigation, it is suggested in the report that archaeological monitoring of all groundworks should be undertaken on the subject site. The Board should note that the any possible visual impacts have already occurred in the area of the subject site.
- 7.3.6. Limerick City & County Council's policy in this regard is outlined in Section 6.5.1 of the Development Plan and the objective for the protection and preservation of the archaeological heritage is clearly enunciated under Objective EH O36. I am satisfied that the mitigation proposed with the Archaeological Impact Assessment would be sufficient to ensure the protection and preservation of the archaeological heritage of the area. I am also satisfied that the first party has satisfactorily demonstrated that the proposed development would not adversely affect the Recorded Monument (LI005-024), or any other monuments or archaeological features / artefacts on the appeal. Consequently, I consider that Reason No.2 for refusing permission issued in the notification of decision by the planning authority is not warranted in this instance.
- 7.3.7. In conclusion, if the Board is minded to grant permission for the proposed development, I would consider it necessary to include an archaeological condition for monitoring per the archaeologist's recommendation. With these mitigation measures, I consider that it can be concluded that the proposed development would not have an adverse impact on the archaeological heritage of the area and the proposed development would be consistent with the Council's policies and objectives.

#### **7.4. Flood Risk**

- 7.4.1. Another reason to refuse permission for the proposed development issued in the notification of decision of the planning authority was that parts of the site are located within Flood Zone A and B as identified in Strategic Flood Risk Assessment prepared to inform the Limerick Development Plan 2022-2028 and there would be a high risk of flooding. The planning authority considered the proposed development to be premature pending the coming into effect of this plan, and that the proposal would be contrary to the Planning System and Flood Risk Management, Guidelines for Planning Authorities 2009.

- 7.4.2. As stated earlier in this report, the Limerick Development Plan 2022-2028 subsequently came into effect on 29<sup>th</sup> July 2022. The maps contained in the Plan illustrate that a significant portion of the lands that are the subject of this appeal are designated as being within Flood Risk Zones A and B.<sup>2</sup> Consequently, the first party submitted a site-specific a flood risk assessment, prepared by Hydro Environmental Ltd., in support of the application.
- 7.4.3. The site-specific flood risk assessment identifies fluvial flooding by the River Shannon, which is corroborated in the CFRAM Study for Limerick City (CFRAM, 2016), as the source of flood risk. It identifies that 6 no. proposed houses would be located within Flood Zone A and a further 4 no. proposed houses within Flood Zone B. The remainder of the proposed houses would be located within Flood Zone C. In order to facilitate the development of housing within Flood Zones A and B, the first party is proposing to raise the ground levels at these locations, which would take the finished floor levels above the predicted flood levels. I note that the predicted flood levels take account of the 100year and 1000year flood events as well as an allowance for climate change and the possibility of the Ardnacrusha channel being closed.
- 7.4.4. The proposal by the first party to raise the ground levels presents the issue of displacement and possible impacts on adjoining land and uses. To counteract this, the first party proposes a compensatory storage area on the northern portion of the appeal site. The lowering of this part of the appeal site to 5.3m OD will provide a compensatory storage volume of 3,294m<sup>3</sup> for a 100year year flood level and 5,156m<sup>3</sup> for a 1000year flood level. The stated loss by the development footprint is 2,123m<sup>3</sup> and 4,849m<sup>3</sup>, respectively.
- 7.4.5. On the day of my site inspection, I noted the undulating nature of the levels on the northern portion of the site and I consider that this area may have been used to store soil from previous development works on adjacent land and, consequently, the land levels may be artificially high on this area. I am satisfied that the contour map (Figure 2-3) within the Flood Risk Assessment submitted by the first party supports this observation. As a result of this observation, I am not satisfied that the proposal for a

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<sup>2</sup> Map 5: Limerick City and Suburbs (in Limerick), including Mungret and Annacotty – Flood Map, P.24, Volume 2a, Limerick Development Plan 2022-2028.

compensatory flood zone on this area is entirely accurate as this area may have formed part of the flood plain at this location prior to the deposition of soil. As such, I consider that there is a deficiency of information in the application in this regard.

- 7.4.6. As outlined in the flood guidance, the key principle of a risk-based sequential approach to managing flood risk in the planning system is to avoid development in areas at risk of flooding. If this is not possible, consideration should be given to substituting a land use that is less vulnerable to flooding and, only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks. I consider that this may have been the reasoning of the elected members in changing the land use zoning on the lands to primarily 'Open Space and Recreation' uses within the recently adopted Limerick Development Plan 2022-2028 which has been informed by a Strategic Flood Risk Assessment (SFRA).
- 7.4.7. In conclusion, I consider that the land use zoning has been changed under the new Plan in order to avoid flood risk, which is in accordance with the broad philosophy underpinning the sequential approach in flood risk management outlined in the guidelines. Therefore, the use of the lands for residential purposes is not required for the life of the Plan as alternative lands within Limerick City have been zoned for residential purposes that will enable population targets to be met. Further to this, I am not satisfied that the land / part of the appeal site did not originally form part of the flood plain associated with the River Shannon and, therefore, would not now result in a significant compensatory measure/area. On these bases, I consider that there is a substantive reason for including the risk of flooding to a vulnerable land use as a reason for refusal and I recommend this to the Board.

## 7.5. **Other Issues**

### Design and Layout

- 7.6. The proposed development seeks to accommodate 27 no. three-bedroom, two-storey houses, on a site stated to be 1.827 hectares in area. 26 no. of the proposed houses are semi-detached and one of the houses is detached. There are 4 four different house types. All houses are 2-storeys with a maximum height of 8.603m. The semi-detached houses have gross floor areas of approx. 104.4m<sup>2</sup> and 106m<sup>2</sup>,



and the gross floor area of the detached house is 106m<sup>2</sup>. Private open space is proposed to the rear of the houses. Amenity space is proposed centrally within the scheme and at the north-eastern corner of the site.

- 7.6.1. I consider the overall scale and height of the proposed houses would sit comfortably within the appeal site. Similarly, I consider the design of the fenestration and proposed finishes to be compatible with its suburban context. The proposed areas of private open space are all 11m in depth to the rear, except for House No.'s 22 and 23. However, the separation distance from the first floor windows of House No.'s 22 and 23 to the opposing first floor windows of the existing houses to the south of these is 22m. All private open spaces are in excess of Development Plan standards in terms of area i.e., 60-75m<sup>2</sup> each.
- 7.6.2. A total of 1,956m<sup>2</sup> of usable public open space is provided in two central areas and an area at the north-eastern corner of 653m<sup>2</sup>, 402m<sup>2</sup> and 901m<sup>2</sup>, respectively. This represents approximately 15.5% of the development area and is in accordance with the requirement for 15% set out in section 11.3.6 of the Limerick Development Plan. I note the comments of the planning officer regarding the lack of passive surveillance of the public open spaces but I am satisfied that the central areas are well overlooked and the open space proposed at the north east of site would benefit from the surveillance afforded along the main access to the housing development.
- 7.6.3. In conclusion, having regard to the sites location at the edge of a residential area in Limerick City and the pattern of development in the area, I am satisfied that the proposed development is appropriately designed, could be accommodated at the subject site, and that it would result in a development that would be sympathetic to its setting in terms of design, scale and layout.

#### Water Services

- 7.6.4. The proposed development would be connected to the existing public water and foul water mains. No significant concerns have been raised by the Area Planner or Area Engineer regarding capacity constraints within the public water or sewer systems. I also note that Irish Water in their statutory consultation with the planning authority state that a Confirmation of Feasibility for connection to the public water / wastewater infrastructure is required. As there are no capacity issues evident and a connection to the public sewer already exists at this location, I am satisfied that a suitable

condition requiring a connection agreement with Irish Water, prior to commencement of any development on the appeal site, would be appropriate.

- 7.6.5. The site falls generally from the south to north, towards the River Shannon. It is proposed to discharge surface water via gravity to an attenuation tank with total storage of 315m<sup>3</sup> and a controlled outflow to an existing 300mm diameter storm water sewer culvert. I consider the proposal for the collection and disposal of surface water from the proposed development to be an acceptable approach and, consequently, the proposed development would be unlikely to give rise to any surface water ingress / issues to proposed houses or neighbouring properties.

#### Right of Way

- 7.6.6. A number of the observers on this appeal contend that there is a right of way across the site that facilitates access to farmlands. I note that the first party has shown a right of way on the site layout plan and that there are no impediments within the proposed development that would interfere with the indicated right of way.
- 7.6.7. On the basis of the information available, I am satisfied that there is no clear information presented to conclude that the applicant does not have sufficient legal interest in the appeal site, and I am satisfied that the applicant has provided sufficient evidence of their legal interest for the purposes of the planning application and decision. In any case, this is a matter to be resolved between the relevant parties, the applicant and the local authority in this instance, having regard to the provisions of S.34(13) of the 2000 Planning and Development Act.

## **8.0 Appropriate Assessment**

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

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

### **8.2 Background on the Application**

- 8.2.1. The planning application was not accompanied by an Appropriate Assessment Screening Report or a Natura Impact Statement.

8.2.2. Consequently, by order dated 27<sup>th</sup> July 2022 Limerick City & County Council issued a Notification of Decision to Refuse Permission for the proposed development with one of the four reasons being:

“The site of the proposed development is located in close proximity to the Lower River Shannon SAC site code 2165. In the absence of a Natura Impact Assessment the Planning Authority considers that the applicant has failed to demonstrate to the satisfaction of the Planning Authority that the proposed development would not adversely affect the qualifying interests of the Lower River Shannon SAC as listed in Annex I/II of the EU Habitats Directive. Accordingly, the development would be contrary to the proper planning and sustainable development of the area.”

### 8.3. **AA Screening Report**

8.3.1. The appeal was then accompanied by an Appropriate Assessment Screening Report (August 2022) and a Natura Impact Statement (NIS) prepared by ALTEMAR Marine & Environmental Consultancy. This report assesses whether significant effects to the Natura 2000 network are likely to occur as a result of the project. The screening report sets out the methodology employed and provides a description of the project proposed as well as including a description of the site, noting the consultants’ reports submitted with the planning application in relation to drainage, flood risk and lighting.

8.3.2. The AA Screening Report identifies a potential zone of influence as 15km from the boundary of the development. The report identifies seven Natura 2000 sites within this radius, namely:

- Lower River Shannon SAC
- Glenomra Wood SAC
- Clare Glen SAC
- Glenstal Wood SAC
- Tory Hill SAC
- River Shannon & River Fergus Estuaries SPA
- Silverfelim to Silvermines Mountains SPA

8.3.3. The report notes that there is a direct hydrological connection to the Lower River Shannon SAC, given the proximity of the site (8 metres). There is potential for

contaminated surface water and dust to enter the SAC during construction works and significantly impact on the downstream qualifying interests of the SAC. Invasive species were noted on the site and works also have the potential to spread invasive species. It is stated that the qualifying interests of the SAC were not noted on the appeal site. During the operational phase, there is potential for contaminated surface water that directly drains through an outfall to the SAC and could significantly impact on the downstream qualifying interests of the SAC.

- 8.3.4. The screening report concludes that given the proximity of the site to the Lower River Shannon SAC, without incorporation of mitigation measures, significant impacts on the SAC cannot be discounted. The Screening Report considers that no other SAC or SPA has the potential to be significantly impacted by the proposed development and focuses its assessment on the Lower River Shannon SAC. The conclusion of the AA Screening (Stage 1) is that a full AA was required with regard to the SAC. The report includes a Natura Impact Statement.

#### 8.4. **Natura Impact Statement**

- 8.4.1. The NIS submitted by the first party is included in the AA document. The NIS seeks to examine the potential impacts of the proposed development on the following European Site:

- Lower River Shannon SAC (Site Code: 002165)

Table 5 of the report identifies the qualifying species and habitats and their conservation objectives for the SAC, and also sets out the conservation status of the QIs. Table 7 identifies the potential impacts of the proposed development.

- 8.4.2. Having reviewed the NIS and supporting documentation, 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 site to the appeal site and the potential for direct and indirect impacts to water quality and species arising:

- Lower River Shannon SAC (Site Code: 002165)

- 8.4.3. I am not satisfied that the submitted NIS provides adequate information in respect of the site, or clearly identifies all of the potential impacts using best scientific information and knowledge. In this regard, I note that no field survey was carried out,

particularly for the presence of otters or their foraging areas, on the appeal site. Table 7 of the NIS document presents an assessment of potential impacts and proposed mitigation measures to be employed in terms of the surface / storm water run-off during the construction phase and operational phase, impacts as a result of dust, and the spread of invasive species.

- 8.4.4. The NIS presents an assessment of potential residual impacts of the development on relevant QIs in tabular form, Table 7 refers, and concludes that, with the implementation of the mitigation measures summarised in the same table, on the basis of objective scientific information, that the proposed plan, individually or in combination with other plans or projects, will not adversely affect the integrity of the European Sites. As stated earlier in this report, I am not satisfied that the information is sufficient to allow for Appropriate Assessment of the proposed development.

#### **Consultations and Observations**

- 8.4.5. The DAU of the Department of Housing, Local Government & Heritage advised that there is potential for the development to have a significant impact on the qualifying interests in the nearby Lower River Shannon SAC due to the lands being prone to flooding. The Board should note that although an AA Screening Report and an NIS were submitted with the appeal, the Department recommended that these reports/statements be produced.
- 8.4.6. I note that the third party observations also raised a number of concerns with regard to the potential impact of the development on the Lower River Shannon SAC. A number of the third parties state that it cannot be concluded that the development will not have a negative impact on the SAC.

#### **8.5. Screening for Appropriate Assessment - Test of likely significant effects**

- 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.

### **Brief description of the development**

- 8.5.2. The applicant provides a description of the project on pages 4 of the NIS. In summary, the development comprises:
- The construction of 27 houses,
  - The provision of public open space,
  - The provision of a vehicular junction,
  - The provision of an attenuation tank and hydro brake to service surface water, and
  - The provision of street lighting, internal roads, footpaths and landscaping / boundary treatments.
- 8.5.3. The development site is not described in the NIS other than reference made to the observation of invasive species on the site and within the SAC during a site inspection carried out on 12<sup>th</sup> August 2022.
- 8.5.4. As described in section 8.3.2, the first party's AA Screening report identifies 7 no. Natura 2000 sites within 15km radius of the development. I am satisfied that due to separation distances and/or the absence of hydrological or other links that Glenomra Wood SAC, Clare Glen SAC, Glenstal Wood SAC, Tory Hill SAC, and Silverfelim to Silvermines Mountains SPA and I, therefore, conclude that no significant impacts are reasonably foreseeable. I am also satisfied that the River Fergus & River Shannon Estuaries SPA (Site Code: 004077) can be screened out in the first instance given the separation distance of 2.7km and as the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. Therefore, I also conclude that no significant impacts on the River Fergus & River Shannon Estuaries SPA (Site Code 004077) are reasonably foreseeable.
- 8.5.5. I consider that the following Natura 2000 site, located within 8m of the subject site, can be identified as being within the zone of influence of the project, for the purposes of AA Screening, as follows:

- Lower River Shannon SAC (Site Code: 002165)

### **Conclusion on Stage 1 Screening**

8.5.6. 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, separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and taken in conjunction with my inspection of the site and the surrounding area, I am satisfied that the following site can be screened out from further assessment:

- River Fergus & River Shannon SPA (Site Code: 004077).

8.5.7. It is further reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on the above European site, in view of the sites' conservation Objectives and that a Stage 2 Appropriate Assessment is not required in respect of this site.

8.5.8. There is potential for the development to give rise to potential impacts in terms of water quality of the Lower River Shannon SAC during both the construction and operation phases of the development and on disturbance to otters and their foraging grounds. Potential impacts on qualifying features, conservation interests and conservation objectives are primarily related to the otter and water quality.

8.5.9. In light of the above, Appropriate Assessment of the proposed development is required in relation to the following European Site:

- Lower River Shannon SAC (Site Code: 002165)

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.

### **8.6. Appropriate Assessment**

8.6.1. The Qualifying Interests (S.I. No. 328 of 2023 refers) of the Lower River Shannon SAC (Site code: 002165) located approximately 8 metres to the north of the appeal site are as follows:

- Sandbanks which are slightly covered by sea water all the time [1110]
- Estuaries [1130]
- Mudflats and sandflats not covered by seawater at low tide [1140]
- Coastal lagoons [1150]
- Large shallow inlets and bays [1160]
- Reefs [1170]
- Perennial vegetation of stony banks [1220]
- Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]
- Salicornia and other annuals colonising mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
- *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]
- *Petromyzon marinus* (Sea Lamprey) [1095]
- *Lampetra planeri* (Brook Lamprey) [1096]
- *Lampetra fluviatilis* (River Lamprey) [1099]
- *Salmo salar* (Salmon) [1106]
- *Tursiops truncatus* (Common Bottlenose Dolphin) [1349]
- *Lutra lutra* (Otter) [1355]



### **Lower River Shannon SAC (Site Code: 002165)**

8.6.2. This very large site stretches along the Shannon valley from Killaloe in Co. Clare to Loop Head/ Kerry Head, a distance of some 120 km. The site thus encompasses the Shannon, Feale, Mulkear and Fergus estuaries, the freshwater lower reaches of the River Shannon (between Killaloe and Limerick), the freshwater stretches of much of the Feale and Mulkear catchments and the marine area between Loop Head and Kerry Head. Rivers within the sub-catchment of the Feale include the Galey, Smearlagh, Oolagh, Allaughaun, Owveg, Clydagh, Caher, Breanagh and Glenacarney. Rivers within the sub-catchment of the Mulkear include the Killeenagarriff, Annagh, Newport, the Dead River, the Bilboa, Glashacloonaraveela, Gortnageragh and Cahernahallia.

### **Conservation Objectives**

8.6.3. They are to restore the favourable conservation condition of the Freshwater Pearl Mussel and Atlantic Salmon, and to maintain the favourable conservation condition of all other species and habitats cited.

### **Assessment of Effects**

8.6.4. 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 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 outside the boundaries of the European Sites, no direct effects are anticipated.

8.6.5. In terms of indirect effects, and 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 lies at a remove of some 8m from the boundary of any designated site at its closest point. As such, there shall be no direct or indirect loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies at the edge of the built-up area of Limerick City, immediately adjacent to residential development to the south. The site is unkept and appears to be under a natural process of

rewilding. The site also lies immediately adjacent to the River Shannon to the north and a significant portion of the site presently forms part of the flood plain associated with the River Shannon. There is no significant evidence of survey work being carried out on the appeal site that would provide baseline ecological information for the preparation of the NIS.

It is uncertain whether there are species / habitats and, in particular otters, which is a qualifying species of interest for which the SAC is so designated, present on the appeal site. The otter's range includes a 10m terrestrial buffer along the shoreline and a foraging range of within 80m of the shoreline. As stated previously, the Board should note that the SAC is within 8 metres of the appeal site and, therefore, could form part of the otter territory.

Similarly, as there is a drainage channel present on the site, this area could hold the protected species Opposite-leaved Pondweed (*Groenlandia densa*). Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation (habitat code 3260) has three sub type habitats which occur in the vicinity of Limerick city and Opposite-leaved Pondweed is one of these habitats. It is noted in Conservation Objectives supporting document 'Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation (habitat code 3260)' that this species is likely to be more widespread in the tidal stretches of the Shannon, as well as in marginal ditches.

As the subject site is located within or immediately adjacent to a Natura 2000 site and having regard to the nature of the construction works proposed, there is potential for disturbance or displacement impacts to these species / habitats for which the identified Natura 2000 site have been designated.

I find this part of the assessment to be inconclusive and ambiguous. The Board will note that the baseline surveys which present the data relating to habitats / species was undertaken in 2006, which I consider to be out of date at this time.

- **Water Quality:** The proposed development relates to the construction of 27 houses on lands adjacent to the built-up area of Limerick City. The development will require the movement of soil to take part of the site out of the designated

flood plain and to create a compensatory storage area in lieu of this. The surface water disposal system will connect directly to an existing culvert that outfalls to the River Shannon. There is potential, therefore for construction and operational silt / pollutants to affect water quality and in particular sediment pollution, and therefore impact on the water dependent habitats and species within the SAC.

I note that a number of mitigation measures are identified in the NIS. I also note that standard water protection measures are identified as mitigation in the context of AA. In addition, I note that the NIS provides clear proposals for the management of surface water during the construction and operation phases of the development. However, it is also stated within the Conservation Objectives supporting document for habitat code 2160 that 'the area of active floodplain at and upstream of the habitat should be maintained'.

- 8.6.6. In light of the above, and in the absence of up-to-date data, I do not consider it possible to conclude that significant impacts are unlikely to occur on otters and Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachium* vegetation, which are qualifying interests for the Lower River Shannon SAC.

## 8.7. In-Combination / Cumulative Effects

- 8.7.1. In terms of potential in-combination / cumulative impacts associated with the proposed development, I note Table 3 of the NIS which has considered planning applications and other factors in this context.
- 8.7.2. Given the nature of the proposed development, being the construction of a relatively small housing scheme, I consider that any potential for in-combination effects on water quality in the Lower River Shannon can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in the Lower River Shannon SAC via rivers and other surface water features are also subject to AA.

## 8.8. Mitigation Measures

- 8.8.1. Mitigation and best practice measures are proposed to address the potential adverse effects of the development to ensure that the development will not adversely affect

the identified European Sites or the conservation status of protected habitats and species they support.

- 8.8.2. The NIS also includes a suite of environmental measures which deal with runoff prevention and ecological monitoring associated with the construction and operational phases in relation to the protection of water quality and any possible associated significant impacts on the Qis of the SAC. However, I draw the Board's attention to the absence of any extensive up-to-date survey work carried out on the appeal site and that due to the time lapse since the initial baseline habitats / species surveys were carried out, new surveys would be required to appropriately assess possible impacts on the otter and Water courses of plain to montane levels with the *Ranunculus fluitantis* and *Callitriche-Batrachion* vegetation.

### 8.9. Overall Appropriate Assessment Conclusion

- 8.9.1. Having regard to the nature of the subject development site, the nature of the proposed development, together with the details presented in the Natura Impact Statement, I consider that there are gaps in the baseline data with regard to habitats and species within and using the proposed development site.
- 8.9.2. On the basis of the information provided with the application and appeal, and in the absence of up-to-date baseline data, and the indication that no field surveys were carried out, in particular, for the presence of otters (*Lutra lutra*) and Water courses of plain to montane levels with the *Ranunculus fluitantis* and *Callitriche-Batrachion* vegetation on the appeal site in the submitted Natura Impact Statement, it is considered that further assessments are required with regard to Appropriate Assessment. The Board cannot, therefore, be satisfied that the proposed development, individually or in combination with other plans or projects, would not result in adverse effects on the integrity of Lower River Shannon SAC (Site code: 002165) in view of the sites conservation objectives. In such circumstances, I consider that the Board is precluded from granting permission.

## 9.0 Recommendation

I recommend that permission be refused for the proposed development for the following stated reasons.

## 10.0 Reasons and Considerations

1. Having regard to the land use zoning objective of the appeal site for 'Open Space and Recreation' under Section 12.3 of the Limerick Development Plan 2022-2028 where it is policy to protect, provide for and improve open space, active and passive recreational amenities, it is considered that the proposed development would materially contravene this zoning objective in the Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009) and the Strategic Flood Risk Assessment prepared to inform the Limerick Development Plan 2022-2028, it is considered that the proposed development would represent a highly vulnerable land use at a location identified to be within Flood Zone A and B under the Development Plan. It is further considered that the proposed development would conflict with the Guidelines and the Development Plan where the guidance and policy seek to avoid the development of vulnerable land uses in areas at risk of flooding and, therefore, would be contrary to the proper planning and sustainable development of the area.
3. Having regard to the lack of up-to-date baseline data, and the indication that no field survey was carried out, in particular, for the presence of otters (*lutra lutra*) and Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation on the appeal site in the submitted Natura Impact Statement, it is considered that further assessments are required with regard to Appropriate Assessment. The Board, therefore, is not in a position to conclude that the proposed development individually, or in combination with other plans or projects, would not adversely affect the integrity of the Lower River Shannon Special Area of Conservation (Site Code: 002165), in view of the

site's conservation objectives, and the Board is precluded from granting permission for this proposed development.

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

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Liam Bowe  
Senior Planning Inspector

12<sup>th</sup> July 2023