



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315694-23

<b>Development</b>	Construction of 52 houses, demolition of a pump house and all associated site works and services. A Natura Impact Statement (NIS) has been included in the application.
<b>Location</b>	Dock Road, Ballyquin Td., Tuamgraney, Co. Clare.
<b>Planning Authority</b>	Clare County Council.
<b>Planning Authority Reg. Ref.</b>	22359.
<b>Applicant(s)</b>	Michael Pearl.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant subject to conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant(s)</b>	Reddan's Quay Residents.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	11 <sup>th</sup> April 2024.
<b>Inspector</b>	Daire McDevitt.

## **1.0 Site Location and Description**

The site is located on the southern side of the L41341, referred to interchangeably to as Dock Road/Reddans Road/Quay Road. The site is a greenfield site with a stated area of c.3.96ha. The northern and southern boundaries with road frontage are comprised of hedgerows and some trees. The eastern boundary run along the Tuamgraney River and the western boundary is a field. There are a number of houses on individual plots along both roads and a mechanic opposite the site along the Dock. Dock road is a substandard single carriageway in terms of condition and width. The road along the southern boundary is a private lane (single carriageway) that serves as access to a number of houses, farmland and forestry.

## **2.0 Proposed Development**

The proposed development comprises the demolition of a pump house and construct 52 no. dwelling houses, comprising 6 no. 4 bedroom detached houses, 22 no. 3 bedroom semi-detached houses, 14 no. 2 bedroom semi-detached, 10 no. 2 bedroom semi-detached bungalow and all associated site works and services.

A Natura Impact Statement (NIS) has been submitted with the application to the planning authority.

Further Information submitted on 26 October 2022 to address 6 items

Housing Directorate letter (21/05/2022) submitted with application that proposals are acceptable and Part V element agreed in principle.

### **3.0 Planning Authority Decision**

Permission granted subject to 24 conditions. For the most part they relate to standard conditions. Conditions of note include:

**No. 4** sets out that no works shall commence on site until the upgrade works to the L- 41341 have been completed to the satisfaction of the planning authority.

**No. 5** refers to the implementation throughout the construction and operational phases a) actions/procedures contained in the CEMP, b) mitigation measures set out in the NIS and c) mitigation measures set out in the Biodiversity Assessment.

**No. 6** refers to the requirement to agree in writing a) details of the proposed Water Quality Monitoring Programme, b) Environmental Officer to oversee implementation of CEMP, c) comprehensive lighting plan designed to have regard guidance notes relating to bats and d) detailed plan for signage and road markings.

**No. 7** (b) details of alternations to the western boundary treatment of unit 24, having regard to the recommendations of the Biodiversity Assessment and the presence of a Badger sett at this location.

**No. 9** Archaeology.

**No. 22** Section 48 contribution of €288,548.

**No. 23** Cash security of €260,000.

**No.24.** Special Development Contribution under section 48(2)(c) of €356,000 towards the improvement/construction of 460m roadway, construction of 460m footpath including public lighting and accommodation works to link the development with the existing public road on the R463 and the existing footpaths on the R463.

#### **3.1. Planning Authority Reports**

##### **3.1.1. Planning Reports**

## **Planner Report (10/06/2022)**

The proposed development was assessed having regard to the Clare County Development Plan 2017-2023 which was the operative Plan at the time the planning authority made its decision.

The report sets out the policy context, planning history, summary of issues raised in the submissions, summary of technical reports, EIA Screening, AA Screening and Planning assessment.

Points of note raised include inter alia:

- While the principle of development having regard to the 2017 Development Plan is considered acceptable, concerns in relation to access and potential impacts on European sites are raised.
- Density and unit mix acceptable.
- Overall design of units acceptable.
- A more balance distribution of units throughout the layout considered more appropriate, tied in with concerns relating to internal access roads would warrant a FI request.
- Alterations to ground levels a concern in relation to potential sediment run-off and the displacement of water and potential implications for flood risk. The planning authority concluded that this matter warranted a FI Request.
- Traffic: Issues raised by area engineer need to be addressed. These relate inter alia to: requirement to upgrade road, provide footpaths. Improvement to junction with regional road, upgrades required. Internal road layout. Public lighting FI recommended.
- Public Health: FI required as no confirmation from IW regarding connections.
- Archaeology: A desktop archaeological assessment is submitted. It was noted that the area is rich in archeology, appropriate condition should be attached relating to archaeological monitoring.
- Natural heritage: the proposal is close to known bat roosts. A Biodiversity Assessment is submitted. Revised proposals required to ensure landscaping proposals in line with biodiversity assessment and retention of hedgerows.

- Flood Risk: the site is located outside flood zone A and B. No record of the lands flooding but record of lands in the vicinity flooding and parts of the site are known to be waterlogged raised concerns. Concerns also raised regarding potential displacement of water from the site may increase the risk or intensity of flooding elsewhere, further assessment therefore required.
- Surface water management: 2 no. attenuation tanks proposed to manage the discharge of water. It is submitted that in the event that the capacity of tanks is exceeded, surface water would be redirected to the green areas within the development. The EIA screening report and NIS state that the management and treatment of surface water discharges from the proposed site is essential to ensuring that there are no significant impacts on the adjoining Tuamgraney river. No proposals submitted. In addition, the planning authority noted that the capacity of the adjoining watercourse to accommodate surface water discharges has not been established. FI required.

A detailed 6 point further information request was recommended. These broadly related to:

No. 1. Items requested by Area Engineer relating to: upgrade to the L41341, footpaths, landownership, works to junction of L41341 and R463, public lighting.

No 2. Revised layout to address inter alia: aesthetic, traffic issues, open space, parking, distribution of unit mix throughout the scheme, revision to no. 44-52 to address lane, phasing proposals, cross section to show current and proposed ground levels across the site, revision to unit 7-12.

No. 3. Revised AA NIS, Biodiversity Assessment required to address issues raised regarding their validity.

No. 4 Reference in the NIS and EIA Screening report to management and treatment of surface water discharges. Requirement for a detailed Surface Water Management Plan, assessment of likely displacement of water from the site, impact and frequency, assessment of capacity of water course to receive storm water from the development.

No. 5. Discrepancies between landscaping plan and biodiversity assessment regarding boundary treatment, bat roosts and implications of R2 zoning.

No. 6. Requirement to undergo IW pre-connection enquiry process and submit detail of IW response.

**AA Screening Determination (05/06/2022)** concluded that potential for significant effect to European site(s) could not be ruled out.

Photographs dated 05/06/2022 on file.

**Planner Report (13/01/2023) following submission of further information.**

Detailed response to FI request submitted. Response included inter alia revised AA Screening, Natura Impact Statement, EIA Screening.

The report includes an assessment of FI received, a summary of submissions and technical reports received. Points of notes include:

- The planning authority noted the comments received from the Environmental Assessment Officer.
- The planning authority concluded that the revised NIS addressed concerns raised and eliminated the remaining uncertainty in relation to the potential, or otherwise, for the proposed development to have an adverse effect on European sites.
- The design of the proposed dwellings was generally considered acceptable, the revised layout proposals considered generally acceptable.
- Cross section submitted and while some contouring is required on the site, the proposed alterations are not considered excessive and are generally acceptable.
- Traffic issues raised were referred to the technical departments for comments. Noted this are the primary issue raised by third parties. Two history files relating to this site ended up on appeal with ABP. One granted, one refused but access was not one of the grounds. At present the L41341 does not have capacity to accommodate traffic associated with the proposed development. Proposals submitted with FI to upgrade the road, as not within the application site boundaries the only recourse is payment of a special contribution towards the cost of the necessary upgrade.

- The PA is satisfied that the road width can accommodate the required road for the majority of the road. The only area of concern is at the junction with the R463, where flowerbeds have been constructed on a deep verge which is maintained by the local community, Land Registry shows this area as part of the carriageway. The PA are of the view that this grassed area must be included in the roadway to facilitate the required road upgrade works.
- Calculations provided by SEE for the required special contribution to carry out the upgrade works.
- It is recommended that a condition be attached that no development works shall commence on the proposal site until such time as the upgrade works to the access road have been satisfactorily progressed.
- All light to follow Bat Conservation Ireland's Bats & Lighting: Guidance Notes for Planners, Engineers, Architects and Developers (2010)
- IW pre-connection details submitted. The PA noted that the IW Wastewater Capacity Register indicated that there is sufficient available capacity at the Scarriff WWTP to accommodate the proposed development.
- Submission noted from DAU and recommendation for archaeological monitoring condition.
- Natural Heritage – Revised Biodiversity Assessment (BA) submitted. 3 no. badger setts identified on the site perimeter. Revised assessment also considers the findings and recommendation contained in the CEMP and the Surface Water Management Plan. Mitigation measured in the BA generally align with those in the CEMP and Surface Water Management Plan. A Derogation License would be required for any works that may disturb the Badger setts. Boundary details on plan do not match those in the BA, this need to be addressed by condition and hedgerow retained.
- Surface Water Management Plan submitted. Noted site located on lands identified as flood zone C. Surface water would be attenuated via two tanks onsite with discharges limited to a maximum flow rate of 11l/s. This flow rate is the equivalent of greenfield run-off, indicating that the development will not result in increased discharge rates to the adjoining water course.

- The Surface Water Management Plan defers to the actions contained in the CEMP to prevent impacts on surface waters as a result of the proposed development. These include:
  - Construction of a temporary berm and silt trap adjacent to the watercourse prior to the commencement of construction works.
  - Topsoil stripping to be undertaken in dry weather and stockpiles to be >50m from any watercourse.
  - Storage areas, machinery depots etc to be >50m from any watercourse.

These actions are required to both manage surface water run-off and ensure the protection of water quality.

The PA consider the surface water management proposal acceptable.

Recommendation that the proposed development be granted permission subject to 24 conditions, conditions of note are highlight in section 3 of this report.

**Determination under section 177V of the Planning and Development Act 2000 (as amended) signed by A/Senior Planner (not dated but attached to planners report dated 13/01/2023)**

This concluded that having regard to the contents of the NIS submitted as part of the planning application, together with the CEMP, the Surface Water Management Plan, the Biodiversity Assessment and submission received from the Department of Housing, Local Government and Heritage with regard to the qualifying interests and conservation objectives of the surrounding European sites, it was determined that the proposed development (either individually or in combination with other plans and projects) will not adversely affect the integrity of any European Site.

This Determination was made in light of the following:

Having reviewed the QI and SCI of the Lough Derg (Shannon) SPA and the absence of a direct footprint associated with the works to within a European site, The SP concluded that there is no potential for direct effects from the proposed works. A list



of recommended conditions are included to ensure there is no risk of adverse effects on the conservation objective or the integrity of any European site.

### **3.1.2. Other Technical Reports**

**Transportation & Road Design Office (26/05/2022).** Issues highlighted include inter alia: Requirement for a special contribution for the upgrade of the junction of the L41431 and R463; a special contribution for the construction of a footpath from the entrance to the proposed development from the junction with the R463; sightlines and stopping distances at access of the L41431; revised layout regarding internal roads; compliance with DMURS; turning bay details; road gradients; road specs as per TII docs; signage & lining layout; traffic calming measures for roads over 70m; surface water runoff and gullies; parking as per Clare CC requirements; footpaths; lighting; waste and landscaping.

**Transportation & Road Design Office (09/11/2022) following Further information submission.** Following a review of the FI the following comment is noted in relation to the carparking spaces in the vicinity of no. 41-45, it is noted that all access ways and parking spaces accessed for turning bays are removed/relocated to ensure the turning bay is dedicated solely for vehicle turning movements, should be reviewed.

**Taking in Charge/Estates Team (27/05/2022).** Issues highlighted to be addressed include inter alia: details of where filling required, compliance with Clare County Council TIC policy and recommendations for site development works for housing areas, consideration of an additional bond for repairs of roads arising from construction traffic, estate name/plaque, works to be carried out prior to commencement works on remainder, ensure full compliance with Building Regulations, no units to be occupied until development is fully connected to public foul and water infrastructure to the satisfaction of IW.

**Killaoe Municipal District Engineer (20/05/2022).** Further information required in relation to the proposed treatment of the existing public road, including surface water drainage, footpath and public lighting provision and connectivity with Tuamgraney village.

**Chief Fire Officer (03/05/2022).** No objection subject to requirements set out.

**Environmental Assessment Officer (12/01/2023).** Satisfied Clare CC are the competent authority having regard to the revised NIS, Biodiversity assessment, CEMP, Surface Water Management Plan, Landscape Plan together with all other plans and particulars submitted with the application together with the various internal and external reports. Following a review of all the data held internally by Clare CC that there is no risk of adverse effects on the QI of any European sites (either directly or indirectly), either alone or in combination with other plans and projects and there is no reasonable scientific doubt in relation to this conclusion.

### **3.2. Prescribed Bodies**

**Uisce Eireann (04/05/2022).** Further information required. IW (UE) typical layout for watermains within developments to be followed. Recommended to have a flow meter and a prv on the water feed into the estate. Wastewater – a pre-connection enquiry needs to be lodged with IW. Details of pump station expected flows and expected loading to be provided.

**Development Applications Unit, Department of Housing, Local Government and Heritage (29/11/2022).**

#### Archaeology:

Noted that given the scale of the proposed development, encompassing an area of c. 3.96ha, its extent and location that it is possible that subsurface archaeological remains could be encountered during the construction phase that involve ground disturbance.

Desktop assessment reviewed and it is also noted that the site was the subject of a programme of archaeological excavation under licence from the Department (Pl. Ref. 08/463, Excavation License No. 08/E0709). The Department broadly concurs with the conclusion and Archaeological Impact Statement of the desk-based assessment.

Recommendation that condition relating to archaeological monitoring be attached to any grant of planning permission.

#### Nature Conservation:

The development is c.350m from the River Scarriff which flows directly into Lough Derg (Shannon) SPA (site code 4058).

Lough Derg (Shannon) SPA is of special conservation interest and of high ornithological importance as it supports nationally important breeding populations of Cormorant and Common Tern. In winter, it has nationally important populations of Tufted Duck and Goldeneye as well as a range of other species including Whooper Swan. The conservation objectives are to maintain the special conservation interests of this SPA at 'favourable conservation status'.

Clare CC should carry out a screening for AA to assess if there is potential to have an impact on the European site. Potential impact on water quality also needs to be assessed by Clare CC.

Conditions recommended include 1) the requirement to use native tree and shrub species and 20 external lighting to be kept to a minimum to reduce disturbance to wildlife. No lighting should be directed at features of ecological sensitivity.

### **3.3. Third Party Observations**

6 no. third party submissions received at the initial application stage and 5 received on foot of the FI response. These include 4 no. by parties who had made submissions on the initial application.

Parties at initial application stage included: Ann Hayes, Reddan's Quay Residents, The Hogan family, William & Christine Bleach, Barry O'Donovan and Majella Cahill & Michael O'Brien.

Parties following submission of FI response included: The Hogan family, William & Christine Bleach, Majella Cahill & Michael O'Brien, Reddan's Quay Residents (c/o Majella Cahill) and Andras & Lisa Paczy. Folio details, photographs submitted including those showing vehicles, flooding etc.

Issues raised can be summarised as follows:

- Access, dispute width of road.
- Works to road would encroach on third party lands.
- Traffic hazard.
- Concerns for pedestrian safety.
- Query why a Road Safety Audit was not carried out.

- Works to junction of the Reddan's Quay Road and R463 will not improve sight distance or reduce speeds on the R463.
- No traffic calming proposed on regional road.
- Embodied Carbon.
- Events at Church, Handball alley etc will increase parking and obstruction sightlines at junction with regional road.
- Lower section of road prone to flooding. Potential flooding of new houses not addressed.
- Query who will be responsible for water, sewerage and attenuation tanks.
- Local road cannot accommodate additional traffic generated by the proposed development.
- Village unable to cope with population increase.
- Multiple vacant properties in the village that could be used to accommodate families.
- Changes to the ground levels and the road could lead to flooding to other properties along the road.
- River Graney is 'at risk' of failing to meet the objective of the RBMP. Given the proximity of the site to the River Graney, the impact of the development on water quality is queried.
- The development is premature pending upgrade to the road.
- Inclusion of lands without consent of owners.

The current appeal lodged by Reddan Quay Residents reiterates issues raised at PA stage, this is summarised in detail in section 6 of this report.

## 4.0 Planning History

**PA Ref. 08/463 (ABP Ref.PL.03.232241)** refers to a decision to refuse permission to demolish an existing pump house and construct 89 residential dwellings and a crèche at site R3. (reduced to 72 dwellings under FI). Reason for refusal related to: the scale of development and development premature pending upgrade of wastewater services in the area.

To the west with access via Dock Road:

**PA Ref. 06/2232 (ABP PL.03.222591)** refers to a grant of permission for 27 no. dwelling houses, ancillary site works and ppwts and connection to public services.

**PA Ref. 11/824** refers to a grant of EOD to 06/2232.

**PA Ref.12/553** refers to a grant of permission for a house.

**PA Ref. 13/200** refers to a grant of permission for a house.

**PA Ref. 13/201** refers to a grant of permission for a house.

To the west with access via Wood Road

**PA Ref. 12/550** refers to a grant of permission for a house.

**PA Ref. 12/551** refers to a grant of permission for a house.

**PA Ref. 12/552** refers to a grant of permission for a house.

**PA Ref. 12/554** refers to a grant of permission for a house.

**PA Ref. 13/196** refers to a grant of permission for changes to site boundaries and location of house from that granted under 12/551.

**PA Ref. 13/197** refers to a grant of permission for revised location of foul effluent pumping station granted for serviced sites 1, 2 and 3 under 12/554.

## **5.0 Policy Context**

### **5.1 National**

#### **Project Ireland 2040 – the National Planning Framework**

The National Planning Framework (NPF) is the Government's high-level strategic plan for shaping the future growth and development to the year 2040.

The Framework is based on a set of values that will ensure Ireland's long term economic, environmental and social progress. In framing a new way forward, the National Planning Framework draws upon lessons learned from the National Spatial Strategy and highlights a vision of success based on better choices.

#### **Housing for All – A New Housing Plan for Ireland (2021)**

It is 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 government's 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.
- offering a high quality of life.

The government's vision for the housing system over the longer term is to achieve a steady supply of housing in the right locations with economic, social and environmental sustainability built into the system.

The policy has four pathways to achieving housing for all:

- supporting home ownership and increasing affordability
- eradicating homelessness, increasing social housing delivery and supporting social inclusion
- increasing new housing supply
- addressing vacancy and efficient use of existing stock

Housing for All contains 213 actions which will deliver a range of housing options for individuals, couples and families.

### **Climate Action Plan 2024 (May 2024)**

Climate Action Plan 2024 is the third annual update to Ireland's Climate Action Plan 2019 and the second to be prepared under the Climate Action and Low Carbon Development (Amendment) Act 2021. It builds on the introduction of carbon budgets and sectoral emissions ceilings in Climate Action Plan 2023 and sets a course for Ireland's targets to halve emissions by 2030 and reach net-zero no later than 2050. These national targets align with Ireland's obligations under EU and international treaties, most notably the Paris Agreement (2015) and the European Green Deal (2020).

Embedded in Climate Action Plan 2024 are the principles of Ireland's Just Transition Framework. The integration of these principles into the policy cycle through the annual Climate Action Plans continues to ensure that climate action policies and measures are effectively aligned with the needs to ensure that the costs of transition are fairly distributed, and that people are equipped with the necessary skills to benefit from the transition.

## **Section 28 Guidelines**

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the reports from the planning authority, prescribed bodies, third party submissions and the grounds of appeal, I am of the opinion that the directly relevant section 28 Ministerial Guidelines are:

- The Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities (2024) (hereinafter the ‘Compact Settlements Guidelines’) came into effect in January 2024. No transitional arrangements were put in place for the implementation of these guidelines, therefore affect any decision from that date they came into effect regardless of when an application/appeal was lodged.
- The Planning System and Flood Risk Management – Guidelines for Planning Authorities & Technical Appendices (2009)

Other:

- Guidance on Appropriate Assessment for Planning Authorities (NPWS)
- Design Manual for Urban Roads and Streets – (Referred to as DMURS)

## **5.2 Regional**

### **Southern Region Regional Social Economic Strategy (RSES) (2020)**

The RSES provides a long-term, strategic development framework for the future physical, economic and social development of the Southern Region and includes Metropolitan Area Strategic Plans (MASPs) to guide the future development of the Region’s three main cities and metropolitan areas – Cork, Limerick-Shannon and Waterford.

The RSES sets out a vision for the Southern Region to:

- Nurture all our places to realise their full potential.
- Protect, and enhance our environment.
- Successfully combat climate change.
- Achieve economic prosperity and improved quality of life for all our citizens.
- Accommodate expanded growth and development in suitable locations.

- Make the Southern Region one of Europe's most creative, innovative, greenest and liveable regions.

The RSES seeks to achieve balanced regional development and full implementation of Project Ireland 2040 – the National Planning Framework. It will be implemented in partnership with local authorities and state agencies to deliver on this vision and build a cohesive and sustainable region.

### **5.3 Local**

#### **5.3.1 Development Plan**

The planning authority assessed the application having regard to the Clare County Development Plan 2017-2023 (as varied) which was the Plan in effect at the time Clare CC made its decision on the 13<sup>th</sup> January 2023. Since then, the Clare County Development Plan 2023-2029 came into effect in April 2023. My assessment has regard to the 2023 Plan as this is the operative plan at this moment.

#### **5.3.2 Clare County Development Plan 2023-2029**

##### **Volume 1**

Scarriff/Tuamgraney is designated d as a Service Town.

Service towns are designated due to their role as important service centres in their respective Municipal Districts and due to their role as drivers of growth for their surrounding hinterlands. The detailed strategies for each of these Service Towns are outlined in their individual settlement statements and land use plans, contained in Volume 3 of this Development Plan and these reflect the local characteristics of these settlements.

Objectives CDP4.5 applies.

Tuamgraney is recognised as a linked settlement with Scarriff and referred to as Scarriff/Tuamgraney. The Plan sets out that while retaining their own identities, these linked settlements, due to their proximity to one another and their complementary roles, will be encouraged to work together to share assets and strengths, and to generate the critical mass of population needed to allow them to act as a focus for service provision and economic growth for their surrounding rural areas.



## **Chapter 19 Land Use and Zoning.**

**Residential** use shall be taken to primarily include the use of land for domestic dwellings. It may also provide for a range of other uses particularly those that have the potential to foster the development of new residential communities e.g. schools, crèches and open spaces.

Appendix 1 Development Management Guidelines

Appendix 2 – Indicative Land Use Zoning Matrix

### **Volume 3 (c) Killaloe Municipal District Area Settlements**

#### **Section 1 Service Towns**

##### **Scarriff/Tuamgraney**

Scarriff/Tuamgraney is identified as a Service Town in the settlement hierarchy of this plan with a population of 805 (CSO 2016). Scarriff and Tuamgraney are also identified as Linked Settlements that are physically linked by the bridge across the Scarriff River. Their complementary nature provides opportunities to expand on the range of services that they provide to their communities and the surrounding rural area. Both settlements have expanded in recent years, to the extent that the two have now almost merged. However, both continue to retain their own strong identity.

The entire settlement of Scarriff-Tuamgraney is located within the Shannon – Graney/Scarriff River catchment which has been identified by the National Parks and Wildlife Service (NPWS) as a “Catchment with previous records of *Margaritifera*, but current status unknown”. Therefore, any proposed development must take into consideration the potential effects on this species and its habitat and protect water quality during construction and operation.

##### ***General Objectives –Scarriff and Tuamgraney:***

- To ensure that the serviced linked settlements of Scarriff and Tuamgraney are a driver of growth and prosperity for their catchment, by consolidating their administrative, retail and service bases, protecting and enhancing their distinctive town centre characteristics and natural landscape settings, and maximising their role for subregional growth.

- To promote consolidation and compact growth through brownfield reuse/redevelopment and to address vacancy and the under utilisation of the existing building stock to support existing services and encourage the development of new services, whilst retaining the existing character;
- To promote the development of residential lands to provide an appropriate mix of housing types and densities, together with complementary land uses such as community facilities and public transport facilities to serve the current and future residential population of Scarriff/Tuamgraney.
- To deliver up to 30% of all new homes targeted for Scarriff/Tuamgraney within the existing built-up footprint.
- To make provision for amenity, leisure and tourism-related developments to contribute to the tourism product, based on the network of loughs, harbours, walkways and the Shannon Blueway in Scarriff/Tuamgraney and the wider area;
- To encourage the redevelopment and reuse of the former Finsa site in Tuamgraney for employment and enterprise opportunities;
- To encourage employment-generating development in Tuamgraney, focusing industrial and commercial activities on suitably zoned lands;
- To design and implement additional active travel measures for Scarriff/Tuamgraney

### ***Housing and Sustainable Communities:***

#### ***Tuamgraney***

##### **R1 Lands to the southeast of the road to Reddan's Quay, Tuamgraney**

This is a large site located in close proximity to the village core in Tuamgraney. The design and layout of any future development on these lands must reflect the traditional character and scale of the existing village. R1 covers an extensive area and it is preferable that the lands be developed as a series of smaller developments in a phased manner. Standards of both public and private open space associated with development must reflect the rural village character. Improvement works to the junction with the R352 may be required as part of any development on the site. The existing hedgerow and treelines should be retained along all site field boundaries to protect the biodiversity and feeding/foraging routes for all bat species.

The lands which are the subject of this appeal are zoned Residential under objective **R1** on the Tuamgraney Map contained in Volume 3(c) -17.

The western portion of the lands (c.0.61ha) are zoned **OS1** – Tuamgraney Harbour (HAR2), this open space is designated as such to allow for the seasonal changes in water levels in the Scarriff River.

Tuamgraney Quay is also referred to as Reddan's Quay.

## **5.4 Natural Heritage Designations**

European Sites:

Lough Derg (Shannon) SPA (site code 004058) is c.1.8km to the north east.

Slieve Bernagh Bog SAC (side code 002312) is c.2.9km at its closest edge to the south.

Slieve Aughty Mountains SPA (site code 004168) is c.3.5km to the north.

Other

Lough Derg pNHA (site code 000011) is c 0.7km to the north east.

Lough O'Grady pNHA (site code 001019) is c.1.9km to the west.

Loughaniloon Bog NHA (site code 001020) is c.7.2km to the west.

Ayle Lower Bog NHA (site code 000993) is c.9km to the west.

## **5.5 EIA Screening**

See Completed Form 1 & 2 attached as Appendices 1 and 2 respectively. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

## **6.0 The Appeal**

A third party appeal was lodged by Reddan's Quay Residents c/o Majella Cahill.

### **6.1 Grounds of Appeal**

**1. Traffic, Transportation and Road Safety.**

- No design put forward by the applicant in relation to the treatment of the junction of the R463 and the L41341.
- No TTA submitted.
- No independent RSA carried out despite the road safety risk given the scale of the proposed development.

**2. Upgrade works required to the Dock Road (L41341) and Third-Party Landowner consent.**

- The grant of permission is wholly premature pending until such works are completed to the satisfaction of Clare County Council.
- No third-party consultation or consent demonstrated by the applicant despite the impact the proposed upgrade works would have on the existing properties on the L41341.
- Considerable number of properties not under control of the application would be affected.

**3. Proposal to connect to existing services.**

- Provision of water and storm and foul wastewater treatment to the proposed site and the impact on existing services and the existing environment.
- Proximity to Special Protection Area (SPA site code 4058).

**4. Scale and Density of the proposed development.**

- Scale and density of the proposal appears to be at odds with what is set out in the County Development Plan 2017-2023 (as varied) in relation to the development of the site.

**5. Embodied and Operation Carbon required for a development of this sale.**

Documentation submitted with the grounds of appeal includes:

- Planning Appeal Form.

- Receipt from Clare County Council regarding submission made by Reddan's Quay Residents c/o Majella Cahill.
- Notification of Decision by Clare County Council in relation to P22/359.
- Report prepared by Michael O'Brien BEng (Hon) on behalf of Reddan's Quay Residents in relation to Traffic, Transportation and Road Safety.
- Figure 1,3 and 4 highlighting affected folios where available road width is less than 7.3m required.
- Response by Area Engineer for Killaloe Municipal District.
- Individual letters from Reddan's Quay Residents and landowners.
- USB drive footage of two HGVs negotiating the existing roadway.

A Report prepared by Michael O'Brien BEng (Hon) on behalf of Reddan's Quay Residents in relation to Traffic, Transportation and Road Safety addresses:

1. Dock Road L41341.
2. Vehicle access.
3. Pedestrian access and vulnerable users.
4. Dock Road upgrade.
5. Junction sightlines, Traffic Impact Assessment and Junction Capacity.
6. Independent Road Safety.

## 6.2 Applicant Response

The applicant submitted a response to the third-party grounds of appeal which was received by An Bord Pleanála on the 1<sup>st</sup> March 2023. The response broadly reiterates information submitted with the application and refutes the grounds of appeal. Points of note include:

- Refute contents and conclusions of the engineering report prepared and submitted with the appeal. It is clear the L41341 needs to be upgrade and condition no. 4 reads *'no works shall commence on site until the upgrade works to the L41341 have been completed to the satisfaction of the planning authority.'*

- Condition no. 24 relates to the special contribution of €356,000 towards the improvement – construction of a 460m roadway, construction of a 460m footpath including public lighting and accommodation works to link the development with the existing public road and footpaths on the R463. It is their understanding that Clare County Council will carry out the works and design for same in house.
- The L41341 is a public road. Clare Conty Council is free to carry out road improvements without third party consent as it is a public roadway.
- The application documentation demonstrates that the connection to existing services is technically feasible and in compliance with all regulations.
- The proximity of the SPA is not an issue and reports submitted.
- A phasing for the construction for the development is proposed, it is submitted to be logical and methodical phasing of the scheme.
- In relation to the embodied and operation carbon required for the development, is submitted that this is opinion and aimed to distract from the reality of the housing need in Clare.

It is submitted that the appeal is vexatious, should be dismissed and permission granted.

### **6.3 Planning Authority Response**

The planning authority submitted a response to the third-party grounds of appeal which was received by An Bord Pleanála on the 3rd March 2023. It is noted that the majority of issues raised in the appeal have been considered by the planning authority in the Planner's Report associated with the assessment of the development. Points of note include:

Road Access:

- Under condition no. 3 there is a requirement that the local road serving the site (L41341) be upgraded prior to the commencement of development. A special contribution has been levied to facilitate the necessary upgrade works.

- The PA is satisfied that there is sufficient width within the existing public roadway to facilitate the required upgrade works.
- Close to the junction with the R463 where works are proposed along a grass verge/flower beds, the PA is satisfied that this area forms part of the public road.
- It is acceptable for the proposed footpath width to narrow at a point on the roadway where the alignment of a residential gate may narrow the available road width.
- The PA wish to highlight to the Board that the previous refusal of permission in the site under P08/463 (ABP Ref.PL.03.232241) on the grounds of scale of development and lack of wastewater capacity in the town at the time.  
Considered the proposed access arrangements via Dock Road acceptable.

#### **6.4 Observations**

None.

#### **6.5 Further Responses**

None.

### **7.0 Planning Assessment**

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle and Quantum of Development
- Traffic and Transportation
- Services

- Embodied and Operation Carbon
- Flood Risk

## **7.1 Principle & Quantum of Development**

My assessment is based on the policies and objectives of the Cork County Development Plan 2022-2028. Given that the operative plan differs from that under which the planning authority assessed the application in the interest of clarity I shall address compliance with the land use zoning objectives.

The grounds of appeal have set out that the proposed scale and density of the proposal appears to be at odds with what is set out in the County Development Plan 2017-2023 (as varied) in relation to the development of the site. I draw the Boards attention to the zoning of the site under the current operative Plan, i.e the Clare County Development Plan 2023-2029, in particular Volume 3 (c) which includes policies and objective for the development of Scarriff/Tuamgraney as a linked settlement.

The lands which are the subject of this appeal are zoned Residential under objective R1 on the Tuamgraney Map contained in Volume 3(c) -17 of the Clare County development Plan 2023-2029. The western portion of the lands (c.0.61ha) are zoned OS1 – Tuamgraney Harbour (HAR2), this open space is designated as such to allow for the seasonal changes in water levels in the Scarriff River. I note that this area includes open space and paths serving the proposed development. Open space is permitted on lands zoned Open Space.

The planning authority consider the proposed density acceptable for this location 52 units on a site with an area of c.3.96ha results in a density of c.13uph. When considering the lands zoned residential the density is c.21uph on R1 and c.8uph on R2 lands (zoning associated with the 2017 Plan).

Under the current Development Plan the area of lands zoned R1 is c.3.3460ha and the proposal for 52 units results in a density of 15.5uph for the current appeal.

Since the appeal was lodged and the Clare County Development Plan was adopted in 2023 The Compact Settlement Guidelines have come into effect.

Vol. 3 (c) of the current Development Plan identified the linked settlements of Scarriff/Tuamgraney as a Service town with a population of 805 (CSO 2016). Section



3.3.5 of the Compact Settlement Guidelines refers to Rural Towns and Villages (<1500 population). Table 3.7 sets out area and density ranges for Rural Town and Villages sets out that it *'is a policy and objective of the Guidelines that development in rural towns and villages is tailored to the scale, form and character of the settlement and the capacity of services and infrastructure (including public transport and water services infrastructure). Lands zoned for housing at the edge of rural towns and villages at locations that can be integrated into the settlement and are connected to existing walking and cycling networks can offer an effective alternative, including serviced sites, to the provision of single houses in the countryside. The density of development at such locations should respond in a positive way to the established context.'*

There are no footpaths linking the site to the R463 where there are footpaths linking to what can be seen as the 'main street' which is in effect the R352 and R463 which traverse Tuamgraney and links it to Scarriff. The site while zoned residential is served by a single carriageway road lacks public infrastructure in terms of footpaths or cycle paths. The planning authority sought to address the lack of connectivity through a special contribution towards the upgrade of the L41341, provision of footpaths along Dock Road for a distance of 460m and the upgrade of the junction of the L41341 and R463 which I address in section 7.2. I am of the view having regard to the provision of the Development Plan, a density of c.15.5uph is considered reasonable in principle at this location subject to a high-quality design and appropriate access which I address in section 7.2 and outline my concerns therein.

The Plan clearly set out the following criteria for development of the site, identified under zoning R1 in Volume 3 (c). it is acknowledged that the site is large in the context of Tuamgraney located in close proximity to the village core. The plan states that "The design and layout of any future development on these lands must reflect the traditional character and scale of the existing village. R1 covers an extensive area and it is preferable that the lands be developed as a series of smaller developments in a phased manner". The current proposal for 52 houses would be considered a large development in terms of the existing character of Tuamgraney or even when considered linked with Scarriff. The village is characterised by single dwellings or serviced sites, as can be seen by development to date along the L41341. I have concerns regarding the proposed scale of the development which is

not in keeping with the character of the area set out for the R1 land at this location which states that There is no question in the current climate of shortfall in housing provision that the area needs housing, notwithstanding a number of vacant properties. The crux of the matter here is whether a development of 52 units is the appropriate manner in which to deliver housing at this location which is served by a substandard road which the planning authority have recommended that a special contribution be attached to any grant of permission to facilitate the upgrade of the L41341 (I address this in section 7.2).

The plan also sets out for this parcel of land that the standards of both public and private open space associated with development must reflect the rural village character. The western portion of the site, where the bulk of the public open space is provided is zoned OS1. In terms of quantum this is considered acceptable. Overall the provision of open space is acceptable given the context of the site.

I note that the Plan also states that work to improvement works to the junction with the R352 may be required as part of any development on the site, I consider this a typo by the planning authority as the road in question is the R463. The R352 while linked to the R463 and leads to Scarriff is not the road at the junction with Dock Road (L41341)

The current plan under the R1 objective sets out that existing hedgerow and treelines should be retained along all site field boundaries to protect the biodiversity and feeding/foraging routes for all bat species. I am satisfied that this matter could be addressed by condition if a grant of permission was forthcoming.

I note from the application documentation that badger setts have been recorded along the perimeter of the site and a derogation license may be required.

## **7.2 Traffic &Transportation**

The grounds of appeal have submitted that the proposed development would a) exacerbate the existing substandard conditions along the L41341 given its width and lines sightlines at the junction with the R463; b) It is also submitted that no design has been put forward by the applicant in relation to the treatment of the junction of the R463 and the L41341; c) No TTA submitted; d) No independent RSA carried out despite the road safety risk given the scale of the proposed development. And e) the upgrade works required to the Dock Road (L41341) and requirement for third-party

landowner consent. The ground of appeal include a letter signed by a person with an engineering qualification in support of the traffic concerns highlighted in the grounds of appeal and addresses a number of items in more detail.

I have inspected the site and surrounding area and concur with the appellants that the L41341 is tantamount to a single carriageway lane in place with road conditions poor for large tracts of it. There are no footpaths linking the site to the R463 where there are footpaths linking to what can be seen as the 'main street' which is in effect the R352 and R463 which traverse Tuamgraney and links it to Scarriff. The site while zoned residential is served by a single carriageway road lacks public infrastructure in terms of footpaths or cycle paths. The planning authority sought to address the lack of connectivity through a special contribution towards the upgrade of c.460m length of the L41341 to the junction with the R463. I note issues relating to landownership to facilitate the widening of the L41341 are disputed in the grounds of appeal. I also note that the planning authority have acknowledged that there are points along the L41341 where adequate widths cannot be achieved.

I have serious concerns regarding the ability of the L41341 to cater for the additional traffic movement associated with the proposed development, notwithstanding the upgrades proposed to the L41341 and provision of a footpath which would be the subject of a special contribution along with works at the junction of the L41341 and the R463. I consider the proposed development would result in excessive traffic movements which would exacerbate the existing traffic hazard at the junction of the L41341 and the R463 which would be contrary to the proper planning and sustainable development of the area.

While I acknowledge that the lands are zoned residential in the current Plan which came into effect in April 2023, I have serious concerns regarding the scale of the development and its associated traffic movements and the cumulative impact this would have on the L41341 and the R463 regardless of upgrades to the road, provision of footpaths to provide connectivity to the site or modifications to the junction and therefore the grounds of appeal relating to this matter should be upheld and permission refused accordingly.

I note concerns raised regarding TTA and RSA however given my concerns as outlined above and given the substantive reason for refusal I am recommending I do not consider that this warrants a reason for refusal.

### **7.3 Services.**

The grounds of appeal have raised concerns regarding the provision of water, storm and foul wastewater treatment to the proposed site and the impact on existing services and the existing environment.

The proposed development would connect to the Scarriff WWTP Discharge License Reference Do319 (EPA accessed 24 July 2024) noted license issued in 2014. Site update Ref. LR065994 (22/03/22) refers to maintenance works at WWTP (replacement of air diffusers and no impact expected on the receiving waters during these works. 2021 levels of ammonia noted, samples taken for remainder of 2020 did not have an ELV breach for ammonia. Site visit 07/09/2021 noted samples in compliance with license. Uisce Eireann Wastewater Treatment Capacity Register (accessed 13/06/2024 and 27/06/2024) indicated that the Scarriff WWTP has a green status (June 2023) which indicates space capacity available.

I note that Uisce Eireann in their submission on file dated 04/05/2022 raised that the IW typical layout for watermains within developments to be followed. Recommended to have a flow meter and a prv on the water feed into the estate. Wastewater – a pre-connection enquiry needed to be lodged with IW. And details of pump station expected flows and expected loading to be provided. This matter was not included the FI request that issued on the 13/06/2022. I have examined the file and can find no record of a further UE submission and I note that the internal Clare CC technical reports have not addressed this matter. Having regard to the nature of the concerns raised by UE and the absence of pre-connection correspondence. I consider it unwise to address this matter by condition if the Board were of a mind to grant permission.

I have reviewed the information on file, the grounds of appeal and submissions received from Uisce Eireann and third parties and notwithstanding a recommendation to grant permission by the planning authority I would concluded that outstanding matters are of a nature that should be addressed before permission is granted having regard to the submission on file from Uisce Eireann.

Furthermore, the EU (Drinking Water) Regulations 2023, came into effect through the transposition of EU Directive 2020/218 into Irish Legislation. EPA website accessed 24<sup>th</sup> July 2024 and 1<sup>st</sup> August 2024 and noted the 2022-2027 third cycle of the WFD assigned gave the Graney (Shannon) 050 (IE\_SH\_25G040400) a status of 'poor' for WFD period 2016-2021. This refers to the adjoining river referred to in the application as the Tuamgraney river.

Having regard to the information on file I have concerns that the applicant has not demonstrated that the proposed arrangements provided for dealing with wastewater disposal from the proposed development, including the pump station, are adequate to cater satisfactory for the development and that the proposed development would not contribute to water pollution at this location or that it would not be prejudicial to public health

#### **7.4 Embodied and Operation Carbon**

The grounds of appeal have raised concerns relating to the embodied and Operation Carbon required for a development of this scale. It is submitted that there are several unoccupied or derelict houses within the village together with infill sites that should be considered first so the village can grow within the construction of a large scale development. Reference to a study carried out relating to occupancy rates in Clare. It is submitted that current stock with their embodied carbon should be brought into use first before new stock built.

I refer to the current Clare County Development Plan and its policies and objectives pertaining to this matter.

#### **7.5 Flood Risk**

I draw the Board attention to the fact that I do not consider this a 'new issue' even though while not raised in the grounds of appeal specifically I note under the Clare County Development Plan 2023-2029 the western portion of the lands (c.0.61ha) are zoned **OS1** – Tuamgraney Harbour (HAR2), this open space is designated as such to allow for the seasonal changes in water levels in the Scarriff River.

Having regard to the land use objective and the rationale behind this designation I note that the portion of the site is identified as public open space with paths shown traversing it. In principle the use as public open space serving a housing

development is acceptable. My main concern would lie with the treatment of boundaries at this location and the need to ensure that any treatment along this section of the site does not interfere with potential fluctuations in water levels in adjoining rivers or water dispersal elsewhere as raised by the planning authority at FI stage. In my opinion this has been adequately addressed by the use of appropriate boundary treatment such as the proposed mesh fence along the eastern boundary and a portion of the southern boundary that corresponds with the OS1 zoning. A plaster capped low wall along the western boundary of no. 52 encroaches on this zoning and should be removed if a grant of permission is forthcoming, and any boundary associated with the house amended to not encroach on the open space as currently shown on site layout drawing no.0003 revision b.

The Tuamgraney river runs along the eastern boundary of the site, this feeds into the Scarriff when in turn feeds Lough Derg. I noted the poor drainage conditions of the site at the time of inspection which was after a period of heavy rainfall. The site is located within flood zone C. The planning authority raised concerns regarding flooding at application stage and in their response to the FI A Surface Water Management Plan was submitted. The applicant argued that a SSFRA was not required as the site was in flood zone C. I have reviewed the documentation on file and note that the local authority was satisfied that their concerns were adequately addressed. I am of the view that the use of appropriate boundary treatment in conjunction with appropriate use of the land zoned open space would address this matter and comply with the requirements of the Development Plan.

## **8.0 Appropriate Assessment**

The ground of appeal raised concerns regarding the proximity to Special Protection Area (SPA site code 4058) and potential impact arising from the proposed development.

### **Stage 1 – Appropriate Assessment Screening**

Having reviewed the documents, submissions, I am satisfied that the information on file which I have referred to in my assessment allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites. I have reviewed the

applicant's 'Screening for Appropriate Assessment' dated 23 March 2022 and Natura Impact Statement dated 3<sup>rd</sup> October 2022 (both of which were submitted as part of the further information response received by the planning authority on the 26<sup>th</sup> October 2022) and I have carried out a full Screening Determination for the development and it is attached to this report in Appendix 3.

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information I conclude that the proposed development would have a likely significant effect 'alone' on the Lough Derg (Shannon) SPA (site code 004058) from effects associated with the uncontrolled discharge of pollutants in surface waters, wastewater and the deterioration of water quality from polluted waters. An appropriate assessment is required on the basis of the effects of the project 'alone'. It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000, is required on the basis of the effects of the project 'alone'.

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information I conclude that the proposed development is likely to have a significant effect on the qualifying interests of Lough Derg (Shannon) SPA (site code 004058) and 'alone' in respect of effects associated with the deterioration of water quality in the Tuamgraney River and Scarriff river which flows into Lough Derg from the development.

It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000, is required on the basis of the effects of the project 'alone'.

## **Stage 2 – Appropriate Assessment**

The following is an objective assessment of the implications of the proposal on the relevant Conservation Objectives (CO) of Lough Derg (Shannon) SPA based on the scientific information provided by the applicant and taking into account expert opinion and submissions on nature conservation. It is based on an examination of all relevant documentation and submissions, analysis and evaluation of potential impacts, findings conclusions. A final determination will be made by the Board.

All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects on site integrity

are examined and evaluated for effectiveness. Possible in-combination effects were also considered. A full description of the proposed development is set out in section 3 and the potential impacts from the construction and operational phases are set out in Section 5 of the NIS.

Relevant European Sites:

In the absence of mitigation, the potential for significant effects could not be excluded for:

- Lough Derg (Shannon) SPA (site code 004058)

I have reviewed the Conservation Objectives listed for each of the sites on the NPWS website ([www.npws.ie](http://www.npws.ie)). Table 8.1 below summarises the information considered for the Appropriate Assessment and the site integrity test. This information has been compiled from the information contained in the NIS, the supplementary information for the NIS as requested by the PA, and information from the NPWS.

**Table 8.1 – AA summary matrix for Lough Derg (Shannon) SPA (site code 004058):**

Lough Derg (Shannon) SPA (site code 004058)			
		Summary of Appropriate Assessment	
Special Conservation Interest (SCI)	Conservation Objectives	Potential Adverse Effects	Mitigation Measures
Cormorant (Phalacrocorax carbo) [A017]	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.	Deterioration of water quality from pollution of surface and/or ground water during the construction and operational phases.  Pollution from concrete and oil/fuels could result in changes to water	Mitigation measures are listed in Section 7 of the NIS and in the Outline Construction Management Plan, Surface Water Management Plan and Biodiversity Assessment which



		<p>quality and vegetation which could impact on foraging opportunities for the SCI.</p>	<p>accompanied the application.</p> <p>The measures are designed to protect water quality during the construction and operational phases.</p> <p>They include standard measures such as good construction practice in accordance with relevant guidelines and site-specific measures such as the installation of silt traps, stockpiling materials away from drains and appropriate storage of chemicals.</p> <p>Post construction measures require 2 separate attenuation tanks.</p>
Tufted Duck ( <i>Aythya fuligula</i> ) [A061]	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.	Pollution from concrete and oil/fuels could result in changes to water quality and vegetation which could impact on foraging	Mitigation measures are listed in Section 7 of the NIS and in the Outline Construction Management Plan, Surface Water Management Plan

		opportunities for the SCI.	<p>and Biodiversity Assessment which accompanied the application.</p> <p>The measures are designed to protect water quality during the construction and operational phases.</p> <p>They include standard measures such as good construction practice in accordance with relevant guidelines and site-specific measures such as the installation of silt traps, stockpiling materials away from drains and appropriate storage of chemicals.</p> <p>Post construction measures require 2 separate attenuation tanks.</p>
Goldeneye (Bucephala clangula) [A067]	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation	Pollution from concrete and oil/fuels could result in changes to water quality and vegetation which	Mitigation measures are listed in Section 7 of the NIS and in the Outline Construction Management Plan,

	Interests for this SPA.	could impact on foraging opportunities for the SCI.	<p>Surface Water Management Plan and Biodiversity Assessment which accompanied the application.</p> <p>The measures are designed to protect water quality during the construction and operational phases.</p> <p>They include standard measures such as good construction practice in accordance with relevant guidelines and site-specific measures such as the installation of silt traps, stockpiling materials away from drains and appropriate storage of chemicals.</p> <p>Post construction measures require 2 separate attenuation tanks.</p>
Common Tern (Sterna hirundo) [A193]	To maintain or restore the favourable conservation condition of the bird species listed as	Pollution from concrete and oil/fuels could result in changes to water	Mitigation measures are listed in Section 7 of the NIS and in the Outline

	Special Conservation Interests for this SPA.	quality and vegetation which could impact on foraging opportunities for the SCI.	<p>Construction Management Plan, Surface Water Management Plan and Biodiversity Assessment which accompanied the application.</p> <p>The measures are designed to protect water quality during the construction and operational phases.</p> <p>They include standard measures such as good construction practice in accordance with relevant guidelines and site-specific measures such as the installation of silt traps, stockpiling materials away from drains and appropriate storage of chemicals.</p> <p>Post construction measures require 2 separate attenuation tanks.</p>
Wetland and Waterbirds [A999]	To maintain or restore the favourable conservation	Pollution from concrete and	Mitigation measures are listed in Section

	<p>condition of the wetland habitat at Lough Derg (Shannon) SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.</p>	<p>oil/fuels could result in changes to water quality and vegetation which could impact on foraging opportunities for the SCI.</p>	<p>7 of the NIS and in the Outline Construction Management Plan, Surface Water Management Plan and Biodiversity Assessment which accompanied the application.</p> <p>The measures are designed to protect water quality during the construction and operational phases.</p> <p>They include standard measures such as good construction practice in accordance with relevant guidelines and site-specific measures such as the installation of silt traps, stockpiling materials away from drains and appropriate storage of chemicals.</p> <p>Post construction measures require 2 separate attenuation tanks.</p>
--	---	--	---

### **Overall Conclusion – Integrity Test**

The applicant determined that following the implementation of mitigation measures the construction and operation of this proposed development alone or in combination with other plans and projects will not adversely affect the integrity of this European site.

There are a number of discrepancies in the information presented in the NIS in relation to surface water management, assumptions relating to the connection to the Scarriff WWTP and the reference to a need for a pumping station without an assessment of one being carried out. I have reviewed the proposals which include a pumping station, and I am not satisfied that, based on the assessment carried out, the characteristics of the site which indicate poor drainage which could potentially result in leaching of wastewater into the adjoining watercourse has been properly assessed.

I have reviewed the mitigation measures contained in the documentation on file (which includes a Surface Water Management Plan) proposed for the subject development and I am not satisfied that impacts from the development have been adequately assessed and that it has not been clearly demonstrated that the potential impact from a deterioration in the water quality would be unlikely following the implementation of the mitigation measures proposed.

Based on the information provided in the application, I am not satisfied beyond reasonable scientific doubt that adverse effects from deterioration of the water quality in the Tuamgrany River and Scarriff river can be excluded for potential impact on the QI of Lough Derg (Shannon) SPA (site code 004058) As this uncertainty remains, I cannot conclude that the integrity of Lough Derg (Shannon) SPA (site code 004058) and its QI will not be adversely affected in view of the Conservation objectives for the site.

### **Appropriate Assessment Conclusion**

In screening the need for Appropriate Assessment, it was determined that the proposal for 52 dwellings and ancillary site works which include two attenuation tanks and in particular a pumping station had the potential to result in significant

effects on Lough Derg (Shannon) SPA and that Appropriate Assessment was required in view of the conservation objectives of the site.

Following a detailed examination and evaluation of the NIS, all associated material submitted with the planning appeal as relevant to the Appropriate Assessment process, and taking into account submissions of third parties. I am not satisfied that the applicant has demonstrated beyond a reasonable doubt that there are adequate mitigation measures in place to address the potential for wastewater to enter the watercourse and to adversely affect the integrity of Lough Derg (Shannon) SPA (site code 004058) or any other European site in view of the site's Conservation Objectives. This conclusion is based on

- A full assessment of the wastewater infrastructure proposed and the characteristics of the site.
- Detailed assessment of all aspects of the proposed development that could result in significant effects or adverse effects on European Sites within a zone of influence of the development site.
- Consideration of the conservation objectives and conservation status of qualifying interest species and habitats.
- A full assessment of risks to special conservation interest bird species and qualifying interest habitats and species.
- Application of mitigation measures designed to avoid adverse effects on site integrity and likely effectiveness of same.
- Consideration and assessment of in-combination effects with other plans and projects.

## **9.0 Conclusion**

Notwithstanding that the site is located on lands zoned residential in the current Plan which came into effect in April 2023, I have serious concerns regarding the scale of the development and its associated traffic movements and the cumulative impact this would have on the L41341 and the R463 regardless of upgrades to the road, provision of footpaths to provide connectivity to the site or modifications to the junction and therefore the grounds of appeal relating to this matter should be upheld and permission refused accordingly.

## 10.0 Recommendation

I recommend that permission be refused for the reasons and considerations set out below.

## 11.0 Reasons and Considerations

1. It is considered that the proposed scale of the development would endanger public safety because of additional traffic movements on the L41341 which is a seriously substandard minor road in terms of width and alignment. The traffic generated by the proposed development would endanger public safety by reason of a traffic hazard and obstruction to road users.
2. Having regard to the information on file I have concerns that the applicant has not demonstrated that the proposed arrangements provided for dealing with wastewater disposal from the proposed development, including the pump station, are adequate to cater satisfactory for the development. And that the proposed development would not contribute to water pollution at this location or that it would not be prejudicial to public health and would not cause pollution that would adversely affect the water quality in the Tuamgraney river and Scarriff river, and the integrity of the Loug Derg (Shannon)SPA (site code 004058) or any other European site, in view of the sites' Conservation Objectives. Accordingly, the Board is precluded from granting permission.

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.

---

Dáire McDevitt

Inspector

24<sup>th</sup> July 2024



## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	315694-23			
<b>Proposed Development Summary</b>	Permission to demolish pump house and construct 52 dwelling houses and all associated site works and services.			
<b>Development Address</b>	Dock Road, Ballyquin Td., Tuamgraney, Co. Clare.			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	x	
		<b>No</b>	No further action required	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>Yes</b>			EIA Mandatory EIAR required	
<b>No</b>	x	Class 10 (b) (i) Construction of more than 500 dwelling units	Proceed to Q.3	
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>		Class 10 (b)(i) Construction of more than 500 dwelling units		Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	x	Preliminary Examination required
Yes		Screening Determination required

## Appendix 2 - Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	315694-23	
<b>Proposed Development Summary</b>	Permission to demolish pump house and construct 52 dwelling houses and all associated site works and services.	
<b>Development Address</b>	Dock Road, Ballyquin Td., Tuamgraney, Co. Clare.	
<b>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</b>		
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector’s Report attached herewith.</b>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<b>Nature of the Development</b>  Is the nature of the proposed development exceptional in the context of the existing environment?	The development comprises the construction of 52 houses on lands where residential is permitted in principle.	No
Will the development result in the production of any significant waste, emissions or pollutants?	The removal of topsoil and small amounts of C&D waste would be managed in accordance with a CDWMP and CEMP. Localised construction impacts will be temporary.	No

<p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>52 houses</p> <p>The size of the development is not exceptional in the context of the existing built environment.</p> <p>The proposed development for 52 houses would be a stand alone development at this location which is characterised by individual housing plots which received permission but were not developed.</p>	<p>No</p> <p>No</p>
<p><b>Location of the Development</b></p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The Lough Derg (Shannon) SPA (site code 004058) is located c. 1.8.km the south east of the site. A Natural Impact Statement submitted with the application. Refer to section 8 of the Inspectors Report and Appendix 3</p> <p>There is no evidence of other significant environmental sensitivities in the area.</p>	<p>No</p> <p>No</p>
<p><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p>		

Inspector:

Date:

## Appendix 3

### AA Screening Determination

#### Screening for Appropriate Assessment Screening Determination

##### Step 1: Description of the project

I have considered the Construction of 52 houses, demolition of a pump house and all associated site works and services in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

The subject site is located c.1.8km south west of Lough Derg (Shannon) SPA (site code 004058) with Slieve Bernagh Bog SAC (side code 002312) is c.2.9km at its closest edge to the south of the site and Slieve Aughty Mountains SPA (site code 004168) is c.3.5km to the north.

The site is bounded by the Tuamgraney river to the east which flows into the River Scarriff c.350m from the site which in turn flows directly into Lough Derg (Shannon) SPA (site code 4058) c 1.8km to the east.

The proposed development comprises the construction of 52 houses, demolition of a pump house and all associated site works and services on a site on the southern side of the Dock Road (also referred to as Reddan's Road or the L41341). The site is bounded on two sides by narrow cul-de-sac local roads – to the north of the site is the Dock (L41341) off which access to the proposed development is proposed, this links the village to Reddan quay and to the south is Wood road, a private road which serves to access Raheen woods. The site itself is on lands identified a flood zone C but is in an area which has been subject to fluctuating water levels in the adjoining river. Areas of ponding noted on site at the time of inspection following a period of heavy rainfall and poor drainage characteristics of the site.

The DAU in their submission dated 29/11/2022 noted Lough Derg (Shannon) SPA is of special conservation interest and of high ornithological importance as it supports nationally important breeding populations of Cormorant and Common Tern. In winter, it has nationally important populations of Tufted Duck and Goldeneye as well as a range of other species including Whooper Swan. The conservation objectives are to maintain the special conservation interests of this SPA at 'favourable conservation status'.

The DAU highlighted that Clare County Council should carry out a screening for AA to assess if there is potential to have an impact on the European site. Along with assessing the potential impact on water quality.

Queries raised by Uisce Eireann at application stage regarding requirement for a pre-connection enquiry and the provision of capacity and loading of the proposed pumping station. The NIS noted that a pumping station would be required on the assumption that the proposed development would connect to the Scarriff WWTP.

## **Step 2: Potential impact mechanisms from the project**

The applicant has applied the source-pathway-receptor model in determining possible impacts an effect of the proposed development comprising 52 dwelling houses, 2 no. attenuation tanks and 1 pumping station and associated site works and identified:

- Potential link to Lough Derg (Shannon) SPA (site code 004058) via the Tuamgraney river and Scarriff river,

There is potential for indirect impacts from the project arising from:

- Deterioration of water quality from pollution of surface water during site preparation and construction phase through the release of silt/hydrocarbons/oil into the adjoining watercourse.
- Deterioration of water quality arising from pollution of surface water runoff during the operational phase through vehicular movements and contaminated runoff.
- Deterioration of water quality arising from operational wastewater discharges.

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

The proposed development will not result in any direct effects such as habitat loss on any European site.

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Habitat loss/ fragmentation/alteration
- Habitat degradation as a result of hydrological impacts.
- Disturbance and displacement impacts on QI/SCI
- Changes in water quality and resource

No Natura 2000 sites have a direct hydrological connection to the proposed development site.

The application site is not located within or adjacent to any European site. There is a potential indirect hydrological connection arises in the form of surface water discharge to Lough Derg via via Tuamgraney River and Scarriff river at construction and operational stages. The foul sewer water would be connected to

the public network system and a pumping station required. As such there is an indirect connection to Lough Derg via the foul networks via the Scarriff wastewater treatment plant (WWTP). Uisce Eireann raised at application stage that a pre-connection needed to be lodged which should include details of pump station, expected flows and loading. The planning authority did not raise concerns regarding the pumping station in its planning assessment or appropriate assessment. The NIS submitted noted a pumping station proposed and concluded that in its own or in combination would not cause significant impacts due to the distance from the SPA and that it would not affect loading to the WWTP.

I consider, using the source-pathway-receptor model, foul and surface waters from the proposed development will ultimately drain to Lough Derg and therefore may indirectly have an impact. Therefore, the European site with qualifying interests, which are potentially linked to the proposed development is Lough Derg (Shannon) SPA (site code 004058).

- Surface water pollution (silt/ hydrocarbon/ construction related) from construction works resulting in changes to environmental conditions such as water quality/ habitat degradation.
- Groundwater pollution (silt/ hydrocarbon/ construction related) from construction works resulting in changes to environmental conditions such as water quality/ habitat degradation.
- Deterioration of water body and associated habitat via polluted discharge from Scarriff WWTP during operational phase.

### Step 3: European Sites at risk

An indirect pathway exists from the subject site to Lough Derg SPA via the Tuamgraney River which forms the eastern boundary of the site and flows into the Scarriff river Stream which discharges to Lough Derg.

**Table 1 European Sites at risk from impacts of the proposed project**

Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
Deterioration of water quality, siltation via surface water, construction related pollutants during construction phase	Indirect pathway via the Tuamgraney River/Scarriff River	Lough Derg SPA	Cormorant (Phalacrocorax carbo) [A017]  Tufted Duck (Aythya fuligula) [A061]  Goldeneye (Bucephala clangula) [A067]

			Common Tern ( <i>Sterna hirundo</i> ) [A193]  Wetland and Waterbirds [A999]
--	--	--	--

I note that the applicant included a greater number of European sites in their initial screening consideration with sites within 15km of the development site considered, these included the Slieve Bernagh Bog SAC, Slieve Aughty Mountains SPA, Lower River Shannon SAC, South Bog SAC, Pollagoona Bog SAC and Glendree Bog SAC. Having regard to the nature and scale of the project, separate distance from the site and lack of potential pathways I do not consider that, with the exception of Lough Derg SPA (004058), that further consideration of same is required and can be excluded from the project's zone of influence.

The site is bounded by the Tuamgraney river which flows in to the Scarriff river c350m from the site which in turn flows in Lough Derg c1.8km from the site.

### **Lough Derg (Shannon) SPA**

Lough Derg lies within counties Tipperary, Galway and Clare and is the largest of the River Shannon Lakes, being some 40 km long. Its maximum breadth across the Scarriff Bay -Youghal Bay transect is 13 km but for most of its length it is less than 5 km wide. The lake is relatively shallow at the northern end being mostly 6 m in depth but in the middle region it has an axial trench and descends to over 25 m in places. The narrow southern end of the lake has the greatest average depth, with a maximum of 34 m. The greater part of the lake lies on Carboniferous limestone but the narrow southern section is underlain by Silurian strata. Most of the lower part of the lake is enclosed by hills on both sides, the Slieve Aughty Mountains to the west and the Arra Mountains to the east. The northern end is bordered by relatively flat, agricultural country. The lake shows the high hardness levels and alkaline pH to be expected from its mainly limestone catchment basin, and it has most recently been classified as a mesotrophic system. The lake has many small islands, especially on its western and northern sides. The shoreline is often fringed with swamp vegetation. Aquatic vegetation includes a range of charophyte species, including the Red Data Book species, *Chara tomentosa*. The shoreline is often fringed by swamp vegetation, comprised of such species as Common Reed (*Phragmites australis*), Great Fen-sedge (*Cladium mariscus*) and Bottle Sedge (*Carex rostrata*).

The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the following species: Cormorant, Tufted Duck, Goldeneye and Common Tern. The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds.

Lough Derg (Shannon) SPA is of high ornithological importance as it supports nationally important breeding populations of Cormorant and Common Tern. In winter, it has nationally important populations of Tufted Duck and Goldeneye, as well as a range of other species including Whooper Swan. The presence of Whooper Swan, Greenland White-fronted Goose, Hen Harrier and Common Tern is of particular note as these are listed on Annex I of the E.U. Birds Directive. Parts of Lough Derg (Shannon) SPA are a Wildfowl Sanctuary

#### Step 4: Likely significant effects on the European site(s) 'alone'

The habitats within the site are not of value for qualifying species of the Natura 2000 sites. The site itself does not provide suitable habitats/environments for these species. No ex-situ impacts on qualifying species are therefore considered likely.

There is no evidence of invasive alien species on the site of the proposed development. It is considered, therefore, that effects on the European sites are not likely to arise as there is no evidence of existing invasive species and no direct pathway linking such plants to the European sites. The NIS raised potential impact from Invasive species under cumulative effects which I address further on.

**Table 2: Could the project undermine the conservation objectives 'alone'**

Lough Derg SPA	Conservation Objectives	Could the conservation objectives be undermined (Y/N)?		
		Deterioration of water quality through pollution		
Cormorant (Phalacrocorax carbo) [A017]	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.	Y		
Tufted Duck (Aythya fuligula) [A061]	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA	Y		
Goldeneye (Bucephala clangula) [A067]	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA	Y		



Common Tern (Sterna hirundo) [A193]	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA	Y		
Wetland and Waterbirds [A999]	To maintain or restore the favourable conservation condition of the wetland habitat at Lough Derg (Shannon) SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.	Y**		

The table above includes QIs which could potentially be considered at risk from the project and is not all the QIs for which a relevant site may have been designated.

The proposed development would connect to the Scarriff WWTP Discharge License Reference Do319 (EPA accessed 24 July 2024) noted license issued in 2014. Site update Ref. LR065994 (22/03/22) refers to maintenance works at WWTP (replacement of air diffusers and no impact expected on the receiving waters during these works. 2021 levels of ammonia noted, samples taken for remainder of 2020 did not have an ELV breach for ammonia. Site visit 07/09/2021 noted samples in compliance with license. Uisce Eireann Wastewater Treatment Capacity Register (accessed 13/06/2024 and 27/06/2024) indicated that the Scarriff WWTP has a green status (June 2023) which indicates space capacity available.

The NIS refers to an 'assumption' that the proposed development will be connected to the Scarriff WWTP and that a pumping station would need to be built for this. The application outlines that connection to the Scarriff WWTP is proposed along with a pumping station. Given the contradictory statements contained in the NIS relating to wastewater and the proposed pumping station, I do not consider that the matter has been clearly addressed and therefore the potential impacts not fully considered.

Outstanding issues relating to the pumping station and issues raised by UE are addressed in section 7.3 of this report. In the absence of this information the potential for significant effect on Lough Derg (Shannon) SPA cannot be ruled out without appropriate mitigation measures in place.

Under the Water Framework Directive the water quality status assigned as per the EPA website accessed 24<sup>th</sup> July 2024 and 1<sup>st</sup> August 2024 and noted the 2022-

2027 third cycle of the WFD assigned gave the Graney (Shannon) 050 (IE\_SH\_25G040400) a status of 'poor' for WFD period 2016-2021. This refers to the adjoining river referred to in the application as the Tuamgraney river.

Having regard to the foregoing I consider the proposed development has the potential to undermine the conservation objectives of the wetland habitat at Lough Derg SPA which is a resource for the regularly occurring migratory waterbird that use it.

**\*\***The NIS does not consider the development to be a threat to the conservation objectives for the species listed in the SPA as it would not lead to the decrease in the population trend of any bird species, would not lead to any decrease in the range, timing or intensity of use of any areas within the SPA by the QI species and would not lead to the loss of any wetland habitat area. I accept that that the development will not have a direct impact on the conservation objectives for the species. However, there may be an indirect impact on the wetlands habitat which is listed as a QI by virtue of the overall ecological environment through the potential for waterborne pollution. Therefore the proposed development has the potential to undermine the conservation objectives of the wetlands habitat which is listed as a QI for the Lough Derg SPA and which other QI may be dependent on.

I conclude that the proposed development would have a likely significant effect 'alone' on – the QI for which of the Lough Derg SPA is designated, from effects associated with contaminated surface water discharge, wastewater discharges and potential deterioration in the water quality of the Tuamgraney River/Scarriff river which flow into Lough Derg. An appropriate assessment is required on the basis of the effects of the project 'alone'. Further assessment in-combination with other plans and projects is not required at this time. **Proceed to AA.**

**Where relevant, likely significant effects on the European site(s) 'in combination with other the plans and projects'**

No significant in-combination or cumulative effects are identified in relation to potential effects associated with other plans or projects.

The NIS has referred to the potential cumulative impacts arising from invasive species. There is no record of invasive species on the site.).

Subject to appropriate drainage and wastewater treatment requirements being implemented for developments/projects within the immediate vicinity then there will be no significant adverse effects due to the proposed project as a result of any in combination effects with these individual planning applications.

I conclude that the proposed development would have no likely significant effect in combination with other plans and projects on the qualifying features of any European site(s).

#### **Overall Conclusion- Screening Determination**

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information

I conclude that the proposed development is likely to have a significant effect on the QI of Lough Derg (Shannon) SPA 'alone' in respect of effects associated with the deterioration of water quality through pollution.

It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is required on the basis of the effects of the project 'alone'.