



To: Caryn Coogan, Planning Inspector and The Board
(Board member Martina Hennessy)

From: Dr Maeve Flynn MCIEEM Inspectorate Ecologist

Re: Screening for Appropriate Assessment for the proposed development of
Construction of 71 no. residential units at Mullingar, County Westmeath

1. Background

Reference ABP-317280-23 refers to a First Party appeal related to the construction of 71 no. residential units, comprised 30 apartments and 14 two-story houses, vehicular access, communal bin stores and bicycle stores on the Ardmore Road, Mullingar, Co. Westmeath. The proposal includes all associated hard and soft landscaping, boundary treatments, footpaths, an ESB substation and all other ancillary works above and below ground. Matters related to Appropriate Assessment (AA) and biodiversity were a reason for refusal of planning by Westmeath County Council. The Council considered that there was an *absence of satisfactory details to demonstrate that the proposed development would not significantly impact European Sites* and that the development would be contrary to PNH6 of the Mullingar Local Area Plan 2014-2020 as extended.

In considering this case, the Board requested that the planning Inspector consult with the Inspectorate Ecologist in relation to the approach taken by the 1st Party in the Appropriate Assessment (AA) Screening Report submitted with the case and to

consider if an updated AA screening was required as part of an addendum for the Board.

This technical note aims to address the Boards request with focus on matters raised by the Department of Housing, Heritage and Local Government (via the Development Applications Unit 19th April 2023) in their submission to the Local Authority, which the Board consider may not have been fully addressed in the (revised) AA Screening report submitted with the appeal.

In addressing reasons for refusal, a revised Screening report for AA prepared by consultants Dúlra is Dúchas Teoranta (6th June 2023) and a construction environmental management plan (CEMP) prepared by SDS design engineers were submitted as part of the suite of documents for the 1st party appeal. I note that an Ecological Impact Assessment report was also submitted to address wider biodiversity issues including impacts on bats, hedgerows and tree removal and landscaping.

2. Department of Housing, Heritage and Local Government observations (in relation to AA Screening)

The Departments observations on the original planning application to Westmeath County Council were centred around hydrological connectivity between the proposed development site and a tributary of the River Brosna which feeds into Lough Ennell, a European Site, via the drainage network on the site. Lough Ennell is designated Special Area of Conservation (SAC site code 0685) for habitats Hard oligo-mesotrophic waters and Alkaline Fen and designated Special Protection Area (SPA site code 4044) for three waterbird species, Pochard, Tufted Duck, Coot and for the wetland habitats supporting those species.

The Departments submission stated that the drainage channel on the proposed development site discharged into a tributary of the River Brosna and was of the view that in the absence of information on the construction impacts of the scheme, the proposed development had potential to cause adverse effects on the qualifying interest habitats of Lough Ennell SAC and special conservation interests (SCI) of the

SPA downstream and on biodiversity at the development site due to a number of factors including:

- Removal of trees, hedgerows and other vegetation
- Destruction of breeding/ resting sites of protected species
- Inappropriate external lighting
- Water contamination from construction work
- Habitat fragmentation
- Disturbance

The Department observed that potential impacts during the construction phase appeared to be overlooked in the AA Screening report. A CEMP had not been submitted and the proposal lacked mitigation measures to protect the adjacent watercourse. The submission recommended that a CEMP should be completed, and the AA Screening revised to take account of the measures in the CEMP.

3. Overview of AA Screening Report submitted (revised for 1st Party appeal)

The revised AA Screening report (06 June 2023) states that the preliminary construction management plan by SDS Engineers will be assessed to address the concerns raised by the DAU. However, on review, the report remains largely unchanged from the original version submitted to the Local Authority. In terms of *elements of the proposal likely to give rise to impacts on local Natura 2000 sites* examined under the heading Assessment criteria there is addition text under issue no. 2 Absence of surface water management measures:

“The drain on the southern boundary flows in a west to east direction into a culvert on the eastern boundary of the proposed development site. In accordance the preliminary CEMP, no untreated surface water will discharge to the drain on the southern boundary during construction”.

There is no reference to the elements of the development that could give rise to construction related impacts such as site clearance, excavation, soil storage etc. In considering indirect impacts during construction the AA Screening report states that none are likely as the CEMP completed for the site has measures to protect the drain on the southern boundary including the following:

- Settling lagoon/ holding pond to be used during the construction phase- preventing silt laden run-off into the drain
- Designated concrete washout area to prevent uncured concrete entering the drain
- Central refuelling location to prevent hydrocarbon infiltration
- Emergency response kit to contain and deal with any accidental spillages

The revised AA Screening report refers to the CEMP as the method by which the prevention of siltation and pollution to the receiving drainage channel will be managed and no further assessment of potential impacts is considered in view of the conservation objectives. The revised AA Screening report concludes that the proposed development will not significantly impact Lough Ennell SAC or SPA.

4. Review and assessment

Having reviewed the DAU submission, reasons for refusal by Westmeath County Council and the documentation submitted with the 1st Party Appeal, I am satisfied that the only possible impact mechanism that requires consideration in terms of possible significant effects on European Sites is that related to surface water discharge during the construction phase in view of the drainage channel on site and possible connections to downstream European sites of Lough Ennell SAC and SPA.

Measures forming part of the overall design of the proposal including SUDs and integration of surface water and wastewater into the municipal systems will ensure that no risks arise from the operation of the proposed housing development.

I consider that the revised AA screening report submitted does not fully address the issues raised by the Department in the earlier submission to the Local Authority. The examination of possible construction stage impacts is not expanded upon to any significant extent, rather, the role of the CEMP in site management is relied upon to exclude impacts from arising in the first instance. However, I also consider that some of the concerns raised by the Department are not relevant to this site and that the risks of adverse effects via the stated hydrological connection to the River Brosna and Lough Ennell may be lower than indicated in the submission.

From the habitat description provided, examination of aerial photography and site visit photographs taken by the Inspector, I am satisfied that the proposed development site does not provide habitat that could support SCI bird species for Lough Ennell SPA as all three SCI species are waterbirds dependant on the lake habitat and no ex-situ issues arise. The proposed development will not cause any disturbance to any bird species associated with the SPA due to distance from Lough Ennell and will not result in habitat fragmentation that could affect the SAC or SPA in any manner given the conservation objectives are for lake and fen habitat, neither of which occur on or in the vicinity of the proposed development site.

The drainage ditch on the site is not a stream or mapped watercourse. The Ecologist defines it as a drainage ditch FW4 with water evident during a site visit in February (2023) and the immediate habitat is classified as wet grassland (GS4). From examination of aerial photography, the Ecologists description and site photograph's the drainage ditch appears to serve surface water drainage of the field, particularly the southern part which is characterised by wetter conditions, and runs south along the boundary hedgerow, into a piped culvert at the field entrance and then a section of open drain flowing to the east following the gradient which slopes from the site boundary into an existing culvert (see drawing no 2129-PA-00-002 dated Jan 2023 Van Dijk Architects). Of note is that the flow direction is to the east and not west towards Mullingar town centre (and main channel of the River Brosna). The DAU submission refers to a tributary of the River Brosna however, there is no clear pathway discernible for where the culvert eventually discharges as flow is to east and away from more immediate receiving tributaries to the west of the site. Regardless of the indirect nature or distance to a receiving watercourse, a hydrological connection with the River Brosna exists as the site is within the catchment.

The preliminary CEMP prepared for the proposed housing development describes the proposed works and sets out environmental measures to manage, minimise or mitigate any potential environmental impacts that may arise. It is stated that it will be updated to include more site-specific information once the required statutory permissions are obtained, and the construction management team are appointed which is standard procedure for ensuring the incorporation of any additional conditions that may be part of a grant of permission.

The document considers potential surface water impact mechanisms that could occur during the construction phase, risks that should also have been included in the AA Screening report, including the risk of pluvial flooding mobilising silt into adjacent drainage channel and the risk of encountering a high-water table and dewatering management. Standard measures to manage these risks are set out in section 5 and 6 of the preliminary CEMP. The risk of encountering a high-water table during excavation is detailed in section 2.6 with management of same via temporary surface water settling lagoon/ holding pond that can be pumped from the excavation areas to retain and settle excess water (24hr holding period).

The preliminary CMEP sets out standard considerations of the site and project details, environmental management policy and procedures. Section 5 details general requirements for construction site management including provision of hoarding and fencing, materials storage, concrete/ mortar washout management, fuel and chemical storage, spill control measures, emergency planning and response and extreme weather events among other general site management requirements. These are considered “good housekeeping policy” and are standard practice at construction sites. A number of these standard measures are of relevance to the consideration of possible impacts on European Sites as they include management of run off from earthworks and material stockpiles to prevent sit entering watercourses and the consideration of designated concrete washout areas to avoid release of cement leachate from the site, fuel oil and chemical storage.

I consider that application of these standard pollution control measures would reduce the risks of infiltration of silt and potentially polluting construction into the receiving drainage ditch to a very low level, thereby reducing the potential for effects to any sensitive receptors hydrologically connected via the surface water network including the River Brosna catchment and downstream European Sites to non-significant levels.

Section 6 of the CMEP details further environmental/ operational control measures including measures for biodiversity, protection of habitats, invasive species, protection of soil and groundwater, foul drainage among others. This section details management measures specifically related to the protection of surface water quality

and provides further consideration of the standard measures outlined in section 5 including stockpile management, good housekeeping, handling of potential pollutants, protection of soil and groundwater and a plan for dealing with invasive species even though none were recorded on site.

Overall, I am satisfied that the preliminary CEMP is a comprehensive document that fills a number of gaps of the revised AA Screening report. The measures detailed are all standard measures that represent good construction site management and pollution prevention regardless of proximity or otherwise to European sites.

5. Conclusion and recommendations

I consider that the revised AA Screening report submitted with the 1st Party Appeal suite of documents did not wholly address issues raised in the Local Authority's reasons for refusal based on AA grounds and issues raised in the Department of Housing, Heritage and Local Government. However, the Inspector and the Board are not confined to the consideration of that report only, and the preliminary CEMP provides objective information on construction phase risks to surface water and presents standard measures that will be effective in managing that risk.

I consider that application of these standard pollution control measures would reduce the risks of infiltration of silt and potentially polluting construction into the receiving drainage ditch to a very low level, thereby reducing the potential for effects to any sensitive receptors hydrologically connected via the surface water network including the River Brosna catchment and downstream European Sites of Lough Ennell SAC and SPA to a non-significant level.

I consider that these measures are effective, standard measures that represent good construction site management and pollution prevention regardless of proximity or otherwise to European sites and can therefore be taken into consideration by the Inspector and the Board at the screening stage for AA.

Signed: 

27/09/2024

Maeve Flynn BSc, PhD. MCIEEM

Inspectorate Ecologist