



An  
Bord  
Pleanála

## Inspector's Report ABP-319358-24

### Development

Construction of 56 residential units comprising 34 houses and 22 apartment/duplex units and all associated site works. NIS received with application.

### Location

Drumbiggle, Ennis, Co. Clare

### Planning Authority

Clare County Council

### Planning Authority Reg. Ref.

2325

### Applicant(s)

Leadlane (Dumbiggle) Limited

### Type of Application

Permission

### Planning Authority Decision

Refuse Permission

### Type of Appeal

First Party

### Appellant(s)

Leadlane (Dumbiggle) Limited

### Observer(s)

Gerard & Mary O'Brien

Michael O'Flanagan

Martha Dillon

Tony Conroy

John Hodnett

Kevin Tiernan

Sean Connolly

**Date of Site Inspection**

13<sup>th</sup> November 2024

**Inspector**

Matthew McRedmond

## Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	6
3.3. Prescribed Bodies .....	11
3.4. Third Party Observations .....	11
4.0 Planning History .....	13
5.0 Policy Context .....	14
5.1. National and Regional Planning Policy .....	14
5.2. Clare County Development Plan 2023-2029 .....	16
5.3. Natural Heritage Designations .....	19
5.4. EIA Screening .....	19
6.0 The Appeal .....	21
6.1. Grounds of Appeal .....	21
6.2. Planning Authority Response .....	23
6.3. Observations .....	24
7.0 Assessment .....	25
8.0 AA Screening .....	41
9.0 Recommendation .....	60
10.0 Reasons and Considerations .....	61
Appendix 1 – Form 1: EIA Pre-Screening & Form 2: Preliminary Assessment	

## **1.0 Site Location and Description**

- 1.1. The subject site is located at Drumbiggle, Ennis, Co. Clare, approximately 650m southwest of Ennis Town Centre. The site is approximately 2.45 hectares in area and is generally 'L' shaped. Access to the site is via Drumbiggle Road that serves Ennis Rugby Club, Ennis Nursing Home and Páirc na Coille Retirement Village, which are located to the south and east of the subject site. The area to the north and west is defined by detached residential properties that are accessed from Showgrounds Road.
- 1.2. The subject site is part of a wider landholding in the same ownership that is currently the subject of a third-party appeal (Ref. 21/599, ABP-313217). This adjoining development was granted permission by Clare County Council for 58 residential units but is now the matter of a separate appeal.
- 1.3. The subject site generally consists of open scrubland, trees and overgrowth with some derelict portacabin buildings currently situated within the grounds. There is a culverted watercourse known as the Cahercalla Stream (or occasionally known as Cloghleagh watercourse) running through the site in a west-east direction, which proceeds into an open drain along the south east boundary of the site.

## **2.0 Proposed Development**

- 2.1. The proposed development consists of the construction of 56 residential units that includes 24 houses and 42 apartments including duplex units, a 230sqm creche and all associated site works. The residential element consists of the following:
  - 4no. 4-bed houses.
  - 20no. 3-bed houses.
  - 10no. 3-bed duplex units.
  - 6no. 2-bed duplex units.
  - 16no. 1-bed apartments.
- 2.2. The maximum height of the proposal is 3-storeys, with an overall density of 30.2 units per hectare proposed. A total of 105 residential car parking spaces are

proposed including visitor spaces, with 14 spaces separately proposed for the creche.

- 2.3. The proposal includes the provision of shared communal and semi-private open space, landscaping treatments, road and footpath upgrades, and surface and foul water drainage.

### 3.0 Planning Authority Decision

#### 3.1. Decision

On the 23<sup>rd</sup> of February 2024 Clare County Council refused permission for the subject development for the following reasons:

- “1. The subject site is located on lands that are zoned as ‘Strategic Reserve’ as per the Clare County Development Plan 2023-2029, which lands are identified for the long-term sequential expansion of Ennis. The Planning Authority considers that the proposed development does not meet the criteria for exceptions as set out in the current Development Plan for the subject zoned lands and therefore the proposal would be premature by reference to the order of priority for development indicated in the Development Plan. The proposed development would also materially contravene the zoning objective of the site for the zoning of land as ‘Strategic Reserve’ and would be contrary to the proper planning and sustainable development of the area.*
- 2. It is an objective under CDP 15.12 of the Development Plan (Biodiversity and Habitat Protection) to ensure there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5 kilometres of known roosts. It is considered that the proposed development by reason of the clearance of internal wooded and scrub area of foraging habitat from the site as well as some treelines and hedgerows, would lead to a loss of Lesser Horseshoe Bat feeding habitat and would therefore contravene the provisions of CDP 15.12. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*
- 3. Based on the information as submitted with the application to date, and having regard to the ground conditions and shallow depth of rock on site, together with the proximity of the site to an existing stream/watercourse, the Planning Authority are not*

*satisfied in respect of proposals for ground and surface water management, and the implications of same for flood risk management at this location. To permit the proposed development would therefore be contrary to the proper planning and development of the area.”*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Local Authority Planner had regard to the material submitted with the application, the locational context of the site, national and local planning policy, the referral responses received, and submissions made on the application. Their assessment included the following:

- At the time of the initial Planner's Assessment, the site was zoned 'Residential' and was considered adequately serviced, was previously disturbed on foot of a previous permission and the proposed residential and creche proposal was considered acceptable in principle.
- The layout of the proposed development including bay windows addressing the existing road to the south was considered to be acceptable, as is the proposed area of open space which constitutes 15% of the site (3,675sqm).
- The semi-detached and terraced dwellings are broadly consistent with that proposed under Ref. 21/599 and are therefore considered acceptable. The 3-storey duplex units require further articulation, and this was recommended to be addressed through further information.
- Further information was also required in relation to storage spaces provided in the context of Quality Housing for Sustainable Communities Guidelines and Appendix 1 of the Design Standards for New Apartments. The mix, size and internal layout of the proposed apartments was considered acceptable. The overall mix of unit types was considered acceptable.
- Based on the developable area of the site, compact growth objectives and the location of the site within walking distance of Ennis Town Centre, the proposed density of 30.2 units per hectare was considered to be acceptable.

- Private open spaces at ground floor level and at balcony level was considered to meet relevant CDP and Apartment Guideline standards.
- Issues of overlooking and overbearance are not expected to occur to or from the proposed development with properties to the north, south and west due to adequate separation distances and proposed landscaping within the scheme.
- Overshadowing was not considered to be an issue owing to the existing screening and topography of the wider landscape, and given the existing built form in the immediate vicinity as well as the layout of the proposed development.
- Bin storage areas are considered adequate. Details of allocation and capacity can be confirmed through condition if permission is forthcoming.
- A condition was recommended in relation to internal noise levels.
- The proposed layout achieves adequate, 1m separation distances to the sides of shared boundaries and the proposed creche is adequately setback from adjoining properties to minimise any noise impacts.
- A condition should be attached in relation to submission of a Construction and Environmental Management Plan.
- Further information is required in relation to ground levels in the proposed development.
- Boundary treatments generally acceptable but public facing walls at roads and spaces should be faced with natural stone. Further information was required in this regard. Treatment of balconies also required clarification.
- Additional planting and landscaping required around car parking areas. Removal of existing fair – poor condition trees was noted as acceptable.
- The level of traffic generated by the proposed development was not considered to be so significant that it would impact on the surrounding road network at peak times.
- Further information was required in relation to traffic calming measures, including restrictions on parking at the access road adjacent to the proposed creche.

- While the shortfall of 1no. spaces in total was noted, this reduced number was not considered to be significant. Further details in relation to car parking management was required.
- Wastewater and water supply can be provided by Uisce Eireann without the need for upgrades. Further information was required in relation to stormwater drainage and attenuation, as well as the capacity of the Cahercalla Stream and associated flood risks.
- The potential impact of the ground and construction works on existing karst system at the subject site should be considered.
- A flood risk assessment should be provided by the applicant for the subject site and the adjoining application site (Ref. 21/599).
- A bat survey across all seasons (and not just August/September with a site walkover in March) should be provided by the applicant. Further information was required in relation to impacts on bats also to determine what, if any, impacts on qualifying interests of designated sites, particularly on the Lesser Horseshoe Bat which is a QI of Pouladatig Cave SAC and Newhall and Edenvale SAC.
- Further information was sought by the Planning Authority in relation to 5no. items.

#### Further Information Response

3.2.2. Between the time of the further information request and further information response a new Clare County Development Plan 2023-2029 was adopted. The new plan changed the zoning of the subject site from 'Residential' to 'Strategic Reserve'.

3.2.3. The applicant submitted a further information response which included the following:

- A Site-Specific Flood Risk Assessment that identified no flood events are expected at the subject site or surrounding areas and by taking extra precautions to manage flows through the Cahercalla Stream culvert.
- Confirmation that no site clearance works were undertaken to evaluate the ground rock conditions as it may disturb the ecological survey work



being undertaken. The applicant has submitted that following a grant of permission, site investigations can be undertaken.

- Revised Bat Survey information that confirms the number of Lesser Horseshoe Bat flyovers recorded are low and the relative association with Newhall and Edenvale Complex SAC and the Pouladatig Cave SAC is unlikely as the site is not identified for foraging habitat of these SAC. The NIS and EcIA have not been amended as their conclusions remain the same with any potential impacts being adequately mitigated.
- Updated road layout drawings that indicate revised parking layouts, revised pedestrian facilities and numbering of car parking spaces.
- Revised design of the duplex units, confirmation of details on balcony treatments, revised creche design and commitment to face walls with natural stone.
- The applicant provided a justification statement for the development of the site given the change in zoning from 'Residential' to 'Strategic Reserve'.

### Planning Authority Response

The Planner's Response to the F.I. submitted included the following:

- It would not now be appropriate to permit residential development at the subject site given the change in land use zoning and would represent a material contravention. Refusal was recommended on this basis.
- The clearance of wooded and scrub areas within the site, and the recorded bat activity within the site gives rise to concerns in relation to loss of feeding habitat for the Lesser Horseshoe Bat. This is contrary to Objective CDP 15.12 of the County Development Plan.
- The absence of detailed investigation surveys gives cause for concern and lack of information in relation to the existing karst landscape character of the site and the potential impacts this may have on surface water management and flood risk within the site.

- The Planning Authority recommended refusal for the reasons set out above.

#### 3.2.4. Other Technical Reports

- County Geologist – No information provided in relation to depth of limestone bedrock. Derogation licence from NPWS required if any impacts on bat roosts. Use of herbicides is contrary to the Clare County Council Biodiversity Action Plan.
- Executive Engineer: Public Lighting – Proposals considered acceptable and to required standard.
- Environmental Assessment Officer – There is a residual flood risk from potential inlet blockages on the Cahercalla Stream. A flood risk assessment should be submitted that takes into consideration phases 1 and 2 of the proposed development, as well as flood risk at Willsgrove. Bat surveys across all seasons should be provided to measure impacts on the Lesser Horseshoe Bats that are associated with nearby European Sites. Following the submission of F.I. the Environmental Officer concluded that the subject proposal would result in the removal of scrub and wooded areas which are considered to be foraging areas for the Lesser Horseshoe Bat, and which is considered contrary to CDP Objective 15.12.
- Taking in Charge – Surface water details considered appropriate. All footpaths to be 2m in width. Construction mitigation measures recommended. All aspects of the development to comply with Clare County Council's Taking in Charge Policy. Other standard conditions recommended including EV parking, ducting, and noise, dust and vibration mitigation.
- Roads Design Office – Sightlines acceptable. Turning areas to be moved away from parking areas to avoid conflicts. Traffic calming measures recommended on longer straights of road. At FI stage the roads design office recommended additional measures for the protection of cyclists at the creche and for residential parking to be appropriately labelled to prevent creche parking.

- Ennis MD – Mitigation of flood impacts on lower floor level units recommended. Connection to existing concrete attenuation tank should be illustrated, without impacting on Cahercalla stream culvert. Standard stormwater management conditions recommended. Construction management conditions, including management of dust and dirt/mud is recommended. Management of illegal parking at Drumbiggle Road, adjacent to creche should be outlined. A report on existing boundary treatment conditions should be provided by the applicant.

### 3.3. Prescribed Bodies

- 3.3.1. Development Applications Unit (DAU) – Newhall and Edenvale Complex SAC and Pouladatig Cave SAC are identified as being within proximity of the subject site. Bat surveys over all seasons including winter are recommended, particularly in relation to hibernation roosts. The subject proposal represents a net loss in Lesser Horseshoe Bat feeding habitat which is contrary to Objective 14.11 of the Clare County Development Plan. Any disturbance or removal of soprano pipistrelle roosts requires a derogation licence from NPWS. At FI stage the Department further noted the loss of feeding habitat for Lesser Horseshoe Bat. Alternative species to Ash should be planted due to Ash dieback disease. Lighting below 2700kelvins is also recommended.

### 3.4. Third Party Observations

A number of submissions were made by third parties at initial application stage and at Significant FI stage when the application was re-advertised and submissions sought. The main issues raised in third party submissions can be summarised as follows:

#### Biodiversity

- The biodiversity value of the site would be destroyed as a result of the proposal. Numerous species of wildlife are present on the site currently. Potential badger setts on the site would be destroyed.
- Alternative, biodiversity and wildlife supporting uses should be explored on the site, which would complement the retirement village adjacent.

- The submitted NIS does not refer to a number of plant species that are present on the site.
- Bat surveys should have been conducted in winter months as well. The findings on Lesser Horseshoe Bats must be considered.
- Third party submission provided their own bat report of the site. Survey period is considered late in season for optimum survey work. Flight path information not provided in survey results.
- Potential badger sett on subject site. Surveys undertaken did not adequately review this possibility.
- The proposed development is in contravention of the Clare Biodiversity Action Plan.
- No consideration was given to migratory routes of birds and bats in the submitted survey results. Foraging habitats of Lesser Horseshoe bat should be protected in line with County Development Plan and Biodiversity policies.
- The proposed development including the removal of trees will result in air quality issues.

#### Traffic Safety

- Proposed development could lead to pedestrian traffic safety issues. Proposed pedestrian link to Willsgrove is not acceptable.

#### Flood Risk

- Flood risk issues are a concern for residents of Willsgrove and Cahercalla Drive.
- Lack of information on ground conditions and rock formation a concern. Assessment of Karst Landscape submitted in a submission on the FI response suggests possibility of Karst Landscape and associated underground intricacies. Without full understanding of the ground conditions, any redirection of flood waters within the Cahercalla Stream are deemed imprudent. The proposed development within the Cahercalla

Stream floodplain may impede the drainage of floodwater through the Karst system.

- Existence of attenuation tank relied on by the applicant is questioned.
- Insufficient information provided in relation to flood risk that would result from the proposed development.

#### Zoning and Other Issues

- The subject proposal cannot be considered under the current land use zoning and given the availability of other residential zoned land in Ennis.
- The beneficial ownership of the site is not evident from the submitted documentation.
- Proposal is out of character with the area.

## 4.0 Planning History

The following is the most recent, relevant planning history for the subject site and surrounds.

### Subject Site

**Clare CC Ref. 06/21010** – Permission granted for 116no. residential units, creche, offices and retail units.

**Clare CC Ref. 11/21052** – Permission granted for an extension of duration for Ref. 06/21010.

**Clare CC Ref. S1/028 (ABP Ref. ABP-316590-23)** – The subject site was considered by the Planning Authority to be in scope for the purposes of the Residential Zoned Land Tax. This decision was subsequently upheld by An Bord Pleanála. Notably, this decision was made based on the previous 'Residential' zoning for the site.

### Land to South

**Clare CC Ref. 21/599** – Permission granted by Clare County Council for the development of 58no. residential units on lands to the west of Pairc na Coille

Retirement Village. This application is currently on appeal under case reference ABP-313217-22.

## **5.0 Policy Context**

### **5.1. National and Regional Planning Policy**

- 5.1.1. The NPF is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. National Strategic Outcome No. 1 is 'Compact Growth'. Activating strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development, is a top priority.
- 5.1.2. The NPF contains several policy objectives that articulate the delivery of compact urban growth as follows:
- NPO 3 (c) aims to deliver at least 30% of all new homes targeted for settlements other than the five cities, to be within the existing built-up footprints.
  - NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards.
  - NPO 27 seeks to integrate alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility.
  - NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location.
- 5.1.3. Relevant national policy also includes Sustainable Residential Development and Compact Settlements: Guidelines for Planning Authorities, 2024 ('the Compact Settlement Guidelines') which require appropriate residential densities (no less than 30-50 units per hectare) in key towns within with more than 5,000 population.
- 5.1.4. It is worth noting the National Planning Framework is currently undergoing a comprehensive review to reflect changing population and demographic projections for Ireland, which will necessitate revised housing targets countrywide. 50,500 new

dwellings per annum are required to meet demand, scaling up to 60,000 homes in 2030.

- 5.1.5. The Regional Spatial and Economic Strategy for the Southern Region, 2020-2032 is relevant in terms of the strengthening of towns and villages and to enable enhanced roles for sub-regional settlements. Ennis is a Key Town comprising a large-scale urban centre functioning as a self-sustaining regional driver.

## **5.2. Rebuilding Ireland – Action Plan on Housing and Homelessness 2016**

- 5.2.1. This is a government initiative which identifies the critical need for accelerating housing supply.

## **5.3. National Biodiversity Action Plan (NBAP) 2023-2030**

- 5.3.1. The NBAP includes five strategic objectives aimed at addressing existing challenges and new and emerging issues associated with biodiversity loss. Section 59B(1) of the Wildlife (Amendment) Act 2000 (as amended) requires the Board, as a public body, to have regard to the objectives and targets of the NBAP in the performance of its functions, to the extent that they may affect or relate to the functions of the Board. The impact of development on biodiversity, including species and habitats, can be assessed at a European, National and Local level and is taken into account in our decision-making having regard to the Habitats and Birds Directives, Environmental Impact Assessment Directive, Water Framework Directive and Marine Strategy Framework Directive, and other relevant legislation, strategy and policy where applicable.

## **5.4. Conservation Supporting Document – Lesser Horseshoe Bat**

- 5.4.1. The National Parks and Wildlife Service listing for Newhall and Edenvale Complex SAC (site code 002091) and Pouladatig Cave SAC (site code 000037) includes a Conservation Objectives Supporting Document (2018) for lesser horseshoe bat (*Rhinolophus hipposideros*).
- 5.4.2. Section 4.4 of the supporting document notes that Lesser Horseshoe Bats tend to forage in summer in broadleaved woodland and around riparian vegetation for each roost, a 2.5km zone is considered an appropriate distance to foraging areas for the purpose of the current SSCO targets. The 2.5km zone around each known roost is mapped and potential foraging grounds within the zone are identified and mapped

for each SAC. The target is that there is no significant decline in potential foraging habitat within 2.5km of qualifying roosts.

5.4.3. Section 4.5 of the supporting document refers to Linear features. The LHB species follows commuting routes from its roost to its foraging grounds. Lesser Horseshoe Bats will rarely cross open ground and are particularly averse to doing so unless it is very dark (e.g. Schofield, 2008). Consequently, in order to link roosting and foraging sites, linear features such as hedgerows, treelines and stone walls provide vital connectivity for this species, most importantly within 2.5km around each roost (Schofield, 2008). Linear features such as tree lines are also sometimes used for foraging by lesser horseshoe bats (Bontadina et al., 2002). The target is that there is no significant loss of linear features within 2.5km of qualifying roosts.

5.4.4. In respect of light pollution, the target is that there is no significant increase in artificial light intensity adjacent to qualifying roosts or along commuting routes within 2.5km of those roosts.

## 5.1. **Lesser Horseshoe Bat Species Action Plan 2022-2026, Government of Ireland and Vincent Wildlife Trust**

5.1.1. The aim of this plan is to guide, inform and provide structure for the conservation management of Lesser Horseshoe Bat species over the next five years. Section 4. summarises the Actions for roost recording and protection, roost buffers, roost monitoring, connectivity and awareness.

## 5.2. **Clare County Development Plan 2023-2029**

5.2.1. The site is zoned Strategic Residential Reserve (SR8) in Volume 3a - Ennis Municipal District of the Clare County Development Plan 2023-2029. As per volume 1, these areas are in serviced settlements to facilitate longer term growth needs across the county and are most appropriate for long term sequential expansion. The site is within the Cloughleigh/Drumbiggle Neighbourhood. (section 2.9 of Vol.3a).

5.2.2. Site SR8 Adjacent to Pairc na Coile Nursing Home: *"This site has been identified for residential development. The area of the site to the west of Park na Coille Nursing Home includes an attractive natural habitat a portion of which should be retained, at least in part, as open space between any new development and the existing nursing home, providing an open space buffer between the two developments. This site is*



*located less than 1km from a known bat roost. Proposals for development on this site must be informed by an ecological assessment of the site and appropriate bat surveys and shall ensure that there is no loss of habitats used by Lesser Horseshoe bats. All design proposals, including lighting, must be informed by the results of the bat survey. A landscape management plan must also accompany any development proposals. Development proposals shall include mitigation for bats, water quality and Special Conservation Interest Birds, as set out in Volume 10a Natura Impact Report as it relates to SR8 (NIR mitigation 2,3 and 4a). There is a small watercourse (Cahircalla Stream) that runs through the site. A site-specific Flood Risk Assessment is required in accordance with Section 4.3 of the Strategic Flood Risk Assessment Volume 10c and the sequential approach will be applied.”*

- 5.2.3. Strategic Residential Reserve: These are not in general intended for development within the current plan period although part of the land may be considered subject to meeting criteria with respect to connectivity and access to services and amenities. The following exceptions for development of strategic reserve areas are stated in Vol. 1 of the CDP:

*‘1. Non-residential development that is considered to be appropriate to the site context.*

*2. In addition to protecting these lands for the long-term expansion of these settlements, consideration may be given to the development of some of the strategic residential reserve lands before the end of the current plan period. The residential development of such lands will only be considered from the beginning of year four of the Plan (April 2027) in order to give an opportunity for zoned land to be brought forward for development. It will also be a requirement that the proposed ‘Strategic Residential Reserve’ lands can be serviced and can offer a reasonable substitute in terms of being delivered within the lifetime of the plan and are sequential lands within the settlement with good connectivity and access to services and amenities.*

*In its assessment of such proposals, the Planning Authority must be satisfied that the development of residential zoned land is progressing faster than expected and a shortage of available lands may arise or that residential zoned land is not being brought forward as expected and a shortage may arise*

*which would hinder the delivery of residential units to meet demand during the plan period. The assessment will also be subject to compliance with the Core Strategy, and that the development permitted will not prejudice the future use of the remaining Strategic Residential Reserve lands for the longer-term growth needs of the plan area'*

5.2.4. Strategic Flood Risk Assessment Volume 10C, Section 4.3: Unmapped Fluvial Risk:

*This states: The Flood Zones have been derived for watercourse with a catchment area greater than 5km<sup>2</sup>, which captures the majority of sources of fluvial flood risk in the Clare settlements. However, there may be cases where a watercourse has been identified, either through mapping or through site visit and local knowledge, but due to the size of the catchment, the Flood Zone has not been delineated. In these cases, it is the responsibility of the applicant to undertake an appropriately detailed FRA and to then apply the sequential approach as the Plan Making Justification Test has not been satisfied in these cases.*

5.2.5. The CDP provides objectives for the protection of biodiversity both generally and in an urban context. DP15.13 relates to urban ecology whereas CDP15.12 refers to the protection of biodiversity and habitats in the wider county. CDP 15.12 states:

*"It is an objective of Clare County Council:*

*a) To protect and promote the sustainable management of the natural heritage, flora and fauna of the County both within protected areas and in the general landscape through the promotion of biodiversity, the conservation of natural habitats, the enhancement of new and existing habitats, and through the integration of Green Infrastructure (GI), Blue Infrastructure and ecosystem services including landscape, heritage, biodiversity and management of invasive and alien species into the Development Plan;*

*b) To promote the conservation of biodiversity through the protection of sites of biodiversity importance and wildlife corridors, both within and between the designated sites and the wider Plan area;*

*c) To support the implementation of the All Ireland Pollinator Plan, National Biodiversity Action Plan and National Raised Bog SAC Management Plan;*

*d) To ensure there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5km of known roosts;*

*e) To implement and monitor the actions as set out in the Clare County Biodiversity Plan; and*

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

- 5.2.6. External lighting shall be provided in accordance with guidelines contained in Recommendations for Site Development Works in Housing Areas published by DoEHLG and any subsequent publication or successor to this document. Street lighting proposals shall have regard to Bat Conservation Ireland; Guidance Notes for: Planners, engineers, architects and developers (Bats and Lighting) together with Bat Conservation Trust; Bats and artificial lighting in the UK, Bats and the Built Environment – Guidance Note 08/18.

### **5.3. Natural Heritage Designations**

- 5.3.1. The following are the closest European Sites in proximity to the site:
- Newhall and Edenvale Complex SAC approx. 2.4km southwest of the site.
  - Pouladatig Cave SAC approx. 2.4km to the west.
  - Lower River Shannon SAC approx. 1.9km to the east.
  - The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) - approximately 3.4km southeast.
  - Ballyallia Lake SAC approx. 2.8km to the northeast.
  - Ballyallia Lough SPA approx. 3.2km northeast.
- 5.3.2. Additional sites within 15km of the site are referenced in the AA section of this report. The applicant has submitted an NIS including a Stage 1 AA Screening Report and Stage 2 NIS as part of the supporting documentation.

### **5.4. EIA Screening**

- 5.4.1. An Environmental Impact Assessment Screening report was not submitted with the application.

5.4.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.

5.4.3. The subject development is for the construction of 58 residential units and a creche, together with associated works, on a site with a stated area of 2.45ha. The development falls well below the threshold of 500 dwelling units noted above and also the applicable site area threshold of 20ha. The site is not in an area where the predominant land-use is retail or commercial, so the 2ha threshold is not applicable.

5.4.4. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Uisce Eireann and Clare County Council, upon which its effects would be marginal.

Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on lands that are zoned for Residential uses in accordance with Objective SR8 under the provisions of the Clare County Development Plan 2023-2029,
- The location of the site within an urban area and on lands that are serviced,
- The location of the site outside of any sensitive location specified in Article 109 of the Planning and Development Regulations 2001 (as amended),
- The character and pattern of development in the vicinity,

- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended).

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case.

Reference is had to Appendix 1- Form 1 (EIA Pre-Screening) and Appendix 2 – Form 2 (EIA Preliminary Examination) attached to this Report.

## **6.0 The Appeal**

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

In the First Party Appeal against the Planning Authority decision to refuse permission, the following grounds are submitted:

- At the time of initial lodgement, the site had the benefit of a long-standing residential land use zoning.
- While the site is rezoned to Strategic Residential Reserve (SRR) under the current Development Plan, the site is planned for residential development from 2027, or in 3 years’ time. Policy Objective SR8 that identifies the site for residential development is noted.
- All the requirements of SR8 have been addressed in the submitted application documents including landscape management plan and flood risk assessment.
- Permitted, under consideration and idle residential zoned lands in Ennis will struggle to meet the 2,160 dwellings required for projected population growth in the town to 2029.

- The subject site is closer to Ennis Town Centre than the majority of residentially zoned sites in the town and is therefore, sequentially more appropriate in terms of compact growth objectives.
- The change to 10-year Development Plans under the new Planning and Development Bill 2023, will result in further pressure in the delivery of residential development on zoned land and will require virtually every Development Plan to be varied. The subject proposal was in accordance with local and national planning policy at the time of lodgement.
- Ecology response received in relation to the second reason for refusal. Site is acknowledged as being within 2.5km of a known Lesser Horseshoe bat roost at Newhall and Edenvale SAC. The site has not been mapped as foraging habitat associated with that SAC. 100no. Lesser Horseshoe bat passes were recorded throughout four survey seasons in 2023.
- Proposed development specifically designed in consultation with ecologists to retain foraging and commuting habitat for bats. Lighting and landscaping were subject to several design iterations to retain quality habitats for bats.
- The overgrowth of scrub and immature woodland has occurred in the last 15 years. The proposed development is not anticipated to result in significant impact on Lesser Horseshoe Bat populations as the existing habitat is not considered essential for foraging, commuting or roosting. Adequate landscaping has been maintained, and the layout of the development is appropriately considered, to uphold the existing function of the site for use by bats. This proposal for a commuting corridor was considered acceptable by the Planning Authority under Ref. 21/599.
- Ground and surface water management proposals are appropriate for the subject site as evidenced in the submitted information. 2no. new attenuation tanks along with an existing tank will provide sufficient drainage capacity for this proposed development. The existing tank is underground and therefore is not visible from visual inspection of the site.
- Discharge and flow rates will remain within acceptable limits, allowing for existing and proposed phases of development.

- GSI mapping illustrates there is no karst features located within the Cahercalla Stream catchment and there are no ground water flood extents within 2km of the proposed development.
- The existing culvert on site is a sealed unit that does not allow water to dissipate into the surrounding lands at the site.
- There is no evidence to suggest that the site will be at the risk of flooding or will create flood risk elsewhere as a result of the proposed development.
- Ground survey work was not undertaken as requested by the Planning authority at further information stage due to concerns in relation to vegetation removal and subsequent impacts on ecological survey work being undertaken. If supplementary information is required by the Board, they have the power under Section 132 of the act to request such information.

## **6.2. Planning Authority Response**

In a letter dated 16<sup>th</sup> April 2024 the Planning Authority provided a response to the grounds of appeal as follows:

- The site zoning has changed to 'Strategic Reserve'. The Development Plan is less than a year old and sufficient time has not elapsed to allow this site to be considered for residential development and to allow other residential zoned sites to be brought forward.
- Objective CDP 15.12 remains relevant, and the subject proposal cannot meet requirements in relation to no net loss of Lesser Horseshoe Bat feeding habitats, treelines and hedgerows.
- There remains concern in relation to surface water management of the subject site and proposed development by way of the existing karst landscape character of the site which has the potential for serious repercussions by way of flood risk/surface water management.
- The appeal as submitted does not adequately address these issues and the Board are requested to uphold the Planning Authority decision to refuse permission.

### 6.3. Observations

There were a number of observations submitted on the appeal. The main points of the observations can be summarised as follows:

- Planning Ref. 314448-22, for the development of 289 residential units was not identified by the applicant in their analysis of permitted developments in Ennis.
- There is adequate provision of residential zoned land in Ennis. The applicant should accept the zoning change as it is.
- The new Planning and Development Bill 2023 is a bill of the Oireachtas and is not law, reference to such would be ultra vires.
- The submitted bat report cannot be considered to provide bat surveys over the course of each season including winter.
- The assertion that no loss of essential foraging habitat for lesser horseshoe bats is not supported by the comments of Clare County Council's Environmental Assessment Officer.
- Concern in relation to impacts on Cahercalla Stream culvert and potential flooding as a result.
- Planning permissions from 1995 reference issues with drainage at the subject site. Hydro brakes are proposed to manage stormwater flows in the absence of adequate capacity of the storm water network or natural land drainage.
- No geotechnical survey work was undertaken, despite potential for impacts on existing attenuation tank.
- Observers maintain the existing Cahercalla Stream Culvert includes overflow pipes that mitigate flood risk to Willsgrrove.
- Flood risk and Karst landscape reports were submitted with observations to illustrate impacts on building over the Cahercalla Stream Culvert and on the potential karst formation underground.
- Historical mapping shows the area is liable to flooding.



## 7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the observations received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local, regional and national policies and guidance, I consider that the substantive issues to be considered in this appeal are as follows:

- Land Use Zoning
- Ecology Impacts
- Drainage and Flood Risk

### 7.2. Land Use Zoning/Core Strategy

#### Zoning

7.2.1. At the time the application was submitted, the appeal site was zoned 'Residential' under the Clare County Development Plan 2017-2023. Between the time the Planning Authority requested further information and the time the applicant submitted a response; a new Clare County Development Plan 2023-2029 became effective from the 20<sup>th</sup> April 2023. Under Volume 3a – Ennis Municipal District – of the new Development Plan, the subject site is now zoned 'Strategic Residential Reserve (SR8)' and listed as Site SR8. The following is stated in relation to site SR8:

*"This site has been identified for residential development. The area of the site to the west of Park na Coille Nursing Home includes an attractive natural habitat a portion of which should be retained as open space between any new development and the existing nursing home, providing an open space buffer between the two developments. This site is located less than 1km from a known bat roost. Proposals for development on this site must be informed by an ecological assessment of the site and appropriate bat surveys and shall ensure that there is no loss of habitats used by Lesser Horseshoe bats. All design proposals, including lighting, must be informed by the results of the bat survey. A landscape management plan must also accompany any development proposals. Development proposals shall include mitigation for bats, water quality and Special Conservation Interest Birds, as set out in Volume 10a Natura Impact Report as it relates to SR8 (NIR mitigation 2,3 and 4a). There is a small watercourse (Cahircalla Stream) that runs through the site. A site-*

*specific Flood Risk Assessment is required in accordance with Section 4.3 of the Strategic Flood Risk Assessment Volume 10c and the sequential approach will be applied.”*

- 7.2.2. Reason for refusal No. 1 of the Planning Authority decision explicitly states that the proposed development does not meet the exceptions set out for Strategic Reserve lands that would bring forward the subject site in the order of priority for Ennis residential sites and would therefore materially contravene the Zoning Objective of the Development Plan.
- 7.2.3. The First Party Appeal contains information pertaining to the justification for the development of these Strategic Residential Reserve lands at this stage. This includes a review of available residential land and associated permissions in the town of Ennis. The appeal states the site was zoned Residential at the time of lodgement, the Phase 1 lands to the south were granted permission by Clare County Council but are now at appeal stage, and the lands are not precluded from other types of development at this time. It is also noted the lands will be available for development from 2027 or in 3 years' time. The appeal submits that the subject site may be developed for other appropriate, non-residential land uses at any time.
- 7.2.4. The appeal provides a land use zoning map setting out lands in Ennis that have been granted or are seeking planning permission and the First Party Appeal submits that the subject site is more centrally located than other zoned sites and, sequentially, is more appropriate for residential development on this basis.
- 7.2.5. The observers to the appeal set out that the land use zoning has now changed and that should be the zoning the subject proposal is considered under. Furthermore, the observers to the appeal submit that there is sufficient residentially zoned land in Ennis, as evidenced by the Ministerial Direction on the County Development Plan to reduce the amount of residentially zoned land. Planning Ref. 314448-22, which was granted permission for the development of 289 residential units and was not referred to in the First Party Appeal, is also referenced in the appeal observations.
- 7.2.6. Although the subject site was zoned 'Residential' under the Clare County Development Plan 2017-2023 at the time the application was lodged, the relevant plan is now the Clare County Development Plan 2023-2029 where the subject site is now zoned 'Strategic Residential Reserve'. Under Objective SR8 of the

Development Plan it is stated that the subject site has been identified for residential development. The objective goes on to further state that any proposal for development at the subject site should be informed by:

- Ecological assessment of the site including bat surveys and ensure no loss of habitats used by Lesser Horseshoe Bats.
- An appropriate lighting design, informed by bat survey work.
- A Landscape Management Plan.
- Proposals will include appropriate mitigation for bats, water quality and Special Conservation Interest Birds as set out in the Natura Impact Report (NIR) attached to the Development Plan.
- A site-specific Flood Risk Assessment.

7.2.7. On an initial overview of the above required information in relation to Objective SR8, the listed documents have been provided, however, the appropriateness of the submitted bat survey information and impacts on bats is a distinct matter as it relates to this appeal and is discussed under a separate heading below. Flood risk and drainage matters are also a separate matter that I assess under an individual heading below.

7.2.8. The applicant has submitted a detailed lighting design report and drawing that has been informed by the bat survey work undertaken on site. The light spill drawing illustrates the light spill to the commuting corridor proposed are reduced to a minimum while also maintaining human safety and security within the proposed development.

7.2.9. The applicant has submitted a landscape management plan that was prepared in consultation with the project ecologists. The plan sets out the layout of proposed landscaping on site, the proposed plant species to be included and a maintenance programme. A biodiversity corridor is specifically provided to amalgamate with Phase 1 to the south. I consider the proposed landscape management plan to be acceptable in terms of providing an adequate mix of hard and soft landscaping and maintenance of screening within the site. The acceptability of the biodiversity corridor is discussed under the ecology impacts heading below.

7.2.10. In relation to development plan zoning and identifying the site as Strategic Residential Reserve, I would first note that the site is identified for residential, and the proposed development is compliant with this objective. There is a stipulation that residential development on site will not be considered until 2027. I would consider that the proposed development is a material contravention of the land use zoning objective for Strategic Residential Reserve for this reason.

7.2.11. I refer to the Action Plan for Housing that identifies the critical need for accelerating housing supply and National Strategic Outcome No. 1 for 'Compact Growth'. Activating strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development, is a top priority. Section 3.3.3 of the Compact Settlement Guidelines, which were published after the Clare County Development Plan came into effect, relates to Key Towns above 5,000 population. The following is stated:

*"The key priorities for the growth of Key Towns and Large Towns in order of priority are to:*

- (a) plan for an integrated and connected settlement overall, avoiding the displacement of development generated by economic drivers in the Key Town or Large Town to smaller towns and villages and rural areas in the hinterland,*
- (b) strengthen town centres,*
- (c) protect, restore and enhance historic fabric, character, amenity, natural heritage, biodiversity and environmental quality,*
- (d) realise opportunities for adaptation and reuse of existing buildings and for incremental backland, brownfield and infill development, and*
- (e) deliver sequential and sustainable urban extension at locations that are closest to the urban core and are integrated into, or can be integrated into, the existing built up footprint of the settlement."*

7.2.12. While I note the order of priority and the potentially conflicting objectives in relation to protecting, restoring and enhancing natural heritage and biodiversity and delivering sequential and sustainable urban extension at locations closest to the urban core, which is particularly relevant in relation to the subject site, the matter of sequential

development is most relevant to the matter of the land use zoning of the subject site. As stated, the matter of biodiversity and ecological impacts will be dealt with separately.

### Core Strategy

- 7.2.13. Under Chapter 3 – Core Strategy of the County Development Plan, it is stated that the residential development of Strategic Reserv Lands will only be considered from the beginning of year four of the plan (2027) and the Planning Authority must be satisfied that the development of Residential zoned land is necessary due to a shortage in available suites or supply of units.
- 7.2.14. The appeal sets out that 367 units have been granted permission or are at application stage since the new Development Plan was enacted. The appeal further sets out that 1,793 units need to be provided across 19 sites to meet the projected 2,160 dwellings required in the period to 2029. The appeal concludes that it will be difficult for the Planning Authority to bring forward the number of units required to meet the housing need throughout the plan period without considering additional lands such as the subject site.
- 7.2.15. The Core strategy of the County Development Plan provides a housing unit target of 2,160 units for Ennis up to 2029. Allowing for the permitted development under ABP Ref. 314448-22 (289 units) set out in appeal observations and the permitted developments set out in the appeal itself, this is a total of 656 units either granted or permitted development between the adoption of the development plan and the submission of the subject appeal and observations.
- 7.2.16. This leaves a remainder of 1,504 units to be provided on 20 ‘residential’ zoned sites up to 2029.
- 7.2.17. I note the edge of settlement location of some residential zoned sites in Ennis, and I refer the Board to ABP Ref. 313263-22 which was refused permission based on the absence of servicing and the location of the site. This gives rise to a very real concern that similar zoned sites may not come forward for development within the remaining life of the Development Plan, resulting in a shortfall in housing supply based on Core Strategy figures and numbers of permissions in Ennis thus far in the lifetime of the plan. This concern is further stressed on foot of the review of the NPF and revised housing figures emanating from same, which notably rise to 60,000

nationwide by 2030, one year beyond the lifetime of the Clare County Development Plan.

- 7.2.18. The Development Plan is in place for stated reasons to provide for the proper planning and sustainable development of Clare over a 6-year period. It is clear a consistent level of permissions has been granted in Ennis since the Plan was adopted, with some of these applications having been submitted prior to the adoption of the plan and granted permission after adoption, and some both lodged and granted permission since the effective date of 20<sup>th</sup> April 2023. While the refusal under ABP-313263-22 gives rise to concerns about the location of some zoned sites in Ennis, it is too early in the lifetime of the plan to draw conclusions in relation to a possible shortfall later in the Development Plan lifecycle.
- 7.2.19. In relation to Strategic Reserve lands, the core strategy of the Development Plan states residential development of such lands will only be considered from the beginning of year four of the plan, which is April 2027. Given the rate of permissions since the adoption of the Development Plan and the remaining 5-year period in the lifetime of the plan, I consider it to be a reasonable conclusion that there are sufficient lands available, at appropriate sites, to accommodate expected growth. Therefore, material contravention is not necessary in this instance.
- 7.2.20. Having regard to the foregoing, I am not satisfied that the proposed development can be considered under the Strategic Residential Reserve (SR8) land use zoning objective at this stage (year 2 of a 6-year CDP lifecycle) and therefore should be refused permission on this basis.

### **7.3. Ecological Impacts**

- 7.3.1. The First Party Appeal provides that appropriate bat surveys have been undertaken and ecology inputs on the application conclude that no significant impacts will arise in relation to the Lesser Horseshoe Bat or their foraging habitat. This is particularly emphasised by the fact that the subject site is not mapped as foraging habitat in Figure 2 of the Conservation Objectives Document of the Newhall and Edenvale Complex SAC.
- 7.3.2. Observers on the appeal submitted particular concerns about impact on European Sites and associated species. There is concern expressed about the localised impact on the ecology of the area by developing a woodland type site, resulting in a

loss of a range of wildlife species, notably bats, through loss of foraging ground, and in this way contravening the County Development Plan in respect of its objectives to protect wildlife, biodiversity and the environment.

- 7.3.3. The CDP objectives provide for the protection of biodiversity both generally and in an urban context. DP15.13 refers to the protection of biodiversity and habitats in the wider county whereas CDP15.12 relates to urban ecology. The latter states:

*“It is an objective of Clare County Council:*

*...*

*d) To ensure there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5km of known roosts;*

*...”*

- 7.3.4. An Ecological Impact Assessment (EclA) was undertaken by the applicant and submitted with the application and subsequently amended to take account of supplemental bat surveys. This report was prepared in consultation with published guidance for such assessments in Ireland. It notably takes account of a Tree Survey Report prepared separately which highlights that there are a small number of mature trees of moderate to low value, around which dense scrub vegetation has grown within the site. One sycamore, two beech and four ash trees are noted to be in conflict with the development as proposed and will require removal, while a belt of trees along the western and northern boundary is to be retained and reinforced with additional native tree and woody shrub planting.
- 7.3.5. A separate Bat Survey Report is also submitted that provides details in relation to the number of roosts, bat commuting patterns, and foraging habitats within the subject site and the impacts of the proposed development thereon.
- 7.3.6. Having regard to the extensive submissions in this regard, I have reviewed the EclA and also sought an expert opinion from the Ecologist of an Bord Pleanála on the technical submissions in respect of bats. (Report attached.)

#### Impact on woodland and scrub habitat

- 7.3.7. The applicant submits there will be a loss of habitat as part of site preparation, but this is submitted as a slight -moderate negative impact. The retention of the linear boundary features to the north and west prior to site works and supplementary

planting of indigenous species to enhance these linear features is considered by the applicant to reduce this to a minor residual negative impact in a local context.

- 7.3.8. Having reviewed the Tree survey and report and the EclA, and inspected the site, there are a limited number of trees of value identified within the site with the noted species being of 'B' or 'C' class, which are low or moderate value quality. The remainder of the site is identified as immature woodland or scrub which provide a locally important habitat. I consider this to be a reasonable account of existing habitats on site and, when taken with the suburban nature of the surrounding lands, and the proposed retention and strengthening of existing linear boundary features along the western and northern boundary of the site, I consider it a reasonable conclusion that there will be no significant residual effects on significant woodland and scrub habitats as a result of the subject proposal.

#### Impacts on Fauna (excluding bats)

- 7.3.9. The applicant submits that the proposed development will result in the loss of a known outlier badger sett. The outlier designation is given based on the existing development surrounding the site including the Ennis Showgrounds, existing residential and the Páirc na Coille Retirement Village, and is highly likely to be associated with a wider badger territory in the areas of agricultural grasslands to the west and north-west. The proposed development is also submitted as having the potential for displacement of badgers and direct mortality in the absence of mitigation. Detailed mitigation measures are recommended to avoid disturbance or mortality of badgers present, including pre-commencement surveys and a detailed management of closing off the identified outlier sett.
- 7.3.10. Other occasional mammals such as fox, hedgehog and rabbit may be disturbed in the short-term. Identification by the applicant of potential disturbance is considered on a precautionary basis due to the nature of habitats within the development.
- 7.3.11. Having considered the proposed management of the outlier badger sett, as well as other proposed mitigation measures to be implemented during construction I consider the short-term negative effect can be adequately mitigated at this suburban residential site to avoid any significant effect on mammalian species. Adhering to best practice measures, e.g. Daylight working, no artificial construction lighting, and



pre-commencement surveys among other measures, will ensure no significant effect on fauna species (other than bats) on the site, and I consider this to be appropriate.

#### Impact on Bats

- 7.3.12. In the submitted EclA, the applicant claims there was no Lesser Horseshoe Bat roosting activity recorded within the site. For other bats, the existing prefabs on site are submitted as having 'low' roosting potential while the majority of trees and scrub were considered by the applicant to have 'negligible' roosting potential. Mature trees within the site were identified as having a low-high potential for soprano pipistrelles bats, although the numbers emerging from these potential roosting locations is recorded as low. One bat roost was identified within the site in a mature beech tree. Mitigation measures are proposed to reduce the impacts on roosting locations, including management of tree felling procedures and insertion of bat boxes.
- 7.3.13. The loss of the commuting and foraging habitat at construction stage is identified by the applicant as a permanent slight negative impact. The loss of this commuting and foraging habitat is not considered by the applicant to be significant at any geographic scale. Nevertheless, the applicant proposes mitigation, including retention and additional planting along the northern and western boundaries of the site. No significant effects on foraging and commuting are predicted by the applicant.
- 7.3.14. At operational stage lighting may disturb bats at a local level which, without mitigation, may have a long-term permanent slight impact. An outdoor lighting plan has been prepared and submitted with the application. The design aims to minimise light spillage and reduce potential disturbance. Such lighting features include:
- Warm white LED which allows directional luminaires.
  - Use of internal and rear louvres to reduce light spill and prevent upward light.
  - Rear shields to lights along the southwestern site boundary.
  - Tilting to ensure limited light spill.
  - Dimming of public lighting in the residential area.
  - Intelligent PIR lighting.
- 7.3.15. The applicant has submitted a detailed lighting design report and drawing that has been informed by the bat survey work undertaken on site. The light spill drawing illustrates the light spill to the commuting corridor proposed are reduced to a minimum while also maintaining human safety and security within the proposed

development. The existing lux level on hedgerows most commonly used by horseshoe bats within the site is given as 0.45lux. The proposed lux levels along the biodiversity corridor will be less than 1 lux (approx. 0 lux – 0.5 lux). I consider the proposed lighting layout to be acceptable, with a minimal, if any increase from existing light levels currently recorded. Following the incorporation of the mitigation measures in the EclA, no potential for significant residual effect on local bats is predicted by the applicant at any geographic scale.

7.3.16. I consider the impacts on bat species in totality in the following sections. I refer the Board to the Appropriate Assessment section of this report and the appended report by Meave Flynn, BSc. PhD, MCIEEM, Ecologist in an Bord Pleanála who has reviewed the considerably detailed appellant grounds particularly in relation to bats, the DAU submissions which query the NIS in relation to bat surveys, in addition to the application documents in relation to bat species. I note her comments under the heading 'examination and evaluation':

- Satisfied that the approach for assessment in the EclA and bat assessment are appropriate in context of NIR for the County Development Plan 2023-2029.
- The cumulative impacts of Phase 2 habitat loss (approx. 1.85ha) have not been adequately assessed with Phase 1 habitat loss, which has only been referred to in passing.
- Phase 2 habitat loss is not considered a significant impact by the First Party, however a total loss of 3ha of LHB foraging habitat loss for Phase 1 and Phase 2 is at least a moderate local impact.
- Bats were recorded across the site, but particularly along the northern and western boundaries and the retention of mature treeline and vegetation is significant in reducing the impact of habitat loss. However, a combined assessment of Phase 1 and Phase 2 in terms of habitat loss and impacts should have been considered in a more coherent manner.
- The First Party has determined the loss of scrub habitat is not significant in the context of conservation objectives as:

- The site is not part of the network of potential foraging areas for the species as described and mapped by the NPWS in the site-specific conservation objectives,
  - The loss is not significant in the overall context of habitats available within 2.5 km of the SPA sites and is at the outer boundary of the core range of LHB with low numbers of LHB recorded on the site.
  - The retention of boundary features which will retain wider ecological connectivity
- Objective CDP 15.12 is more stringent than the conservation objectives, in that it refers to no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5km of known roosts. Therefore, it does not seem feasible that there would be no net loss of potential LHB feeding habitats at this site. It is noted this conflicts with the NIR of the Development Plan that recommends mitigation measures for this site in relation to retaining woody vegetation around the perimeter of the site.
  - A derogation licence is required with the application for the removal of the identified bat roost at the site.
  - Lack of detail in relation to cumulative assessment with Phase 1 presents a lacuna in the appropriate assessment, whereby the complete magnitude of effect has not been considered by the First Party.

7.3.17. I note the detail of the information submitted at initial application stage and which was supplemented at further information stage. I note the numbers of lesser horseshoe bats on site as they relate to pass overs, roosting activity and foraging. While I note the absence of any LHB roosts at the site, the number of passovers at approximately 100no. across all seasons may be considered significant, I do not consider this to be unusual given the identified roosts at SAC sites 2.5km to the west and the identified foraging habitats in the wider area. I note the existing foraging habitats for the lesser horseshoe bat have been mapped at Map 2 of the Conservation Objectives for both the Pouladatig Cave SAC and Newhall and Edenvale SAC, and the subject site does not fall within this area. Furthermore, I specifically note the requirements of Objective 15.12 of the County Development

Plan that go a step further than the conservation objectives of the SAC by requiring 'no net loss of lesser horseshoe bat foraging habitats, treelines or hedgerows'.

- 7.3.18. The recorded bat population is considered to be of Local Importance in the case of the soprano pipistrelle and International Importance in the case of the lesser horseshoe bat. While I consider the proposed biodiversity corridor would provide an adequate habitat for the recorded populations of foraging and commuting bats, particularly the lesser horseshoe bat, Objective 15.12 is clear in terms of a requirement for 'no net loss' of foraging habitat.
- 7.3.19. I note the recorded number of Lesser Horseshoe Bat passovers at approximately 100no. across all survey periods, however there is lack of detail in relation to the use of the site by Lesser Horseshoe Bat for foraging purposes. The potential impact is compounded by the lack of an appropriate cumulative assessment with Phase 1 of this site, that could potentially amount to 3ha of habitat loss, which is not insignificant. Given the objective for no net loss of foraging habitat in Objective 15.12, the complete clearance of the site to accommodate residential development is not justified based on the information provided.
- 7.3.20. I further note based on the details submitted in the EclA and revised bat report, that there will be a loss of scrub and immature woodland on the site reducing the foraging area available for all bat species at this location. The retention of the western and northern perimeter planting, along with additional planting and a detailed lighting plan, would ensure that habitat connectivity is maintained in line with the provisions of the County Development Plan and also conservation objectives of the SAC, however this does not meet the threshold of no net loss and is therefore not acceptable.
- 7.3.21. Observers on the appeal submit that the applicant has not had due regard to the most up to date survey practice guidelines and specifically refers to 'Bat Surveys for Professional Ecologists', updated in September 2023. I note these are Guidelines only and The Bat Conservation Trust, who published the guidelines, provide that they do not seek to override professional judgement. In this regard, I do not consider the submitted survey methodology to be deficient, however the requirements of Objective 15.12 have not been met in the submitted documentation and when

considered in the absence of an adequate cumulative assessment of impacts, I do not consider this an appropriate analysis of overall impacts.

7.3.22. The proposal to implement bat boxes for existing soprano pipistrelle bats roosting on site is welcomed, however, a derogation licence for the removal of the existing bat roost on site has not been furnished by the applicant and the requirement for this has been established through case law (CJEU judgement on Hellfire Massy Case C-166/22).

7.3.23. On balance, I consider the details submitted do not demonstrate adherence to the current development plan aims in respect of biodiversity while accommodating housing in accordance with the site-specific objective SR8. I am not satisfied that the applicant has demonstrated substantial compliance with all elements of Objective CDP15.12 regarding urban ecology and no net loss of foraging habitat for the Lesser Horseshoe Bat. An adequate cumulative assessment of habitat loss has not been provided and I therefore consider the proposed development is contrary to the County Development Plan in this regard. When also considered with the absence of an appropriate derogation licence for the removal of an identified bat roost, I therefore recommend refusal of permission on the basis of impact on ecology and biodiversity.

#### **7.4. Drainage and Flood Risk**

7.4.1. The appellants responded to Reason for Refusal No. 3 in relation to concerns about inadequate provision for ground and surface water drainage and flood risk in the context of unknown ground conditions. I note this matter was raised in the objections to the Planning Authority and observations on the appeal, with reference to overloading on the culverted stream traversing the site and impact on drains. Concerns were identified in submissions about the impacts on surrounding properties and the potential flood risk that could result from the subject proposal. I note that the current Clare County Development Plan 2023-2029 has extended the criteria for development on the subject lands to include a site-specific flood risk assessment under Objective SR8. This information was submitted to the Planning Authority at Further Information stage with further clarifications provided in the First Party Appeal. In the submitted documents there is detailed information provided about the culverted stream and its attenuation capacity within the site. This is based

on projections taking account of 1 in 100-year flood events with additional allowance for climate change. The applicant also clarifies in further information, as illustrated in the FI drawings, the culvert and wayleave location and arrangements.

- 7.4.2. The site is identified as being outside flood risk zones A and B as mapped in the current Development Plan. The link to flood risk is therefore via ground and stormwater run-off and inundation of the culvert and stream within and adjoining the subject site which feed into the River Fergus. Based on the information provided, I consider that the culvert could be technically overloaded in the event of an extreme flood event downstream and potential blockage of the culvert beyond the boundaries of the subject site and depending on design features. In view of the criteria in objective SR8 of the County Development Plan, I consider the matter merits consideration.
- 7.4.3. In response to the request for further information in respect of attenuation and culvert maintenance/wayleave arrangements and following survey work by the applicant, the applicant confirmed a number of details in relation to ground and surface water management. The following details are provided by the applicant:
- Phase 1 of the proposed development and the neighbouring development to the west, currently feeds surface water into a long 2m x 1m attenuation tank constructed adjacent to the culverted Cahercalla Stream.
  - The existing attenuation tank has a capacity of 1,085m<sup>3</sup> of which 501m<sup>3</sup> is reserved for management of runoff from these Phase 1 and Phase 2 developments. The discharge rate of 15l/s was designed to take account of this proposed development and will remain unchanged, discharging to the existing open channel to the southeast.
  - Two new, additional attenuation tanks are proposed as part of the subject proposal. Network A attenuation tank is located at the western cul-de-sac within the proposed development and has a capacity of 390m<sup>3</sup> and a discharge rate of 0.8l/s. Network C attenuation tank is located at the southeast corner of the site and has a capacity of 111m<sup>3</sup> and a discharge rate of 0.2l/s.

- The analysis considered the 100-year return period plus 10 and 20% to allow for climate change.
- Sufficient capacity exists within the existing and proposed network to cater for critical extreme storm events. A total of 70% total tank capacity is predicted, meaning discharge rates of 15l/s remain acceptable to prevent any flood risk upstream or downstream of the site.

7.4.4. In summary, the applicant submits that the above information demonstrates there is adequate provision for the management of stormwater for the proposed site associated with this current planning application based on a one in a 100year design plus 10 and 20% allowed for climate change.

7.4.5. The Ennis Municipal District Planning report on the original application (dated 09/3/23) requested mitigation for flood risk for units 77-85 and details of proposed connections to the existing attenuation tank. The Municipal District recommends conditions relating to hydrocarbon interceptors, storm water network and attenuation area is installed as per the designer's requirements, along with maintenance details.

7.4.6. The submitted Engineering Report sets out the calculations for capacity of the surface water drainage network and concludes on this basis that there is adequate provision for the management of stormwater for the proposed site based on 1 in 100-year design plus 10 and 20% climate change allowance. While the Ennis Municipal Engineer recommended conditions at the initial application stage, no report is provided on the further information submitted. The Local Authority Planner, in their report on the FI response, indicates a concern with the possibility of flood risk, owing to the lack of information in relation to the underground geology that is present on the site and the impacts this could have on ground and stormwater drainage.

7.5. The applicant has submitted that it was not possible to undertake ground investigation works at Further Information stage as it would disturb ecological surveys. As part of the appeal, the applicant has submitted information based on Geographical Survey Ireland (GSI) mapping to identify potential for karst landscapes in the vicinity on the subject site. Based on the mapping, no karst features were noted to be located within the Cahercalla Catchment, and no groundwater flood extents were found to be located within 2km of the proposed development.

- 7.6. The concerns of the observer parties are noted in relation to existing groundwater accommodation at the subject site and the actual presence of the existing attenuation tank used for calculating stormwater capacity. The submitted documents and mapping from GSI showing potential for limestone bedrock conditions are also noted, as is the identification of flood areas on historical mapping.
- 7.7. The first party appeal sets out that there is no overflow pipes associated with the culvert structure and that this is a sealed unit that does not disperse water into the surrounding lands during surge events. The applicant also confirms that the existing attenuation tank is an underground unit and would not be visible by performing a surface-level visual inspection.
- 7.8. I further note that a letter from Uisce Eireann was provided at application stage that has stated that there are feasible connections to the foul sewer and water supply but it is clear that storm water is a matter for the planning authority.
- 7.9. I consider the submitted Stage 2 FRA to be an evidence-based submission and an important part of the considerations in relation to this matter of the appeal, particularly as this is the identified piece of information required under SR8.
- 7.10. I note from the submitted OPW National Flood information Portal, there have been no past flood events in the immediate vicinity of the subject site. The subject site is identified as being within Flood Zone C with a 0.1% of Annual Exceedance Probability (AEP). While the OPW Preliminary Flood Risk Assessment (PFRA) identifies the potential for flooding at the subject site, there are some limitations with this assessment and the Catchment Flood Risk Assessment and Management Study (CFRAM) is considered a more accurate representation of flood risk.
- 7.11. The OPW's CFRAM study provides no indication of the possible extent of Fluvial Flooding at the subject site, so the applicant undertook additional assessment, which I consider to be a reasonable approach to reviewing fluvial flood risk. The discharge of the receiving channel ( $8.7\text{m}^3$ ) is calculated by the applicant to be greater than the estimated  $3.70\text{m}^3/\text{s}$  available in the upstream culvert. With the level of the gully associated with the open stream and rugby grounds being lower than the subject site and with walls surrounding the culvert and gully inlet, it is predicted that the  $2\text{m} \times 1\text{m}$  box culvert and the open channel will have sufficient capacity to convey the 1000-year flood event and avoid flooding of the subject site and surrounding lands. Extra



precautions of not locating any buildings within 20m of the open channel section of the Cahircalla Stream are also recommended by the applicant.

- 7.12. In relation to Fluvial Flood Risk, I note the existing ground elevations of 12.00mOD are 4m above the nearest fluvial flood node located 260m downstream from the subject site.
- 7.13. The distance of the subject site from coastal areas and the ground levels of the subject site in relation to predicted coastal water surface elevations in the River Fergus, indicate the subject site is not liable to be flooded by coastal water.
- 7.14. The submitted FRA provides a detailed review of GSI mapping that indicates identified karst landscape features in the surrounding area, with the closest being 750m southeast of the site that includes swallow holes and springs. I note the GSI Bedrock Polygon mapping that identifies the site as being located atop limestone bedrock. In the absence of detailed site specific ground investigations, I consider there to be a significant shortfall in obtaining a reliable indicator of ground conditions in this given area, and more detailed information is required in this regard in my opinion. The details submitted by the applicant state that the absence of a site investigation prevents a site-specific assessment on the existing karst system and groundwater flow/quality. Only high-level comment in regard to karst systems in the area are provided.
- 7.15. Overall, there is insufficient information provided in the submitted FRA to confirm the level of flood risk due to the absence of ground condition survey information. I have considered requesting this information by way of a pre-commencement condition; however the results of this survey work have potential far-reaching implications for the detailed Flood Risk Assessment and overall drainage strategy for the site. It would therefore be imprudent and premature to allow this proposed development to proceed in the absence of this detailed information.

## **8.0 AA Screening**

### **8.1. Introduction**

The requirements of Article 6(3) as it relates to screening the need for appropriate assessment of a project under Part XAB, section 177U and section 177V of the

Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment
- The Natura Impact Statement and associated documents
- Appropriate Assessment of implications of the proposed development on the integrity of relevant European sites.

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

8.2.1. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

8.2.2. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

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

### Background

8.3.1. As part of the planning application, the applicant has submitted a Natura Impact Statement (NIS), with a 'Screening for Appropriate Assessment' included in that report. An amended NIS and Screening Report were submitted as part of further information and advertised accordingly. The NIS and ecological baseline studies and the survey work were undertaken by a team of experts as set out in the statement of authority in the introductions of the NIS. I also refer the Board to the appended report by Maeve Flynn BSc. PhD, MCIEEM, Ecologist in An Bord Pleanála who has reviewed the considerably detailed appellant and observer grounds particularly in

relation to bats, the DAU submissions which query the NIS in relation to bat surveys, in addition to reviewing the application documents in relation to bat species.

8.3.2. The AA Screening Report as amended was prepared by reference to current best practice guidance as set out in section 4 of the NIS report. It describes the site characteristics and, in accordance with the methodology in Table 4-1, identifies the European Sites with potential pathways to the proposed development in order to establish the zone of influence of the proposal. It concludes that there is potential for likely significant effects. A source-pathway-receiver model was used to identify potential impact pathways linking the project site to the European sites. The potential pathways were restricted to hydrological connections and disturbance on site. The European Sites with potential likely significant effects are:

- The River Shannon SAC and River Shannon and River Fergus Estuaries SPA European Sites given the potential for deterioration of water quality primarily through surface water runoff to the Cloghleagh watercourse and via wastewater which may have the potential to result in significant effects on the QI, and
- The Newhall and Edenvale Complex SAC and Pouladatig Cave SAC sites given the nature and location of the development site within a potential foraging range of the QI bat species. Accordingly, taking a precautionary approach, the zones of influence relating to these sites cannot be ruled out at screening stage.

8.3.3. Having reviewed the documents and submissions on file and noting Dr. Flynn's comments, there is reasonable uncertainty that the information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

#### Screening for Appropriate Assessment – Test of likely significant effects

8.3.4. The proposed development is examined in relation to any possible interaction with European sites designated as Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

- 8.3.5. A description of the development is set out in section 2 of this report, and I have also noted the EclA in this regard. In summary, the proposed development comprises a housing development in a suburban area with access to services. The application site extends to 2.45 hectares and is described, in terms of habitat, as consisting mainly of extensive scrub, recolonising bare ground, building and artificial surfaces (old pre-fab and culvert works), immature woodland and some mature trees. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the main issues considered for examination in terms of implications for likely significant effects on European sites are water quality impacts and disturbance of bat species.

#### Submissions and Observations

- 8.3.6. The 3<sup>rd</sup> party observations on the appeal raised issues relevant to European Sites and concerning the inadequacies and shortfall in survey methodologies.
- 8.3.7. In respect of the River Shannon/River Fergus sites, the main points in the submissions relate to lack of understanding in relation to the karst landscape features and the associated impact on groundwater and flood risk, which may have an impact on water pollution.
- 8.3.8. DAU: No comments on water quality or potential impacts on River Shannon/River Fergus European sites. Further survey work recommended in relation to impacts on bats.
- 8.3.9. European Sites

The development site is not located in or immediately adjacent to a European site. Table 4.1 of the applicant's Stage 1 Screening for Appropriate Assessment presents all European Sites that are within 15km of the Proposed Development in tabular and mapped format. In summary the sites are screened accordingly:

- Lower River Shannon SAC 002165 – 0.8km away. Due to the existence of a substantially culverted stream that connects to the SAC approximately 1km downstream, potential for deterioration of water quality arising from run off during construction and at operational phase have been identified. A list of QIs are identified for further assessment. These are set out in Table 4.1 of the NIS report.

- Newhall and Edenvale Complex SAC 002091 – 1.9km southwest – The Lesser Horseshoe Bat is identified as a QI for this SAC. The site of the proposed development is located within the 2.5km core foraging range of the SAC Lesser Horseshoe Bat population. Taking a precautionary approach, a potential pathway for indirect effects on the lesser horseshoe bat population associated with the SAC via loss/fragmentation of commuting and foraging habitat and via disturbance was identified.
- Pouladatig Cave SAC 00037 - 2.4km. As the site is within the 2.5km foraging range of the SAC Lesser Horseshoe Bat, and taking a precautionary approach, there is potential for impact on this QI species through loss/fragmentation of commuting and foraging habitat.
- River Shannon and River Fergus Estuaries SPA 004077 - 3.4km away. Due to the potential for indirect effect through the hydrological connection and potential for indirect effect from water quality deterioration, a potential pathway for indirect effects on the SPA was identified. Woodland and scrub habitat character of site is not a significant habitat for the QI bird species and direct impact can be screened out. The European Site is located within the Likely Zone of Impact and further assessment is required.
- Ballyallia Lake SAC 000014 - 2.8km away. The subject site is in a separate sub-catchment to the SAC and no potential hydrological connections have been identified to the QI Habitat (natural eutrophic lakes). As there is no pathway, it is not within a likely zone of Impact. This site is not considered further in the Appropriate Assessment.
- Toonagh Estate SAC 002247 - 5.6km away. LHB is a QI of this SAC but the site is outside the 2.5km foraging range and outside the likely zone of impact. This site is not considered further in the Appropriate Assessment.
- Knockanira House SAC 002318 - 7km away. LHB is a QI but the site is outside the 2.5km foraging range and outside the likely zone of impact. This site is not considered further in the Appropriate Assessment.
- Dromore Woods and Loughs SAC 000032 - 7km away. No potential for surface water connection due to the subject site being in a different sub-catchment. While

LHB is a QI, due to the distance and nature of the proposed works the subject site is outside the Likely Zone of Impact. This site is not considered further in the Appropriate Assessment.

- Old Domestic Building (Keevagh) SAC 002010 - 7.2km away. LHB is a QI, but the site is outside the 2.5km foraging range from this SAC and outside the Likely Zone of Impact. This site is not considered further in the Appropriate Assessment.
- Ballycullinan, Old Domestic building SAC 002264 - 9.1km away. LHB is a QI, but the site is outside the 2.5km foraging range and outside the Likely Zone of Impact. This site is not considered further in the Appropriate Assessment.
- Ballycullinan Lake SAC 000016 - 9.2km away. Due to nature and distance, with the subject site being located in a separate sub-catchment, there is no potential for indirect effects on Calcareous fens habitat within the Likely Zone of Impact. This site is not considered further in the Appropriate Assessment.
- Old farm buildings, Ballymacrogan SAC 002245 - 9.5km away. LHB is a QI, but the site is outside the 2.5km foraging range of this SAC and outside the Likely Zone of Impact. This site is not considered further in the Appropriate Assessment.
- Poulmagordon Cave (Quin) SAC 000064 - 9.6km away. LHB is a QI, but the site is outside the 2.5km foraging range of this SAC and due to the distance and nature of the proposed works, there is no potential for indirect effects to the terrestrial QI for which this SAC has been designated. This site is not considered further in the Appropriate Assessment.
- East Burren Complex SAC 001926 - 10.2km away. Habitats are hard oligo-mesotrophic water and turloughs and a range of flora species (fully listed in AA screening section of the NIS). The subject site is in a separate sub-catchment to the SAC and outside the Likely Zone of Impact. This European site is not considered further in the Appropriate Assessment.
- Lough Gash Turlough SAC 000051 - 10.3km away. Habitats are rivers with muddy banks and turloughs. The subject site is in a separate sub catchment to this SAC, with no potential surface water connectivity, and is outside the Likely

Zone of Impact and is therefore not considered further in the Appropriate Assessment.

- Moyree River System SAC 000057 - 11.6km away. LHB is a QI but the site is outside the 2.5km foraging range of this SAC and outside the Likely Zone of Impact. Habitats are water courses, fens limestone and caves but the site is in a separate sub catchment. This European site is not considered further in the Appropriate Assessment.
- Old Domestic buildings, Rylane SAC 002314 - 11.8km away. LHB is a QI, but the site is outside the 2.5km foraging range for this SAC and outside the Likely Zone of Impact. This European site is not considered further in the Appropriate Assessment.
- Newgrove House SAC 002157 - LHB is a QI but the site is outside the 2.5km foraging range for this SAC and outside the Likely Zone of Impact. This European site is not considered further in the Appropriate Assessment.
- Ballyogan Lough SAC 000019 - 13km away. Due to distance and nature of proposed works no potential for indirect effect to this SAC. This European site is not considered further in the Appropriate Assessment.
- Ballyallia Lough SPA 004041 - 3.2km away. No direct hydrological connection and due to habitat type within this SAC, no loss of supporting habit. No potential for significant effects. This European site is not considered further in the Appropriate Assessment.
- Slieve Aughty Mountains SPA 04168 - 10.1km. Due to woodland scrub habitat, the subject site does not provide supporting habitat for the species which this SPA has been designated. Given the nature and scale of the proposed development, no potential for indirect effects through disturbance or displacement of Hen Harrier or Merlin species exists. This European site is not considered further in the Appropriate Assessment.
- Corofin Wetlands SPA 004220 - 11.4km away. No hydrological connection and no pathway for indirect effects on the aquatic SCIs have been identified. Woodlands /scrub habitats do not support these QI and therefore no potential for disturbance or displacement of these species exists. No potential for significant

effects exist as the site is not within the Likely Zone of Impact. This European site is not considered further in the Appropriate Assessment.

8.3.10. In respect of the European Sites for which the LHB is a qualifying interest (Newhall and Edenvale Complex SAC and Pouladatig Cave SAC), I refer the Board to Dr. Flynn's summary of attributes and targets and summary of potential impacts in her report and her appraisal and reference to screening, which states: 'While the proposed development alone may not result in adverse effects in view of the conservation objectives set for these SAC sites, I consider that the in-combination assessment with Drumbiggie Phase 1 in particular is lacking in detail and presents a lacunae in the overall assessment.' This is in consideration of the site location and distances from the European Sites at c. 2.5km, the conservation objectives and targets for the preservation of foraging and commuting habitats, and the potential for disturbance within the site with woodland features, in combination with the application for development on the lands immediately to the south.

8.3.11. Given the proximity of the site to the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA and the presence of a hydrological pathway established by the culverted watercourse flowing through the project site to the Estuary, I identify both of these European Sites as being within the zone of influence. These sites are presented in the table below together with the potential connection description and details of the links to conservation objectives that I have considered applicable for each site.

<b>European Site (Site Code)</b>	<b>Qualifying Interests (QIs) *Denotes a priority habitat Receptors in bold</b>	<b>Distance</b>	<b>Connections (source, pathway, receptor) and effects</b>
Lower River Shannon SAC (002165)	<b>Sandbanks which are slightly covered by sea water all the time [1110] Estuaries [1130]</b>	c.840m	Potential to generate contaminated surface run-off during construction and



European Site (Site Code)	Qualifying Interests (QIs) *Denotes a priority habitat Receptors in bold	Distance	Connections (source, pathway, receptor) and effects
	<p><b>Mudflats and sandflats not covered by seawater at low tide [1140] (see maps 5 and 9 for targets)</b></p> <p><b>Coastal lagoons [1150]</b></p> <p><b>Large shallow inlets and bays [1160]</b></p> <p><b>Reefs [1170]</b></p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p><b>Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]</b></p> <p><b>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</b></p> <p><b>Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</b></p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p>		operational phases that could have a potential impact downstream.

European Site (Site Code)	Qualifying Interests (QIs) *Denotes a priority habitat Receptors in bold	Distance	Connections (source, pathway, receptor) and effects
	Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] <b>Petromyzon marinus (Sea Lamprey) [1095]</b> <b>Lampetra planeri (Brook Lamprey) [1096]</b> <b>Lampetra fluviatilis (River Lamprey) [1099]</b> <b>Salmo salar (Salmon) [1106]</b> <b>Tursiops truncatus (Common Bottlenose Dolphin) [1349]</b> <b>Lutra lutra (Otter) [1355] (see map 17)</b>		
River Shannon and River Fergus Estuaries SPA (004077)	Cormorant (Phalacrocorax carbo) [A017] Whooper Swan (Cygnus cygnus) [A038] Light-bellied Brent Goose (Branta bernicla hrota) [A046] Shelduck (Tadorna tadorna) [A048] Wigeon (Anas penelope) [A050] Teal (Anas crecca) [A052] Pintail (Anas acuta) [A054] Shoveler (Anas clypeata) [A056] Scaup (Aythya marila) [A062] Ringed Plover (Charadrius hiaticula) [A137]	c.3.2km	No supporting habitat for QI bird species. Potential to generate contaminated surface run-off during construction and operational phases. This could impact wetland habitat downstream.

European Site (Site Code)	Qualifying Interests (QIs) *Denotes a priority habitat Receptors in bold	Distance	Connections (source, pathway, receptor) and effects
	Golden Plover ( <i>Pluvialis apricaria</i> ) [A140] Grey Plover ( <i>Pluvialis squatarola</i> ) [A141] Lapwing ( <i>Vanellus vanellus</i> ) [A142] Knot ( <i>Calidris canutus</i> ) [A143] Dunlin ( <i>Calidris alpina</i> ) [A149] Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156] Bar-tailed Godwit ( <i>Limosa lapponica</i> ) [A157] Curlew ( <i>Numenius arquata</i> ) [A160] Redshank ( <i>Tringa totanus</i> ) [A162] Greenshank ( <i>Tringa nebularia</i> ) [A164] Black-headed Gull ( <i>Chroicocephalus ridibundus</i> ) [A179] <b>Wetland and Waterbirds [A999]</b> <b>Habitat</b>		

#### 8.3.12. Assessment of likely Effects:

Lower River Shannon SAC (site code 002165) and The River Shannon and River Fergus Estuaries SPA (Site Code: 004077)

8.3.13. The submitted AA Screening Report considers the assessment of likely significant effects. The applicant's screening assessment had regard to the conservation interests and objectives of the SAC and SPA, and to the characteristics of both the project site as a habitat and to the foraging needs of the bird species (QI). The

Screening Assessment states that in addition to there being no direct loss of SAC or SPA habitat, the development site is more woodland in nature and therefore does not support wetland bird species.

- 8.3.14. Effects relate to discharge of pollutants generated by run-off at the site during construction and operational phases. Surface water discharging from the site to the culverted stream has the potential to be contaminated without mitigation by materials such as hydrocarbons, cement-based material and construction emissions and silt. Wastewater generated by the development has the potential to impact and effect water quality.
- 8.3.15. Effects are therefore based on the hydrological connection provided by the stream traversing the site and the fact that the qualifying interests in both the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA are dependent on good water quality. Given the proximity of the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA and the presence of a hydrological pathway established by the substantially culverted stream flowing through the project site to the River Fergus and to a much lesser extent due to connection via foul sewer and discharge to the waste water treatment system in Ennis, I consider both of these European Sites to be within the zone of influence.
- 8.3.16. Accordingly, in the absence of mitigation there is potential for direct, indirect and cumulative impacts on these European sites and their QIs downstream of the subject site.

Newhall and Edenvale Complex SAC (site code 002091) and Pouladatig Cave SAC (site code 000037)

- 8.3.17. The applicants screening has regard to conservation interests and objectives and to the characteristics of both the project site as a habitat and to the foraging/commuting needs of the LHB (QI). The AA screening states that although the site is not mapped within the NPWS foraging habitat for these SACs, the proposed site lies on the outer edges of the mapped range of potential habitat for the species. Table 1 of Dr. Flynn's report summarises the attributes and target for both sites. Effects relate to foraging habitat decline and fragmentation such as through loss of woodland and foraging ground, impact on connectivity and disturbances from loss of connectivity and light pollution at construction and operational stages.

8.3.18. Impacts are based on the potential impact on foraging/commuting type habitats for the Lesser Horseshoe Bat species – a qualifying interest of both Newhall and Edenvale Complex SAC and Pouladatig Cave SAC. Having regard to the proximity of the subject site to both of these SACs, at less than 2.5km, and the potential foraging range for these species and the potential for disturbance at construction and operational stages, I consider there to be a potential for impacts on these European Site. In the absence of mitigation, the EclA has identified a permanent negative impact on bat species from the proposed development with an effect at a local geographic scale as the habitat type of woodland and scrub is not common around Ennis town.

8.3.19. Accordingly, in the absence of mitigation there is potential for direct, indirect and cumulative impacts on these Natura sites and their Qis.

8.3.20. In conclusion, based on my review of the details submitted in the application Screening Assessment, I consider that further assessment is required in relation to:

- Lower River Shannon SAC (site code 002165).
- The River Shannon and River Fergus Estuaries SPA (Site Code: 004077)
- Newhall and Edenvale Complex SAC (site code 002091)
- Pouladatig Cave SAC (site code 000037)

#### Sites that were 'screened out'

8.3.20.1. Having regard to the absence of any likely pathway, the separation distance and nature of the site and proposed development, I am satisfied that no additional sites other than those listed above and assessed in the NIS need to be brought forward for inclusion in the AA.

#### Mitigation Measures

8.3.21. In this screening exercise, I have not relied upon any measures designed or intended to avoid or reduce any harmful effects of the project on designated European Sites.

#### AA Screening Conclusion

8.3.22. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the

project individually, or in combination with other plans or projects, could have a significant effect on 4no. European Sites in view of the Conservation Objectives of those sites and Appropriate Assessment is therefore required for the following sites:

- Lower River Shannon SAC (site code 002165).
- The River Shannon and River Fergus Estuaries SPA (Site Code: 004077)
- Newhall and Edenvale Complex SAC (site code 002091)
- Pouladatig Cave SAC (site code 000037)

8.3.23. I am satisfied the possibility of significant effects on other European sites can be excluded on the basis of objective information and as set out in the sections above.

## **Stage 2 Appropriate Assessment**

### **8.4. The Natura Impact Statement and associated documents**

8.4.1. The application documentation includes a Natura Impact Statement (NIS). The applicant determined that an update was not required at FI stage, as the bat surveys did not result in any updated conclusions to the NIS. Other relevant documents include the Ecological Impact Assessment, the Tree Survey Report and the Outdoor Lighting Report. The Civil Works Report sets out drainage details. In this context the NIS draws on these reports and examines the potential effects of the proposed development on the integrity of the relevant European Sites below. The First Party appeal addresses ecological matters, particularly in relation to bat surveys and reason for refusal No. 2. The relevant sites are:

- Lower River Shannon SAC (site code 002165).
- The River Shannon and River Fergus Estuaries SPA (Site Code: 004077)
- Newhall and Edenvale Complex SAC (site code 002091)
- Pouladatig Cave SAC (site code 000037)

8.4.1.1. Having regard to the absence of any likely pathway, the separation distance and nature of the site and proposed development, I am satisfied that no additional sites other than those listed above, and assessed in the NIS, need to be brought forward for inclusion in the AA.

**8.5. Assessment of potentially direct and indirect effects on integrity of European sites:**

8.5.1. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interests/special conservation interest features of the European Sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures are considered and assessed.

8.5.2. The main aspects of the proposed development that could adversely affect the conservation objectives of the sites are:

- Contaminated water mainly due to surface water run-off effect on Water Quality and impact on habitat and species through pollution during construction and operational phases. Also, wastewater discharge from housing to receiving waters via the Ennis WWT plant could impact on habitat and species.
- Disturbance: Due to site clearance and habitat fragmentation, noise and light associated with the development and impact on trees that may be potential foraging and commuting habitats for the Lesser Horseshoe Bat (LHB).

**8.5.3. Water quality: (Lower River Shannon SAC (site code 002165) and The River Shannon and River Fergus Estuaries SPA (Site Code: 004077))**

8.5.3.1. The NIS identifies the relevant QIs and associated conservation objectives in section 4 and 5. Potential threats are identified as pollution to surface waters due to household sewage and wastewaters during construction and operation of the proposed development. Screened in QIs are listed as Sandbanks, mudflats and Sandflats not covered by seawater at low tide, estuaries, reefs, Coastal lagoons, Large shallow inlets and bays, River Lamprey, Common Bottlenose Dolphin, Otter, Brook Lamprey, Sea Lamprey and Salmon,

8.5.3.2. There will be no direct impact on the habitats that are qualifying interests of the sites as the development lies outside the boundaries and the proposal does not provide or propose any access to any part of the designated sites or require resources from same.

- 8.5.3.3. The potential effects are described as deterioration in water quality and aquatic receptors through pollution generated during the construction and operational phases. In the absence of mitigation, impact from pollutants such as hydrocarbons, fuel, cement and sedimentation at construction stage are identified.
- 8.5.3.4. Measures for the protection of the environment and water quality have been incorporated in to the initial site set up phase including site compounds, and fuel and material storage area, ensuring there is no potential for water quality deterioration, Section 6.2.11 sets out measures in detail under the headings: Site set up, Biosecurity, Disturbance limitation Measures, Pollution prevention, Earthworks, measures to avoid release of cement based materials, measures to avoid effect associated with the disposal of wastewater, waste management and environmental monitoring.
- 8.5.3.5. The disturbance or displacement of species associated with the European site does not arise given the distances involved and the nature of the habitat environs of the site. There is very limited opportunity for visiting species by reason of access to the culvert as supported by survey results.
- 8.5.3.6. Impacts arising via foul waste is not significant as it is to be removed off-site at construction stage. At operational stage the site is connected to the foul sewer which had capacity at time of application. I note the Appendix 1 of the applicant's NIS in this regard and the appended letter from Uisce Eireann confirming current and future conditional capacity. Uisce Eireann will regulate access in accordance with capacity at time of connection. It must also act in compliance with licence arrangements.
- 8.5.3.7. The NIS includes control/mitigation measures for the construction and operational phases designed to mitigate issues related to the potential for run-off or contamination of watercourse and any associated risk to the hydrologically connected European sites. This is part of a wider range of measures to minimise disturbance of species (not of special conservation interest). Notably as part of the surface water management, hydrocarbon filters are proposed to the existing system with the benefit of water protection at operational phase as it is part of a system to



prevent pollution of the stream. The attenuation system and its design capacity will also inhibit excess run-off filtering directly to the watercourse.

**8.5.4. Disturbance to Lesser horseshoe Bat Species.** (QI Newhall and Edenvale Complex SAC (site code 002091) and Pouladatig Cave SAC (site code 000037))

8.5.4.1. Section 6.2.2 of the NIS identifies effects on the LHB species at construction and operational stages. The NIS refers to the supporting specialist reports such as the EclA, the Tree Survey Report, the outdoor lighting plan and the landscape plan. In the documentation submitted with the application and appeal, mitigation for potential adverse impacts on bats include vegetation retention and replanting to maintain landscape connectivity for foraging and commuting bats, a sensitive lighting design, and pre-construction surveys are all recommended to ensure impacts on the LHB species and habitats are limited. The lighting design is also confirmed as being in accordance with Bat Conservation Ireland (Bats and Lighting: Guidance Notes for Planners, Engineers, Architects and Developers, BCI, 2010) and the Bat Conservation Trust (Guidance Note 08/18 Bats and Artificial Lighting in the UK (BCT, 2018).

8.5.4.2. Tables 7.16, 7.17 and 7.18 of the NIS set out the targets for respective European sites and how the proposal, with mitigation, does not compromise the targets related to the Lesser Horseshoe bat or wetlands and waterbirds.

8.5.4.3. The applicant submits there will be no decline in auxiliary roost for either site having regard to the location of the site and the survey results. However, as a precaution, preconstruction surveys will be carried out and a derogation license will be sought.

8.5.4.4. The applicant submits that there will be no significant decline in foraging/commuting habitat within 2.5km of these sites due to the site not being in the mapped foraging grounds. While there will be some loss of vegetation, key linear features are retained and supplemented with landscaping in accordance with the landscape plan submitted with the application.

- 8.5.4.5. Measures in relation to minimising disturbance due to light spill and construction activities are aimed at ensuring disturbance is not significant, with the site being noted as already surrounded by housing and activity in a suburban context.
- 8.5.4.6. I note Dr Flynn's summary review on Table 3 and that conservation objectives to maintain favourable consideration of LHB could be undermined by the proposed development and that adequate cumulative assessment of impacts has not been undertaken. Impacts are assessed for Phase 2, but no evidence of consideration of total area of habitat loss and LHB activity across both Phases of development at this site or with other developments that may reduce foraging habitat within 2.5km of known roosts.
- 8.5.4.7. Dr. Flynn notes that while the proposed Phase 2 development alone may not result in adverse effects in view of the conservation objectives set for these SAC sites, the in-combination assessment with Drumbiggle Phase 1 in particular is lacking in detail and presents a lacuna in the overall assessment. It is not adequate to just list other projects as part of consideration of in-combination effects without a detailed assessment of relevant impact mechanisms including in this case, loss of foraging habitat, which if combined may have potential to increase the magnitude of an effect.
- 8.5.4.8. In view of the foregoing, I consider the mitigation measures proposed are sufficient to ensure that impacts regarding water quality are reduced to an imperceptible level and no impacts would arise on the qualifying interests of the Lower River Shannon SAC and The River Shannon and River Fergus Estuaries SPA.
- 8.5.4.9. In relation to the disturbance to LHB, the overall cumulative assessment with Phase 1 does not provide sufficient details to prove, beyond reasonable scientific doubt, that the subject proposal would not have a negative impact on foraging and commuting habitats of LHB associated with the Newhall and Edenvale Complex SAC or the Pouladatig Cave SAC. On this basis I am not satisfied that the proposed development will prevent any of the qualifying interests from achieving or maintaining the conservations objectives listed.

8.5.4.10. Cumulative effects may arise in-combination with other plans and projects in the vicinity. The NIS has referenced other developments in the area at the time of application. However, as referenced above, the cumulative assessment and in-combination effects of particularly the Phase 1 and Phase 2 applications for the subject site, have not been adequately considered in the submitted documents. There will be a loss of scrub and immature woodland on the subject site, which will reduce the foraging area for all bat species at this location.

8.5.4.11. I am therefore not satisfied that it has been demonstrated based on the information in the submitted Natura Impact Statement that with implementation of mitigation measures included in the supporting reports (EcIA, Tree Report, Lighting Report and Landscape Plan) that the proposed development, individually or in combination with other plans and projects would not adversely affect the above-mentioned European Sites (Newhall and Edenvale Complex SAC and Pouladatig Cave SAC).

#### **8.5.5. Appropriate Assessment Conclusions**

8.5.5.1. The proposed development has been considered in light of the assessment requirements of Section 177U and 177V of the Planning and Development Act 2000 as amended. Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that significant impacts could not be ruled out on the Lower River Shannon SAC (site code 002165), The River Shannon and River Fergus Estuaries SPA (Site Code: 004077), Newhall and Edenvale Complex SAC (site code 002091) and Pouladatig Cave SAC (site code 000037).

8.5.5.2. Consequently, Appropriate Assessment was required to assess the implications of the project on the qualifying interests/special conservation interest of those sites in light of their conservation objectives.

8.5.5.3. I am not satisfied that an examination of the potential impacts has been analysed and evaluated using the best scientific knowledge. The NIS, along with other supporting documents including the EcIA, Tree Report, and Lighting Plan provide details on mitigation measures for bats and prevention of water quality contamination

among other details, that were referred to in the NIS and also have been reviewed by Dr. Flynn. While significant impacts on the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA can be ruled out through the provision of appropriate mitigation measures, a full and comprehensive, in-combination assessment of impacts on the Newhall and Edenvale Complex SAC and the Pouladatig SAC Lesser Horseshoe Bat population, has not been adequately provided. Phase 1 and Phase 2 foraging habitat removal at the subject site has the potential to have a significant impact on foraging and commuting habitats of the LHB, which is contrary to the attributes and targets common to both SACs.

8.5.5.4. Following a Stage 2 Appropriate Assessment, with submission of a NIS, it has been determined that subject to mitigation (which is known to be effective) the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European sites, Lower River Shannon SAC (site code 002165), The River Shannon and River Fergus Estuaries SPA (Site Code: 004077).

8.5.5.5. It cannot be determined beyond scientific doubt that the proposed development, in combination with other plans or projects would not adversely affect the integrity of the European sites, the Newhall and Edenvale Complex SAC (site code 002091) and Pouladatig Cave SAC (site code 000037) in view of their Conservation Objectives that there is no significant decline of foraging habitat within 2.5km of known roosts.

8.5.5.6. This conclusion is based on a complete assessment of all aspects of the proposed project and there is, therefore, a reasonable doubt as to the absence of adverse effects.

## **9.0 Recommendation**

On the basis of the above planning assessment, and Appropriate Assessment, I recommend that permission should be refused for the proposed development for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

1. In respect of both urban ecology and housing provision and the site-specific objective (SR8) for 'Strategic Residential Reserve' Zoned land, the development of the subject site is premature until year 4 of the County Development Plan (April 2027) and would therefore not comply with the policies and objectives of the Clare County Development Plan 2023-2029.
2. Having regard to the location of the site, together with adjoining land, within the 2.5km foraging range of the Newhall and Edenvale Complex SAC (site code 002091) and the Pouladatig Cave SAC (site code 000037) Special Area of Conservation, it is considered that:
  - (a) the proposed development would result in the significant loss of foraging and commuting habitat, of the Lesser Horseshoe bat which is a qualifying interest of both SACs which are included on Annex I of the European Union Habitats Directive of 1992; and
  - (b) the proposed development would give rise to increased disturbance to wildlife, including the Lesser Horseshoe Bat (which is a protected species included on Annex II of the European Union Habitats Directive), from human activity in what was formerly a relatively undisturbed area.

Notwithstanding (a) and (b) above the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that adequate information has been provided on the impact of the proposed development in-combination with other projects in the area within the Annexed habitat and the resulting implications for wildlife and flora.

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

3. The applicant has not adequately illustrated that there would be no net loss of feeding habitat, treelines or hedgerows for the Lesser Horseshoe Bat, which has a known roost within 2.5km of the subject site and would be contrary to Objective 15.12 of the Clare County Development Plan 2023-2029 and be contrary to the proper planning and sustainable development of the area.
4. Having regard to Annex IV of the EU Habitats Directive, European Communities (Birds and Natural Habitats) Regulations 2011 (as amended), the applicant has failed to submit a derogation licence for the removal of an identified bat roost within the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
5. Having regard to the complex hydrological and hydrogeological conditions pertaining to the site, to the limited investigation carried out of those conditions and hence to the potentially inadequate mitigation impacts associated with the proposed development, it is considered that the development site could lead to unforeseen flooding and groundwater impacts that have not been fully assessed. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

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.

---

Matthew McRedmond  
Senior Planning Inspector

12<sup>th</sup> December 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	ABP-319358-24			
<b>Proposed Development Summary</b>	Development of 56 residential units and a creche.			
<b>Development Address</b>	Drumbiggle, Ennis, 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>	✓	
		<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>		Class.....	EIA Mandatory EIAR required	
<b>No</b>	✓		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)	Proposed 56 unit development does not meet or	Proceed to Q.4

			exceed 500 dwelling threshold	
--	--	--	----------------------------------	--

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

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_



## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	<b>ABP- 319358-24</b>	
<b>Proposed Development Summary</b>	Development of 56 residential units and a creche	
<b>Development Address</b>	Drumbiggle, Ennis, Co. Clare	
<p><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></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development.</b> Is the nature of the proposed development exceptional in the context of the existing environment.</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	Residential development with 56 units is not out of context at this urban location and will not result in any significant waste or pollutants.	No.
<p><b>Size of the Development</b> 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>	Residential development with 56 units is not out of context at this urban location and will not result in any cumulative considerations.	No.
<b>Location of the Development</b>	Site is adequately removed from	Uncertain

<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, or protected species?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area, including any protected structure?</p>	<p>the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SAC to minimise impacts. The proposal has the potential to impact foraging and commuting habitats of the Lesser Horseshoe Bat associated with the Newhall and Edenvale Complex SAC and the Pouladatig Cave SAC. Appropriate Assessment deals with this matter.</p> <p>I have given consideration to the requirement for sub-threshold EIA. The site is located on lands identified for residential development and is within an established urban setting. The site includes a roadway and is otherwise a greenfield site with partial woodland that has extensive scrubland and is in a suburban setting with playfields/showgrounds and low-density housing developments surrounding the site. The introduction of an additional residential development will not have an adverse impact in environmental terms on surrounding land uses. I note that while the site is identified in the development plan as having a natural habitat, the parameters for development of the site are set down in the site specific objective SR8 which envisages housing and requires development to be informed by an ecological assessment of the site, appropriate bat surveys to be undertaken and that the design proposal should be accompanied by a landscape management plan and mitigation for bats, water quality and Birds of special conservation interest in addition to a site-specific Flood Risk Assessment (having regard to the small Cahircalla stream</p>	
--	---	--

	<p>that runs through the site). These requirements have been substantially met in the submitted documents and assessment by the planning authority.</p> <p>The site is not designated for the protection of the landscape or of natural or cultural heritage although it is within a bat foraging range hence the requirement for specific surveys. The proposed development however could potentially have a significant effect on two European Sites (as discussed in the AA section of my main report). There is limited hydrological connection to sensitive sites due to the culverting of a stream traversing the site. This is not likely to give rise to significant impact on nearby water courses (whether linked to any European site/or other) as also addressed in the AA section of my report.</p> <p>As the potential impacts are limited to loss of foraging and commuting habitats as a direct result of removal, and where there are other plentiful supply of mapped foraging and commuting habitats in the surrounding area, I am satisfied that, as detailed in the AA section of my report, although the CDP requirement of 'no net loss' is not met, EIA is not required in relation to this issue.</p>	
<b>Conclusion</b>		

<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p><b>EIA is not required.</b></p> <p>√</p>	<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p>
--	--	--

**Inspector:**

**Date:**

---

**DP/ADP:** \_\_\_\_\_

**Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)