An Bord Pleanála

Board Direction
BD-018670-25
ABP-319358-24

The submissions on this file and the Inspector's report were considered at a Board meeting held on 15/01/2025.

The Board decided to refuse permission, generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

Reasons and Considerations

Having regard to the Clare County Development Plan 2023-2029 and to the zoning of the site as Strategic Residential Reserve (SR8) to facilitate growth needs across the county and sequential expansion in the long term, it is considered the development of the subject site at this time is premature and would, therefore, not comply with the policies and objectives of the Clare County Development Plan 2023-2029.

In deciding not to accept the Inspector's second recommended reason for refusal in relation to appropriate assessment of the proposed development, the Board noted the totality of submissions on the file including (i) the location of the site, together with adjoining land, within 2.2 kilometres of a hibernation roost (Roost ID 53) in

Newhall and Edenvale Complex Special Area of Conservation (site code 002091), (ii) the site-specific conservation objective, attribute and target of the Special Area of Conservation that there should be no significant decline in the extent of potential foraging habitat within 2.5 kilometres of a qualifying roost, (iii) the observation of the Board's Ecologist regarding the low numbers of Lesser Horseshoe Bat recorded across all seasons at the proposed development site, (iv) the history of scrub clearance activity at the proposed development site, (v) the site-specific zoning measures (SR8) and the mitigation measures set out in the Development Plan's Natura Impact Statement. The Board considered the Development Plan, in zoning the site for residential development rather than amenity, anticipates a level of site development alongside prescribed site-specific mitigations to protect the movement of Lesser Horseshoe Bats, subject to satisfactory applicable assessments. The Board noted the applicant's submission that the site-specific conservation objectives for Newhall and Edenvale Complex Special Area of Conservation did not map this particular site as part of the potential foraging grounds for that European Site (Map 2, NPWS (2018) Conservation Objectives: Newhall and Edenvale Complex SAC 002091. Version 1). In any case, the Board also considered that a conservation target of no significant decline in the extent of potential foraging habitat does not equate to no loss. The Board concurred with the Board Ecologist that the details provided in the Natura Impact Statement in this application with respect to phase 1 did not enable the Board to complete an appropriate assessment and while the Board could have sought further information from the applicant in this regard, given the substantive reason for refusal the Board decided not to pursue the matter further at this time.

In deciding not to accept the Inspector's third recommended reason for refusal in relation to no net loss of feeding habitat, the Board noted that Policy Objective 15.12(d) of the Clare County Development Plan 2023-2029 seeks to ensure there is "no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5 km of known roosts". The Board noted that a radius of 2.5 km equates to an area of 19.6 km^2 encompassing the vast majority of Ennis Town including its rural periphery to the west and south. In terms of enabling the practical application of such an objective across all landholdings, gardens and related activities in this area, the Board also had regard to the use of the phrase "net loss" in

the policy objective which implies loss in some areas may be counterbalanced by gains in others areas. Taken together with the local authority's decision to designate this site for residential development (SR8) rather than an amenity zoning, the Board considered the local authority had anticipated some level of scrub removal at this site alongside appropriate site-specific measures and mitigations referenced above. On that basis, the Board considered Policy Objective 15.12 of the Development Plan did not constitute a sufficient reason for refusal.

In deciding not to accept the Inspector's fourth recommended reason for refusal in relation to a stated requirement for derogation licensing in advance of a decision for this planning application, the Board noted the recommendation of the Development Applications Unit at the Department of Housing, Local Government and Heritage and the subsequent Board's Inspectorate in this regard. The Board considered the Judgement of the Court of Justice of the European Union in relation to Case C-166/22, and noted in particular paragraph 36 which states "... in the specific case where, first, the execution of a project that is subject to the dual requirement for assessment and development consent laid down in Article 2(1) of Directive 2011/92 involves the developer applying for and obtaining a derogation from the plant and animal species protection measures prescribed in the provisions of national law transposing Articles 12 and 13 of Directive 92/43 and where, second, a Member State confers power to grant such a derogation on an authority other than the one on which it confers power to give development consent for the project, that potential derogation must necessarily be adopted before development consent is given". In considering that this proposed development is not a 'project' for the purposes of Directive 2011/92 as concluded in Section 5.4 of the Inspector's Report, the proposed development does not appear to fall within the scope of this Judgement and the Board was not satisfied this constituted a reason for refusal.

In deciding not to accept the Inspector's fifth recommended reason for refusal in relation to hydrological and hydrogeological conditions pertaining to the site, the Board, in having regard to the totality of submissions received, was nevertheless satisfied with and accepted the technical submissions provided by the applicant regarding the surface water management strategy including as it relate to flood risk. In the context of surface water for the proposed development predominantly being

routed to the Cahercalla Stream culvert thereby reducing the volume of surface water going to ground within the site, the Board did not consider the concerns relating to unforeseen flooding and groundwater impacts as set out by the Inspector to be sufficiently significant as to warrant a refusal.

Board Member Eamonn James Kelly **Date:** 22/01/2025

Eamonn James Kelly