



An
Bord
Pleanála

Inspector's Report

ABP-319267-24

Development	Construction of 39 houses and all associated site works.
Location	Treanrevagh, Mountbellew, Co. Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	2361219
Applicant	Cahermorris Developments Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Barry McCormack & Michael Duffy
Observers	None
Date of Site Inspection	16 th July 2024
Inspector	Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 1.8 Ha, is located in the townland of Treanrevagh, on the northern side of the R358/College Road, c. 300 metres east of the centre of Mountbellew, Co. Galway.
- 1.2. Holy Rosary College is located to the south-west of the appeal site. Mountbellew Agricultural College is situated to the south-east of the appeal site.
- 1.3. The appeal site has been partially excavated and there is a large soil heap in the centre. The appeal site previously formed part of a larger previously permitted mixed use development (PA. Ref. 06/3886/ABP. Ref. 07.221318 refers) accommodating commercial development at the southern end of the site and a residential element towards the north of the site. To date, a supermarket (Aldi) and a petrol filling station have been constructed.
- 1.4. Access to the appeal site is via an existing road to the south, connecting the appeal site to the R358/College Road.
- 1.5. The lands adjoining/surrounding the appeal site are indicated as being within the applicant's ownership/control, as demarcated by the blue line boundary. The blue boundary of the site also includes the access onto the R358/College Road and the location of the temporary waste water treatment plant to the north-west of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development comprises;
 - Construction of 39 no. houses (35. No. 2 bedroom houses and 4 no. 3 bedroom houses).
 - Pedestrian and vehicular connection to R358/College Road (via existing access road and junction to the south).
 - Connection to public water supply and wastewater¹.

¹ It is proposed to treat effluent from the proposed development in a temporary waste water treatment plant (tWWTP) prior to discharge to the public sewer.

- Public open space areas, playground footpaths, bicycle parking, lighting, landscaping and boundary treatments, and associated site works.

2.2. The planning application was accompanied by the following reports;

- Storm Water Services Proposal.
- Planning Statement.
- Lighting (technical specification).

2.3. The following reports were submitted in response to a request for Further Information.

- Traffic Report (inc. Traffic and Transport Assessment (TTA), Mobility Management Plan (MMP) and Road Safety Audit (RSA)).
- Appropriate Assessment Screening Report.
- Natura Impact Statement (NIS).
- Preliminary Construction and Environmental Management Plan (pCEMP).
- Wastewater Treatment using SBR Technology.
- Storm Water Services Proposal (updated).

3.0 Planning Authority Decision

3.1. Request for Further Information

Prior to the decision of the Planning Authority to grant permission for the proposed development, the Planning Authority requested Further Information.

3.1.1. Further Information was requested on the 5th of December 2023 as follows:

- Item 1 – submit Appropriate Assessment Screening report.
- Item 2 – liaise with Uisce Éireann/clarify timeframe for connection to public foul sewer.
- Item 3 – demonstrate how the site accords with the sequential development of the settlement.
- Item 4 – submit details of proposed attenuation tank.

- Item 5 - submit updated Traffic and Transport Assessment and Mobility Management Plan.
- Item 6 – (i) revise private amenity space provision for unit no.'s 9, 14 and 37; (ii) revise proposed boundary treatments; (iii) clarify boundary treatment between front private unit interface with the footpath and front amenity areas dividing individual units; and, (iv) indicate bin storage for terrace units.

3.1.2. Further Information² submitted on the 18th of December 2023.

- Item 1 – Appropriate Assessment Screening report and Natura Impact Statement (NIS) submitted. A Preliminary Construction Environmental Management Plan (pCEMP) was also submitted.
- Item 2 – applicant's response notes that;
 - the use of a tWWTP discharging treated effluent to the public sewer was established under PA. Ref. 06/3886, and was confirmed by the Board under ABP. Ref. 310047-21 (PA. Ref. 20/1799). This approach was also recently accepted by the Planning Authority under PA. Ref. 23/60139.
 - Uisce Éireann has issued a Confirmation of Feasibility in respect of the proposal.
 - the proposed tWWTP is located on lands owned by the applicant.
 - correspondence from Molloy Engineering addresses the installation and operation of the proposed tWWTP.
 - the applicant has engaged with Uisce Éireann in order to establish a projected timeframe for connection to the public sewer. The accompanying letter from Uisce Éireann (dated 14th December 2023) confirms that the upgrade works to Mountbellew Wastewater Treatment Plant are due to be complete in Q4 2027. The timescale concerned would not be unduly prolonged.
- Item 3 – the location of the proposed residential development is consistent with the principles of consolidated urban development and sustainable mobility. The site is located within the 50 kmph limit; within 5 minutes walking distance of the village square; the site is bounded by a mixed use development to the south;

² The Further Information submitted was deemed significant and was readvertised in accordance with Article 35 of the Planning and Development Regulations, 2001, as amended.

schools to the east and west; and is adjacent to a recently permitted development of 35 no. houses (PA. Ref. 23/60139 refers).

- Item 4 - updated 'Storm Water Proposal' report and Longitudinal Section for the proposed attenuation tank submitted.
- Item 5 – a Traffic Report was submitted to the Planning Authority in June 2023 under PA. Ref. 23/60139 (this report has been re-submitted in response to Item 5). The applicant notes that the report included a Traffic and Transport Assessment, a Mobility Management Plan and a Road Safety Audit, and that the TTA addresses 'cumulative traffic' arising from both proposed and permitted developments. The current application is for the construction of 39 no. residential units on lands on which there is an extant permission for 37 no. units under Planning File Reg. Ref. 17/1699 (06/3886). The TTA submitted under PA. Ref. 23/60139 includes for the assessment of the effects of traffic arising from the permitted 37 no. units. Since these units are to be replaced by the current proposed development of 39 no. units it follows that the effect of 2 no. additional units are included in the cumulative assessment provided in the Traffic Report, which concluded that impacts would be imperceptible. The potential impact of 2 no. additional units will not have such an effect on traffic that it would warrant detailed examination or revision of the comprehensive and detailed analysis already provided in the Traffic Report submitted in June 2023. A Construction and Environmental Management Plan (CEMP) would be a satisfactory mechanism in relation to construction generated traffic.
- Item 6 - (i) the layout of the proposal has been updated to ensure sufficient private open space for units 9, 14 and 37. Unit 9 has been changed from a Type C1 to Type C2 and provides for private open space of 76sqm. Windows on the western gable address the public realm. Unit 14 is changed from a Type C1 to Type C3 and is served with 107 sqm of private open space. Windows are proposed on the southern gable to address the public realm. The site boundary for Unit 37 has been increased to provide 125 sqm of private open space. (i), (ii) and (iii) are addressed in the 'Boundary Treatment' layout prepared by Archeco.

3.2. Decision

The Planning Authority issued a Notification of Decision to Grant Permission on the 14th of February 2024 subject to 18 no. conditions. The following conditions are of note-

C4 (a) – requires connection agreement to be entered with Uisce Éireann.

C5 (c) – requires Discharge Licence to be in place prior to occupation of dwellings.

C5 (e) – requires that on completion of Mountbellew WWTP, the temporary WWTP shall be decommissioned, and shall connect into the public foul sewer.

C8 – requires a Stage 3 Road Safety Audit to be submitted.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The first report of the Planning Officer generally reflects the issues raised in the Further Information request.

The report also notes that;

- the proposed development relates to lands which under PA. Ref. 06/3886 a mixed use development was permitted, and that this development was served by a tWWTP.
- reference is made in the report to Gort and to Athenry (these appear to be typographical errors).
- the report includes a section on the location of the site in the context of a sequential approach to development and notes that the site is 900 metres from the centre. I note that the site is significantly less than 900 metres from the centre of Mountbellew (at c. 300 metres³). This appears to be a typographical error. Additionally, this section of the Planner's report also refers to proposed residential development to the south and west however

³ The second report of the Planning Authority refers to the site as being c. 300 metres from the centre of Mountbellew.

noting the planning history pertaining to the site it appears that this is also erroneous.

- the density of the proposal, at 21 dpha, is considered acceptable.
- consideration of the arrangement for foul water treatment and discharge is guided by the planning history associated with the site (live permission on the site) and the documentary evidence of the acceptance by Uisce Éireann of the arrangements.

Further Information Recommended.

3.3.2. The second report of the Planning Officer notes that the applicant's response to the request for Further information is acceptable. In concluding, the report notes the planning history on the site, and specifically the provision of tWWTP in permissions issued by Galway County Council and An Bord Pleanála, and that the proposal represents an appropriate scale and location of development and will provide for compact growth.

The report of the Planning Officer recommends a grant of permission consistent with the Notification of Decision which issued.

3.3.3. Other Technical Reports

Environment Section – report expresses concerns in relation to the proposal to use a tWWTP, and notes that should a grant of permission be considered a condition requiring a Discharge Licence should be attached.

Roads and Transport Section – report recommends Further Information in respect of the attenuation tank and requires a revised Traffic and Transport Assessment and Mobility Management Plan.

3.4. **Prescribed Bodies**

Uisce Éireann – 2 no. reports were submitted to the Planning Authority. The first report (dated 29th November 2023) recommends that further information is sought. Specifically, the report notes that the applicant was previously advised that pre-treatment should be sized to have capacity for 63 no. houses, however the proposal brings the total number of houses to 75 no. (12 more than outlined in the Confirmation

of Feasibility). The report recommends that to assess feasibility of connection the applicant should engage with Uisce Éireann through the Pre-Connection Enquiry, and submit the outcome of this pre-connection enquiry to the Planning Authority.

A second report (dated 1st December 2023) notes;

- no objection in principle.
- that a Confirmation of Feasibility has been issued subject to, in respect of wastewater, works upstream of the WWTP being required to alleviate capacity constraints, that the works are not in Uisce Éireann's investment plan, and that the applicant will be required to fund them.
- that the development will discharge to a tWWTP prior to discharging to the Uisce Éireann network, and that the applicant will be responsible for the operational costs of the on-site WWTP until the Mountbelllew WWTP can accept untreated loading from the development.
- that pre-treatment should have capacity to treat secondary standard for 83 no. houses.
- that standard conditions recommended, including that a connection agreement is entered into.

3.5. Third Party Observations

The report of the Planning Officer summarises the main issue raised in the third-party observations as non-compliance with Condition no. 3 of PA. Ref. 06/03886 & ABP. Ref. PL.07.221318.

4.0 Planning History

Background - Permission was granted under PA. Ref. 06/3886/ABP. Ref. 07.221318 for a mixed use development on a 7 Ha. site. This development comprised residential development to the north of the site and commercial development to the south of the site. The permission was subsequently extended under PA. Ref.'s 12/1428, 17/1699 and 21/2091, and expired on the 31st of December 2023.

To date, a supermarket (Aldi) and a petrol filling station have been constructed on the southern part of the site. An internal access road and footpaths have also been constructed up to the central part of the site. No residential development has been constructed to date. Under PA. Ref. 06/3886/ABP. Ref. 07.221318, a tWWTP was proposed by the applicant, however Condition no. 3 (a) required that no works commence until the upgrade of the wastewater treatment plant, and Condition 3 (b) stipulated that no house or building shall be occupied until the wastewater treatment plant has been commissioned.

There is an extensive planning history pertaining to the wider site, the majority of these applications relate to alterations to the commercial element of the proposed development on the southern part of the site. One application related to amendments to the residential element permitted under PA. Ref. 06/3886/ABP. Ref. 07.221318. I note that where permission has been granted for amendments to PA. Ref. 06/3886/ABP. Ref. 07.221318 the permission has been linked back to the conditions and duration of the parent permission, i.e. PA. Ref. 06/3886/ABP. Ref. 07.221318, and therefore the requirements of Condition no. 3 have pertained. I note that these amending permissions have now expired.

The planning history of most relevance to the current appeal/proposal is summarised below.

Appeal Site:

PA. Ref. 23/60139 – Permission GRANTED for 35 no. houses (served by a tWWTP).

PA. Ref. 24/61477⁴ – Current planning application for 25 no. houses (served by a tWWTP).

5.0 Policy Context

5.1. National Policy

5.1.1. National Planning Framework ‘Project Ireland 2040’

⁴ Decision due date 4th January 2025.

Relevant Policy Objectives include:

- **National Policy Objective 3a**: Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.
- **National Policy Objective 4**: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

5.2 Ministerial Guidelines

5.2.1 Having regard to the nature of the proposed development and to the location of the appeal site, I consider the following Guidelines to be pertinent to the assessment of the proposal.

- Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities (2024).
- Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities (2021).
- Design Manual for Urban Roads and Streets (2019).
- Urban Development and Building Height Guidelines, Guidelines for Planning Authorities (2018).
- Appropriate Assessment of Plans and Projects in Ireland, Guidelines for Planning Authorities (2010).
- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009).
- Quality Housing for Sustainable Communities - Best Practice Guidelines for Delivering Homes Sustaining Communities (2007).

The following Circular is relevant to the proposed development.

- Circular Letter PD 1/08 - Taking in Charge of Residential Developments/ Management Arrangements. (DoEHLG).

5.3. Development Plan

5.3.1. The relevant Development Plan is the Galway County Development Plan 2022-2028.

5.3.2 The appeal site is not subject to any specific land-use zoning. The provisions of the Galway County Development Plan 2022 – 2028 relevant to this assessment are as follows:

Volume 1

Chapter 2 - Core Strategy, Settlement Strategy and Housing Strategy

- **Objective SS7:** Development of Rural Settlements and Rural Nodes (Level 7)

Chapter 3 – Placemaking, Regeneration and Urban Living

- **Objective PM8:** Character & Identity
- **Objective PM10:** Design Quality

Chapter 7 – Infrastructure, Utilities and Environmental Protection

- **Objective WW4:** Requirement to Liaise with Irish Water – Wastewater

Chapter 15 – Development Management Standards

- **DM Standard 2:** Multiple Housing Schemes (Urban Areas)

5.3.3. The appeal site is located within an ‘Urban Environs Landscape’ (see Map 1) for the purpose of landscape type, which is described as having a ‘low’ sensitivity to change.

5.4. Natural Heritage Designations

- Carrownagappul Bog SAC (Site Code 001242) – c. 2.2 km north.
- Carrownagappul Bog pNHA (Site Code 001242) – c. 2.2 km north.
- Curraghlahanagh Bog SAC (Site Code 002350) – c. 5.4 km north.
- Curraghlahanagh Bog pNHA (Site Code 000256) – c. 5.4 km north.
- Shankill West Bog SAC (Site Code 000326) – c. 5.5 km north-west.
- Shankill West Bog pNHA (Site Code 000326) – c. 5.5 km north-west.
- River Suck Callows SPA (Site Code 004097) – c. 12.2 km east.
- River Suck Callows NHA (Site Code 000222) – c. 12.2 km east.

5.5. EIA Screening

See Form 1 and 2 (attached). Having regard to the limited nature and scale of development, as well as the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

I consider that any issues arising from the proximity/connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment).

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal against the decision to grant permission. The grounds for appeal may be summarised as follows;

- The decision is an abuse of the planning process.
- Potential impact on the environment through increased pollution, and cumulative impacts on European sites.
- Conditions of the decision are *Ultra vires*. Conditions no.'s 3, 5 and 17 are ambiguous. Reference is made to the requirement for conditions to be precise; relevant to planning; reasonable; enforceable; and should not relate to other codes.
 - Condition no. 3 conflicts with the requirements of Condition no. 2. This is an attempt by the Planning Authority not to assume responsibility for the proposed WWTP. Residents within the proposed development will be made liable for the management of the WWTP.
 - Condition no. 4(b) is *Ultra vires* as it requires compliance with a separate code.

- Condition no. 5 (a) may conflict with the requirements of the discharge licence. Reference in Condition 5 (a) to '*that the above has been complied with*' and also to a '*suitably qualified person*' is ambiguous.
 - Condition no. 5 (c) is unclear in relation to reference to '*should be applied for*'.
 - Condition no. 5 (d) is *Ultra vires* as the Planning Authority cannot force anyone to enter into or pay for a contract.
 - Condition 5 (d) is unenforceable as the applicant may not be in existence when Mountbellew WWTP is completed.
 - Condition no. 9 (a) is unenforceable.
 - Condition no. 12 (d) was not considered in the assessment of impacts on receiving waters.
 - The requirements of Condition no. 13 should have been considered in advance to inform the EIA/AA, and includes mitigation in circumstances when AA was not carried out.
- The development is contingent on the consent of a third party which should be in place prior to a planning decision being made. Reference is made to ECJ Case C-166/22. The appellant notes that in this context the Uisce Éireann connection agreement and application for a discharge licence require assessment prior to granting permission for the proposed development.
 - The report of the Planning Authority does not adequately address the issue of the requirement for the upgrading of the municipal waste water treatment plant.
 - The report of the Planning Authority refers to ABP. Ref. PL.07.221318 in the context of the describing the history on the site but not in relation to the issue of the inadequacy of waste water facilities. Condition no. 3 of this permission recognised the overloading of the municipal waste water treatment plant. Nothing has changed in the interim period. Water quality of the Castlegar River has deteriorated. It is an offence under the Surface Water Regulations 2009 to make a decision which leads to increased pollution of surface waters. Reference to the requirements of the Water Framework Directive (WFD) is also made.

- Reference to previous permissions where it is stated that connections to the public sewer exist are incorrect. The relevant consents cannot proceed until the commissioning of the WWTP. The appellants object to the omission of the requirements of Condition no. 3 in this regard.
- The report received from the Environment Section expresses concerns in relation to the proposal. This is not addressed in the report of the Planning Officer and this is in contrast to the treatment of the submission from Uisce Éireann. The report of the Environment Section is also not available on the planning portal.
- The second report of the Planning Officer does not address the observations submitted to the Planning Authority.
- The Planning Authority have not adequately undertaken Appropriate Assessment screening or Appropriate Assessment.
- The use of a WWTP is considered to be mitigation.
- Uisce Éireann's investment plan makes no reference to Mountbellew.
- The Planning Authority have not liaised with the EPA in relation to increasing hydraulic loading at the municipal waste water treatment plant.
- The Planning Authority cannot abdicate their role to Uisce Éireann in relation to the protection of the environment.
- The report of the Planning Officer references Gort and Athenry.
- There is a history of enforcement on the site which is not referred to in the report of the Planning Officer.
- The appellants did not have an opportunity to make submissions to a previous planning application due to the location of the site notice, and its location alongside another site notice. The second site notice should have been a different colour.
- The report from Uisce Éireann does not address the overloaded WWTP.
- The appeal submission refers to the appellant's observations to the Planning Authority, including in respect of the Further Information.

6.2. Applicant Response

The applicant has submitted a response in respect of the third party appeal submission.

- The identity of the appellants is queried (Tony McCormack and John Cunningham, whom the front page of the appeal submission states the appeal is submitted on behalf of, did not make a submission to the Planning Authority).
- The appeal is vexatious and the Board is requested to dismiss the appeal.
- An Bord Pleanála have approved the applicant's foul sewer proposals for the site, which comprised a tWWTP until the municipal WWTP is upgraded.
- The commercial elements of the scheme to the south of the wider have been substantially completed. As this permission has expired, permission is now being sought to develop the residential elements to the north of the site. The first of these applications (PA. Ref. 23/60139) was for 35 no. houses. Similar to PA. Ref. 06/3886, this development also proposes temporary on-site waste water pre-treatment and discharge to the public sewer, as agreed with Uisce Éireann.
- Uisce Éireann have confirmed Confirmation of Feasibility for water and waste water connections under 3 no. applications, i.e. 32 no. units, 31 no. units and 20 no. units, a total for 83 no. units. After the 35 no. unit development, there remains capacity for 48 no. units. Condition no. 4 of the Planning Authority's decision 'copper fastens' Uisce Éireann's requirement into the grant of permission, requiring the applicant to enter into a connection agreement with Uisce Éireann, and Condition no. 5 addresses the temporary waste water treatment plant on the site.
- The requirement to apply for a Discharge Licence is unclear. There is no discharge of effluent to water. The requirement is not explained by the Planning Authority. Should a Discharge Licence be necessary, the conditions set out in Uisce Éireann's Connection Agreement would state this. The requirement for a Discharge Licence is not necessary.
- The following is noted in relation to the Planning Authority's assessment of the waste water proposal;

- under the heading of 'submissions/observations' reference is made to the Confirmation of Feasibility from Uisce Éireann, and the applicant's responsibility to cover the costs of the proposed temporary treatment plant on the site.
 - under the heading 'planning assessment', reference is made to proposed temporary treatment plant being located within the blue line boundary of the site.
 - under the heading 'foul sewerage' the report of the Planning Officer notes that the foul arrangement and discharge is guided by the planning history (live permission on the site) and the documentary evidence of the acceptance by Uisce Éireann of the arrangements.
- The waste water treatment arrangements are considered feasible to Uisce Éireann.
 - The applicant's response to the Further Information request, and observations in respect of same, were considered by the Planning Authority.
 - The Planning Authority were satisfied that the upgrade of the municipal WWTP would be complete within a reasonable timeframe (i.e. Q4 2027). This plant was permitted by An Bord Pleanála under ABP. Ref. 310144-22.
 - The Planning Authority were satisfied that the proposal was acceptable in terms of its layout and scale, and compliance with the Sustainable Residential Development and Compact Settlement Guidelines (2024).
 - There is no evidence of an abuse of the planning process.
 - A Natura Impact Statement (NIS) confirms that the proposal will not impact any designated site.
 - An Bord Pleanála will assess the proposal *de novo* and will attach conditions as it sees fit.
 - Regarding compliance with other codes, the requirement for a Discharge Licence is considered to be an error and the ECJ case referred to by the appellants is therefore not relevant.

- Connections to Uisce Éireann's network do not require EIA/AA and the appellants advance no justification for this contention.
- There is no requirement to have a Connection Agreement in place, rather the requirement is for a Confirmation of Feasibility to be in place at the time of making a planning application.
- Site notices were correctly displayed/erected.
- Under PA. Ref. 23/177 the applicant sought to omit Condition no. 3⁵ of PA. Ref. 06/3886, the Planning Authority have acceded to this however this is decision is the subject of an appeal ABP. Ref. 317614-23.
- The latest Annual Environmental Report (AER) for Mountbellew treatment plant is 2020, and not 2019 as stated by the appellants. The status of the Castlegar River are matters for the EPA and Uisce Éireann, and not the applicant.

6.3. Further Response

A further response was submitted by the appellants.

- The appeal is made by Barry McCormack and Michael Duffy.
- The appeal is not vexatious. The appellants are seeking the Board to comply with applicable statutory requirements, including EIA and AA.
- Mountbellew is not mentioned in the Galway County Development Plan, leaving a vacuum in relation to what Elected Members intended for the settlement.
- Decision makers are prohibited from making decisions which could have a significant impact on a European site, and have a responsibility to ensure that planning decisions do not impact drinking water.
- Increasing the loading on a dysfunctional WWTP, even with partially treated effluent increases pollution.

⁵Condition 3 (a) required - that no works commence until the upgrade of the wastewater treatment plant. Condition 3 (b) stipulated - that no house or building shall be occupied until the wastewater treatment plant has been commissioned.

- PA. Ref. 06/3886 was altered on appeal as there was no capacity to treat waste water.
- The appellants did not see the site notice erected for PA. Ref. 23/60139 due to its location and colour.
- Uisce Éireann is not the decision maker. Before granting permission, the decision maker must determine whether the proposal is likely to impact the environment and European sites.
- The Planning Authority have not referred to the Galway Development Plan in the context of Mountbellew, and the waste water issue appears to be the reason for this.
- The Environment Section were not in favour of the proposal. The Roads Department Office (RDO) expressed concern in relation to flooding which was not addressed.

6.4. Planning Authority Response

None received.

6.5. Observations

None received.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including the appeal, subsequent submissions by the applicant and appellants to the Board, and having inspected the site, I consider that the main issues for consideration are those raised in the appeal, specifically waste water. Issues arising and Appropriate Assessment are also addressed in this report.

7.2. Principle of Development/Compliance with Core Strategy

- 7.2.1. The appeal site is not subject to any specific land use zoning in the Galway County Development Plan 2022 – 2028. Chapter 2 of the Galway County Development Plan

2022 – 2028 sets out the core/settlement strategy for the County. Mountbellew is designated as a Level 7(a) ‘rural settlement’ in the Core Strategy of the Galway County Development Plan 2022 – 2028 (see Table 2.12 Settlement Hierarchy). Objective SS7 of the Galway County Development Plan 2022 – 2028 provides that *‘in the case of smaller settlements for which no specific plans are available, development shall be considered on the basis of its connectivity, capacity (including social, cultural, and economic, infrastructural and environmental capacity) and compliance with the Core Strategy and Settlement Hierarchy, good design, community gain and proper planning and sustainable development’*. The appeal site is located within the settlement boundary of Mountbellew and the proposed development consists of 39 no. houses. I note that there is currently no capacity in the Mountbellew waste water treatment plant. Correspondence from Uisce Éireann indicates that a new waste water treatment plant for Mountbellew is expected to be operational in Q4 2027. The applicant proposes to pre-treat effluent from the proposed development in a tWWTP prior to discharging to the public foul sewer. Consideration of development in settlements where there is no specific plan is based on the availability infrastructure, in accordance with Objective SS7 of the Galway County Development Plan 2022 – 2028. Noting the absence of capacity in the Mountbellew WWTP, the estimated date for completion of the new waste water treatment plant for Mountbellew, and notwithstanding the proposal to pre-treat effluent from the proposal, for the reasons set out below (see para 7.3) I consider that that the proposal for 39 no. dwellings would be premature and not would not therefore comply with the requirements of Objective SS7 of the Galway County Development Plan 2022 – 2028 as it relates to the requirement for development within settlements where there is no plan to be considered on the basis of capacity, specifically infrastructural and environmental capacity, and therefore I do not consider the principle of the proposed development to be acceptable.

- 7.2.2. Furthermore, I note the requirements under Objective WW4 of the Galway County Development Plan 2022 – 2028 in respect of waste water capacity, specifically that *‘new developments will only be permitted which are adequately serviced with sufficient capacity⁶ for appropriate collection, treatment and disposal (in compliance with the Water Framework Directive and River Basin Management Plan) to the public sewer*

⁶ My emphasis.

unless provided for otherwise by the plan..’. In this regard I note that there is no capacity in the Mountbellew WWTP, and that discharge to Mountbellew WWTP with partially treated effluent would not in my view adequately address the requirement for compliance with the Water Framework Directive noting the status of receiving waters (i.e. the Castlegar River).

7.3. **Waste Water**

- 7.3.1. There is no available capacity in Mountbellew Waste Water Treatment Plant (WWTP), which is managed by Uisce Éireann. The waste water treatment plant at Mountbellew has been operating at/above capacity for a significant period of time, including when development on the site was permitted under PA. Ref. 06/3886/ABP. Ref. PL07.221318 (now expired). A new waste water treatment plant to serve Mountbellew was permitted under PA. Ref. 20/1085/ABP. Ref. 310144-21. According to Uisce Éireann this plant is expected to be commissioned in Q4 2027⁷.
- 7.3.2. Regarding the existing WWTP at Mountbellew, I note that the Wastewater Treatment Capacity Register for Galway, published by Uisce Éireann (dated June 2022), provides an indication of available wastewater treatment capacity based on loads received in 2022 and available treatment plan capacity now or by completion of a project at construction (where relevant). The Uisce Éireann Wastewater Treatment Capacity Register indicates that the Mountbellew WWTP has a ‘Red Status’, meaning that there is ‘no spare capacity at present’. The Wastewater Treatment Capacity Register notes that a WWTP project is planned/underway.
- 7.3.3. I note that the most recently available Annual Environmental Report (AER) for Mountbellew (dated 2022) notes that the WWTP is non-compliant with Emission Limit Values (ELVs) set out in the plant’s Discharge Licence which is issued by the EPA. The AER notes failures across a number of parameters. The AER notes that at both upstream and downstream monitoring points, the Water Framework Directive (WFD) ecological status of receiving waters is moderate and poor, respectively, and that

⁷ Uisce Éireann’s submission to the PA (dated 1st December 2023) states that works are required upstream of the existing WWTP in order to alleviate current capacity constraints, and that these works are not currently included in Uisce Éireann’s investment plan. It is not clear whether these works refer to the proposed new WWTP.

results for ambient monitoring do not meet the requirements set out in the Surface Water Regulations, 2009. The AER notes that a deterioration in water quality has been identified but that it is not known if this is caused by the WWTP. Elsewhere, the AER notes that the discharge from the WWTP has an observable negative impact on the Water Framework Directive status.

- 7.3.4. The applicant is proposing to use a tWWTP to serve the proposed development however I note that the tWWTP is not proposed under this application (i.e. PA. Ref. 23/61219, the applicant which is the subject of this appeal). From reviewing the planning history on the wider site the status of the tWWTP is unclear. Under PA. Ref. 06/3886/ABP. Ref. PL07.221318 permission was granted to construct a tWWTP at a location to the north-west of the site. This permission has expired. Whilst commercial development to the south of the site has been completed, and appears to discharge into the public sewer along College Road, it is unclear whether the tWWTP was constructed. Under PA. Ref. 23/60139 (35 no. houses), a tWWTP was indicated at a location to the north/west of the site, however the tWWTP was not located within the red line boundary of the site and therefore the tWWTP was not proposed/permitted under that development/permission. In the event that the Board are minded to grant permission for the proposed development, they may wish to seek clarity from the applicant on this matter. Assuming that the tWWTP has been constructed in accordance with PA. Ref. 06/3886/ABP. Ref. PL07.221318 and is in situ, I note the following. The tWWTP has a PE of 248 and is intended to serve 35 no. houses permitted under PA. Ref. 23/60139, the 39 no. houses proposed under the current proposal, and a development of 25 no. houses proposed under a concurrent/undecided planning application (PA. Ref. 24/61477 refers). The tWWTP will provide pre-treatment of effluent (secondary treatment) prior to being discharged via a rising main into the public sewer and will be conveyed to Mountbellew WWTP. I note that Uisce Éireann has issued the applicant with a Confirmation of Feasibility in respect of the current proposal. Based on Uisce Éireann's report to the Planning Authority it appears that Confirmation of Feasibility and connection agreements have been issued in respect of other developments, presumably the 35 no. houses permitted under PA. Ref. 23/60139 and PA. Ref. 24/61477.

- 7.3.5. The crux of the appellant's case is that there is no capacity in Mountbellew WWTP and that the Planning Authority cannot abdicate responsibility in terms of assessing the impact of the proposed development/pollution arising from same on the environment. In my opinion, the pertinent consideration in relation to the issue of waste water, and the treatment of same arising from the proposed development are, (i) the appropriateness of a tWWPT to serve the proposed development as an interim measure until the commissioning/operation of the new Mountbellew WWTP (assuming that the tWWTP has been constructed in accordance with PA. Ref. 06/3886/ABP. Ref. PL07.221318 and is in situ), and (ii) potential impacts on the environment, and specifically on water quality arising from the discharge of pre-treated effluent to Mountbellew WWTP given that the plant is operating at/above capacity.
- 7.3.6. As noted above, there is ambiguity in relation to the status of the tWWTP, specifically in relation to whether the tWWTP has been constructed, or if it has not been constructed, ambiguity in relation to under what permission it is permitted under, noting that it is not located within the red line boundary of PA. Ref. 23/60139. Should the tWWTP be in situ, in my view the Board is not precluded for determining the acceptability of this tWWPT serving the houses under the current proposal. The applicant has submitted technical specifications of the tWWP and has provided information in relation to its management and decommissioning. Uisce Éireann indicate that they will not be responsible for the tWWPT and the applicant indicates that the tWWTP will be managed by a management company which is to be established, and that the tWWPT will be decommissioned upon commission of the Mountbellew WWTP. If the proposed development is permitted, the tWWTP will serve 74 no. houses (the concurrent planning application for 25 no. houses is not included in this figure as at the time of this report there is no decision on same). Notwithstanding the temporary nature of the arrangement, I have serious concerns in relation to the proposal to use a tWWTP to serve a sizable residential development. I note that this would also be contrary to Circular Letter PD 1/08 relating to Taking in Charge of Residential Developments/Management Arrangements, which recommends that wastewater treatment plants are taken in charge, and I consider that the proposed development in this regard would therefore be premature pending the upgrade of the Mountbellew WWTP and would pose an unacceptable risk to public health and the environment.

7.3.7. Regarding environmental impact, the proposal entails pre-treated effluent being directed to Mountbellew WWTP which is operating at/above capacity and is in breach of emission limits. I have serious concerns in relation to the impact which would potentially arise as result of diverting partially treated effluent to Mountbellew WWTP given that the most recent AER (dated 2022) notes that the receiving waterbodies have moderate and poor status and that Mountbellew WWTP is not meeting the emissions limits of its licence. Whilst the AER notes that 'a deterioration in water quality has been identified', but it is not known if this is caused by the WWTP, it also states that the discharge from the WWTP has an 'observable negative impact on the Water Framework Directive status' of receiving waters. It is difficult in my opinion to reconcile how, in terms of biological and hydraulic loading, Mountbellew WWTP could accept effluent from the proposed development given that it is operating at/above capacity without a detrimental impact on the watercourse into which Mountbellew WWTP discharges to, and particularly noting that the latest AER indicates that current discharge from the plant is resulting in negative impacts on the Water Framework Directive status of receiving waters. I consider that permission should be refused on the basis of the potential for the proposed development to generate water pollution, and the risk posed by the proposed development to the water status of the Castlegar River in the context of WFD requirements to halt deterioration in the status of water bodies and to achieve good status.

7.3.8. The applicant notes that the Board have previously accepted the provision of a tWWTP to serve development on the wider site. I note that a number of permissions were granted by the Board for alterations to PA. Ref. 06/3886/ABP. Ref. PL07.221318 (the 'parent permission' relating to the wider site, which proposed to treat effluent in a tWWTP) but that in each case a condition was subsequently attached linking the permission granted back to the conditions of the parent permission, Condition no. 3 of which restricted development until the commissioning of Mountbellew WWTP, and therefore did not permit the use of the tWWTP. The only exception to this position is PA. Ref. 23/177/ABP. Ref. PL. 07.317614, which included alterations to the supermarket on the southern part of the site and the omission of Condition no. 3 of the parent permission. The Board granted the omission of Condition no. 3, but only as it related to the development which was the subject of the application, which related to the commercial development to the south of the site. I note that the Board's

acceptance of the tWWTP did not relate to residential development. The applicant also refers to reports of Inspectors in relation to the acceptance of the principle of using a tWWTP in relation to proposed alterations to the parent permission. On this issues, I note that in the case of PA. Ref.18/1210/ABP. Ref. PL.07.304043 permission was ultimately refused for the development (on traffic grounds) by the Board and in the case of PA. Ref. 20/1799/ABP. Ref. 310047 the Board attached a condition linking back to the parent permission which therefore required compliance with Condition no. 3. In summation, I am satisfied that that in the context of decisions made by the Board in relation to the wider site, the use of a tWWTP to serve residential development has not been permitted. In my view, the use of a tWWTP for residential development entails considerations of a different nature when compared to a commercial development, as addressed above at para. 7.3.6.

7.4. **Issues Arising**

- 7.4.1. **Conditions of Planning Authority** - The Notification of Decision to Grant Permission issued by Galway County Council includes a number of specific planning conditions which I consider should be included should the Board grant permission for the proposed development, and a number of specific conditions which I do not recommend are attached in the event the Board grant permission for the proposed development, specifically -

C4 (a) – requires that a connection agreement in entered with Uisce Eireann.

I recommend that permission should be refused for the proposed development on the basis of the proposal to connect into Mountbellew WWTP, which is currently at capacity. However, should the Board grant permission for the proposed development I recommend that this condition is included.

C5 (c) – requires a Discharge Licence to be in place prior to occupation of dwellings.

The requirement for this condition is unclear. I note that the proposal entails the pre-treatment of effluent in a tWWTP prior to discharge to the public foul sewer. Surface water is to discharge to a local stream to the north of the site (this arrangement was permitted under PA. Ref. 23/60139) however the proposal does not entail the direct discharge of effluent to surface waters, which would

require a Discharge Licence. I do not recommend that this condition is included should the Board grant permission for the proposed development.

C5 (e) – requires that upon commission of the Mountbellew WWTP that the tWWTP on the site be decommissioned that the proposal shall connect to the public sewer.

I recommend that permission should be refused for the proposed development on the basis of the proposal to connect into Mountbellew WWTP, which is currently at capacity. However, should the Board grant permission for the proposed development I recommend that this condition is included.

C8 – requires the submission of a Stage 3 Road Safety Audit.

I recommend that this condition is included should the Board grant permission for the proposed development.

7.4.2. Flooding – the appellants note that the issue of flooding has not been addressed by the Planning Authority. I note that the report of the Planning Officer has addressed flood risk on the site, and notes that the site is not located within a pluvial, fluvial, groundwater or coastal vulnerable area, and that no historic flood events are recorded on the site. I have reviewed floodinfo.ie and I note that the site is not indicated as being at risk of flooding.

7.4.3. Procedural issues – the appellants raise concerns in relation to the display of public notices on the site in relation to previous planning applications. I submit to the Board that consideration of such matters are outside the scope of this appeal. The above assessment represents my *de novo* consideration of all planning issues material to the proposed development.

The status of the appeal is raised by the applicants. I note that the Board has considered the issues raised by the applicants in this regard and issued correspondence stating that the appellants are considered to be Barry McCormack and Michael Duffy. Having reviewed the appeal submissions and all correspondence on the file I am satisfied that the appeal raises valid planning issues and is not vexatious.

7.5. Appropriate Assessment

7.5.1. Stage 1 Screening

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

7.5.3. Background. The applicant submitted an Appropriate Assessment Screening report for the proposed development to the Planning Authority. 11 no. European sites were examined in the Stage 1 Appropriate Assessment Screening report. Following this screening exercise, 1 no. European site was identified on the basis of there being potential for polluted run-off during construction from the appeal site to reach River Suck Callows SPA via a stream to the north of the site which connects to Carrownagannive Stream, which in turn enters River Suck Callows SPA.

7.5.4. The applicant's Stage 1 Appropriate Assessment Screening report was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development. Having reviewed the document, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

7.5.5. Supplementary Reports/Studies.

An Preliminary Construction and Environmental Management Plan (pCEMP) was submitted with the application, as an accompaniment to the NIS. The pCEMP addresses sustainable construction, environmental protection and waste prevention. The pCEMP sets out environmental control measures for site set-up; earthworks; air and dust emissions; re-fuelling and hazardous materials storage; water contamination; drainage and water quality; biodiversity; buried services; noise; access; and traffic.

7.5.6. Likely Significant Effects. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European Site(s). The proposed development is examined in relation to any possible interaction with European Sites designated as SACs and SPAs to assess whether it may give rise to significant effects on any European site.

7.5.7. The Proposed Development. The development comprises permission for;

- Construction of 39 no. houses.
- Connection to public water supply and wastewater. Effluent from the proposed development is to be treated in a tWWTP prior to discharge to the public sewer. The tWWTP is to be decommissioned upon commission of the municipal WWTP.
- Surface water is to be directed to a petrol interceptor prior to discharging to a stream.

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

- The uncontrolled release of pollutants to ground water and surface water (e.g. run-off, silt, fuel, oils, concrete etc.) and subsequent impacts on water quality sensitive habitats of nearby European sites, Carrownagappul Bog SAC (Site Code 001242), Curraghlehagh Bog SAC (Site Code 002350), Shankill West Bog SAC (Site Code 000326) and River Suck Callows SPA (Site Code 004097).
- Potential for the release of contaminated surface water generated by the proposal at operational stage and subsequent impacts on water quality sensitive habitats of nearby European sites, Carrownagappul Bog SAC (Site Code 001242), Curraghlehagh Bog SAC (Site Code 002350), Shankill West Bog SAC (Site Code 000326) and River Suck Callows SPA (Site Code 004097).
- Release of foul effluent generated by the proposal, either at source or arising from effluent being directed to Mountbellew WWTP which is operating at/above capacity, and subsequent impacts on water quality sensitive habitats of nearby

European sites, Carrownagappul Bog SAC (Site Code 001242), Curraghlehanagh Bog SAC (Site Code 002350), Shankill West Bog SAC (Site Code 000326) and River Suck Callows SPA (Site Code 004097).

- Should any bird species, which are Special Conservation Interests (SCI) of River Suck Callows SPA (Site Code 004097), or another European site, use the site for resting, foraging, breeding etc., then the proposed development would have the potential to result in habitat fragmentation and disturbance to bird species (i.e. ex-situ impacts).

7.5.9. Submissions and Observations. The appellants raise concern in relation to the potential impact arising from the proposed development on the environment through increased pollution, and cumulative impacts on European sites. The appellants also contend that use of a tWWTP is mitigation, and that connection agreements and discharge licences are subject to Appropriate Assessment.

7.5.10. European Sites and Connectivity. A summary of European sites that occur within a possible zone of influence of the proposed development is presented in Table 7.1. Where a possible connection between the development and a European site has been identified, these sites are examined in more detail. I note that the applicant included a greater number of European sites in their initial screening consideration with sites within 15km of the development site considered. There is no ecological justification for such a wide consideration of sites, and I have only included those sites with any possible ecological connection or pathway in this screening determination. I am satisfied that other European sites proximate to the appeal site can be ‘screened out’ on the basis that significant impacts on such European sites could be ruled out, either as a result of the separation distance from the appeal site or given the absence of any direct hydrological or other pathway to the appeal site.

Table 7.1 - Summary Table of European Sites within a possible zone of influence of the proposed development.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)	Considered further in screening
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				Y/N
Carrownagappul Bog SAC (Site Code 001242),	- Active raised bogs [7110] - Degraded raised bogs still capable of natural regeneration [7120] - Depressions on peat substrates of the Rhynchosporion [7150]	c. 2.2 km north of site	There is no hydrological connectivity between the site and Carrownagappul Bog SAC. Noting the lack of connectivity and the distance between the site and Carrownagappul Bog SAC there is no likelihood of significant effects.	N
Curraghleanagh Bog SAC (Site Code 002350),	- Active raised bogs [7110] - Degraded raised bogs still capable of natural regeneration [7120] - Depressions on peat substrates of the Rhynchosporion [7150]	c. 5.4 km north of site	There is no hydrological connectivity between the site and Curraghleanagh Bog SAC. Noting the lack of connectivity and the distance between the site and Curraghleanagh Bog SAC there is no likelihood of significant effects.	N
Shankill West Bog SAC (Site Code 000326)	- Active raised bogs [7110] - Degraded raised bogs still capable of natural regeneration [7120] - Depressions on peat substrates of the Rhynchosporion [7150]	c. 5.5 km north-west of site	There is no hydrological connectivity between the site and Shankill West Bog SAC. Noting the lack of connectivity and the distance between the site and Shankill West Bog SAC there is no likelihood of significant effects.	N

River Suck Callows SPA (Site Code 004097).	- Whooper Swan (Cygnus cygnus) [A038] - Wigeon (Anas penelope) [A050] - Golden Plover (Pluvialis apricaria) [A140] - Lapwing (Vanellus vanellus) [A142] - Greenland White-fronted Goose (Anser albifrons flavirostris) [A395] - Wetland and Waterbirds [A999]	c. 12.2 km east of site (or c. 18 km via Carrownagannive Stream).	A stream located c. 40 metres north of the site connects to Carrownagannive Stream, which in turn enters River Suck Callows SPA. Noting the indirect connectivity formed by the stream a likelihood of significant effects exists.	Y
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7.5.11. Following an examination of sites within the zone of influence, and upon an examination of the connectivity between the appeal site and these sites (see Table 7.1 above), River Suck Callows SPA (Site Code: 004097) has been screened in having regard to the potential connectivity via a drainage stream c. 40 metres north of the site, which connects to River Suck Callows SPA. In terms of the potential for ex-situ effects, the appeal site does not represent a favourable habitat for birds species connected with River Suck Callows SPA or other SPA's for resting, foraging, breeding etc. I note that no SCI bird species associated with River Suck Callows SPA were recorded during the site walkover survey. In the event that bird species connected with SPA's occasionally use the site there are ample alternative sites in the vicinity.

7.5.12. Conservation Objectives of European Sites 'Screened-In'. There is no Conservation Management Plan for **River Suck Callows SPA**. The Conservation Objectives for River Suck Callows SPA can be found at https://www.npws.ie/sites/default/files/protectedsites/conservation_objectives/CO004097.pdf.

7.5.13. Identification of Likely Effects. In light of the above Conservation Objectives, the main elements of the proposal which may give rise to impacts on the European site listed above are as follows;

Construction Phase Impacts on River Suck Callows SPA - during the construction phase, there is potential for surface water run-off from site works to temporarily discharge to groundwater and surface water and flow into the SPA. There is the

potential for the water quality pertinent to this European site to be negatively affected by any contaminants, such as silt from site clearance and other construction activities and also from the release of hydrocarbons.

Operational Phase Impacts on River Suck Callows SPA - during the operational phase, the applicant proposes to pre-treat effluent from the proposed development in a tWWTP on the site and then discharge the effluent to the public sewer. There is currently no capacity in Mountbellew WWTP. I note that the outfall from Mountbellew WWTP is to Castlegar River, which connects to River Suck Callows SPA. The discharge of pre-treated effluent to a WWTP which is operating at/above capacity could potentially affect water quality pertinent to River Suck Callows SPA.

Surface water from impermeable areas within the proposed development will flow to soakaways within individual sites. Surface water from roads and public areas will discharge to an attenuation area and to a silt/oil interceptor prior to discharging to the stream to the north of the site. The surface water drainage design for the development site also includes a 20% allowance for climate change. In this regard, there is no potential for the water quality pertinent to this European Site to be negatively affected during the operational phase of the proposed development.

In the absence of mitigation, the proposed development has the potential to result in negative impacts on River Suck Callows SPA. I consider that such impacts could be significant in terms of the stated conservation objectives of River Suck Callows SPA.

In-combination Impacts. Recent planning applications where permission has been granted and plans have been examined in the applicant's Appropriate Assessment Screening.

A summary of the outcomes of the screening process is provided in the screening matrix Table 7.2.

Table 7.2 - Summary Screening Matrix				
European Site	Distance to proposed development/	Possible effect alone	In combination effects	Screening conclusions:

	Source, pathway receptor			
River Suck Callows SPA (Site Code (004097))	c. 12.2 km east of appeal site.	During the construction phase there is potential for surface water runoff from site works to temporarily discharge to surface water and reach the SAC. There is the potential for the water quality pertinent to this European Site to be negatively affected by contaminants, from site clearance and other construction activities and also from the release of hydrocarbons. The applicant proposes to pre-treat effluent from the proposed development in a tWWTP on the site prior to discharging to the public sewer. There is currently no capacity in Mountbellew WWTP, which discharges to the Castlegar River, which connects to River Suck Callows SPA. The discharge of pre-treated effluent to a WWTP which is operating at/above capacity could potentially affect water quality pertinent to River Suck Callows SPA.	No effect	Screened in for AA

7.5.14. Mitigation Measures. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise. I do not consider the tWWTP to be mitigation for the purpose of

Appropriate Assessment.

7.5.15. Screening Determination. 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 projects or plans **could have a significant effect** on River Suck Callows SPA in view of the Conservation Objectives of the site, and Appropriate Assessment is therefore required.

7.5.16. **Stage 2 – Appropriate Assessment**

7.5.17. Article 6(3). The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 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 each European site.

7.5.18 Compliance with Article 6(3) of the EU Habitats Directive. 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. 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).

7.5.19 Screening The Need for Appropriate Assessment. Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in-combination with other plans or projects will not have a significant effect on the following European Site:

- River Suck Callows SPA (Site Code: 004097)

The possibility of significant effects on other European sites has been excluded on the basis of objective information and noting that there is no possible ecological connection or pathway between the appeal site and other Natura 2000 sites surrounding the proposed development. Measures intended to reduce or avoid significant effects have not been considered in the screening process.

7.5.20. The Natura Impact Statement. A NIS, prepared by Enviroplan Consulting Limited examines and assesses potential adverse effects of the proposed development on River Suck Callows SPA. The NIS identifies the main potential impact from the proposed development on River Suck Callows SPA as being the potential for pollution to enter a nearby stream which in turn enters the Carrownagannive River which connects to the River Suck Callows SPA, affecting aquatic dependent SCI's. The NIS includes an examination of recent planning applications where permission has been granted in the vicinity of the appeal site and also of plans. The NIS notes that there is no potential for additional effects when considered in combination with other projects and plans, and that no potentially significant cumulative and/or in combination pollution disturbance, displacement or habitat loss effects on any QI or any European site has been identified.

7.5.21. The NIS refers to mitigation measures which will be adhered to. Measures are proposed for the construction phase of the proposed development and include;

Re. Site Set-Up:

- Use of solid fence around site perimeter.
- Confinement of works to within site.
- Erection of silt fence.
- Construction of outfall to stream to Inland Fisheries Guidelines (2016).

Re. Earthworks:

- Soil stripping not to take place following heavy rain.
- Stockpiles of sand gravel etc. to be stored on level terrain and covered during heavy rain.
- Ensure materials are free of invasive species.

Air Quality Dust and Emissions:

- Keep dust to minimum.
- Dampen area to minimize windblown dust/use of dust suppression equipment.
- No burning on site.

Refueling, fuel and hazardous materials storage:

- Refueling to be carried out off-site.
- Use of spill-kits.
- Petroleum products to be banded.

Environmental Approvals and Licenses:

- Appropriate waste permits to be provided/retained by supervising engineer.

Water Contamination:

- Groundwater discharge of pollutants prohibited.
- Use of drip trays for machinery.
- Use of impervious base for site storage e.g. bunds.
- Use of spill kits.
- Leaking drums to be removed immediately from site.
- No concrete or cleaning water to enter soil of watercourse.
- Construct systems to collect, convey, treat and attenuate surface water.

Drainage and Water Quality:

- Works planned/executed in accordance with EPA Guidelines.
- Wash water from on-site mixers or lorries shall be disposed of appropriately off-site.

- Ensure that operations do not give rise to discharges of large quantities of dirty water into the watercourses.
- Good site management to ensure protection of groundwater.
- Washing out of concrete trucks not permitted within site.
- Works with concrete shall be carried out during dry conditions for a period sufficient to cure the concrete (at least 48 hours).

Noise Control Measures:

- Measures will be implemented to reduce the number of noise-generating activities occurring concurrently.
- A copy of the EPA 'Guidance Note for Noise: License Applications, Surveys and Assessments in Relation to Scheduled Activities (NG4)' will be available on site for the duration of the works and will be referred to as required during the works.

7.5.22 The NIS concludes that with the implementation of best practice and mitigation it is not expected that the proposed development will give rise to any direct, indirect or secondary impacts on the River Suck Callows SPA.

7.5.23 Having reviewed the documents, submissions and consultations, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation objectives of the following European Site alone, or in combination with other plans and projects:

- River Suck Callows SPA (Site Code 004097)

The applicant's NIS was prepared in line with current best practice guidance and provides an assessment of the potential impacts on River Suck Callows SPA.

7.5.24 Appropriate Assessment of implications of the proposed development. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European site using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

7.5.25 The following sites are subject to Appropriate Assessment:

- River Suck Callows SPA (Site Code 004097)

A description of the site and its Conservation and Special Conservation Interests are set out in Table 7.1 of this report. I have also examined the Natura 2000 data forms as relevant and the Conservation Objectives supporting documents for these sites available through the NPWS website (www.npws.ie).

7.5.26 The main aspects of the proposed development that could adversely affect the conservation objectives of the European site includes;

- Impacts on water quality from the discharge of contaminated surface water run-off during the construction phase of the proposed development to ground water and surface water, affecting SCI and SCI supporting habitat of River Suck Callows SPA.
- Impacts at operational phase of the proposed development on the water quality pertinent to River Suck Callows SPA arising from the discharge of pre-treated effluent to a Mountbellew WWTP, which is operating at/above capacity and which discharges to the Castlegar River, which connects to River Suck Callows SPA.

7.5.27. Assessment of proposed Mitigation Measures - The NIS outlines a number of mitigation measures. For the most part the mitigation measures are intended to avoid the release of contaminated run-off to from the site to groundwater and surface water. I am satisfied that the measures are sufficient to address potential impacts from pollution during construction and that the potential for deterioration of habitats and species identified within the European Site (River Suck Callows SPA) is not likely.

7.5.28. Integrity test. The NIS does not address the potential for operational phase impacts as a result of the proposed development discharging pre-treated effluent to Mountbellew WWTP, which is operating at/above capacity and the potential for impacts as a consequence of subsequent discharge from this WWTP to the Castlegar River, which in turn enters River Suck Callows SPA. Additionally, the NIS does not address the potential for cumulative impacts on River Suck Callows SPA when considered along with the development permitted under PA. Ref. 23/60139, the pre-treated effluent from which similarly discharges to Mountbellew WWTP. I consider these omissions to represent a significant lacuna in the NIS. Following the appropriate assessment and the consideration of mitigation measures, I am unable to ascertain with confidence that the project would not adversely affect the integrity of Suck River

Callows SPA in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

7.5.29. Appropriate Assessment Conclusion. The proposed development has been considered in light of the assessment requirements of Sections [177U and 177V] of the Planning and Development Act, 2000, as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on River Suck Callows SPA. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of this site in light of its conservation objectives. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects could adversely affect the integrity of River Suck Callows SPA, in view of the Conservation Objectives of this site. This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the Conservation Objectives of River Suck Callows SPA.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.

I consider that there remains a reasonable scientific doubt as to the absence of adverse effects on the integrity of on River Suck Callows SPA and as such the Board is precluded from granting permission for the proposed development. I do not consider this to be an new issue as the appellants raise the issue of impact on European sites in their appeal submission.

8.0 Recommendation

8.1. Having regard to the above it is recommended that permission should be refused for the reason set out below.

9.0 Reasons and Considerations

1. The proposed development entails the use of a temporary wastewater treatment system to pre-treat effluent from the proposed development to

secondary level prior to discharging to the existing Mountbellew Wastewater Treatment Plant. Mountbellew Wastewater Treatment Plant, managed by Uisce Éireann, is currently operating at/above capacity. Construction of a new plant in Mountbellew this is not expected until Q4 2027. The applicant has failed to demonstrate that the existing Wastewater Treatment Plant at Mountbellew would be capable of operating without an unacceptable deterioration in the water quality of the Castlegar River into which it flows. It is considered therefore that the proposed development could cause serious water pollution due to the inadequate capacity of the local authority waste water treatment plant to adequately treat the waste water from the proposed development in addition to the existing load on the plant. In these circumstances, this proposal would result in the pollution of this river system and would therefore be prejudicial to public health. In the absence of adequate sufficient capacity in Mountbellew Waste Water Treatment Plant, the proposed development would be contrary to Objective SS7 of the Galway County Development Plan 2022 – 2028, and to Objective WW4 of the Galway County Development Plan 2022 – 2028 in respect of waste water capacity. The Board also has concern in relation to the maintenance and management of the proposed temporary waste water treatment system given that it is to be vested in a management company, contrary to Circular Letter PD 1/08 'Taking in Charge of Residential Developments/Management Arrangements' (DoEHLG), which recommends that wastewater treatment plants are taken in charge. It is considered therefore, that the proposed development would be premature pending the completion of the Mountbellew Wastewater Treatment System, would pose an unacceptable risk to public health and the environment, and would be contrary to the proper planning and sustainable development of the area.

2. The NIS submitted with the planning application does not examine the potential impact of the proposed development on River Suck Callows SPA at operational phase, specifically the proposal to discharge pre-treated effluent to Mountbellew Waste Water Treatment Plant, which is operating at/above capacity, and the potential for impacts as a consequence of subsequent discharge from this waste water treatment plan to the Castlegar River, which connects to River Suck Callows SPA. Furthermore, the NIS does not address

the potential for cumulative impact on River Suck Callows SPA arising from the development permitted under PA. Ref. 23/60139, the pre-treated effluent from which similarly discharges to Mountbellew Waste Water Treatment Plant. These omissions represent a significant lacuna in the NIS, and on the basis of the information submitted with the planning application/appeal documentation and the Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on River Suck Callows SPA (Site Code: 004097), in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

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

Ian Campbell
Planning Inspector

12th December 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-319267-24			
Proposed Development Summary	Construction of 39 no. houses.			
Development Address	Treanrevagh, Mountbellew, Co. Galway			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No	No further action required	
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?				
Yes			EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
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]?				
		Threshold	Comment (if relevant)	Conclusion
No				No EIAR or Preliminary Examination required
Yes	X	Class 10, (b), (i) (threshold is 500 dwelling units) Class 10, (b), (iv) (threshold is 10 Ha.)	Proposed development substantially	Proceed to Q.4

			below threshold in each case.	
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4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: Ian Campbell

Date: 12th December 2024

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-319267-24	
Proposed Development Summary	Construction of 39 no. houses.	
Development Address	Treanrevagh, Mountbellew, Co. Galway	
The Board carries 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.		
	Examination	Yes/No/ Uncertain
• Nature of the Development • Is the nature of the proposed development exceptional in the context of the existing environment? • Will the development result in the production of any significant waste, emissions or pollutants?	The proposed development comprises a residential development of 39 no. houses and is located within an urban area. The proposed development will not give rise to the production of significant waste, emissions or pollutants.	• No • No
• Size of the Development • Is the size of the proposed development exceptional in the context of the existing environment? • Are there significant cumulative considerations having regard to other existing and/or permitted projects?	The size of the proposed development would not be described as exceptional in the context of the existing environment. There are no significant developments within the vicinity of the site which would result in significant cumulative effects/considerations.	• No • No

• Location of the Development • Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location? • Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	Having regard to the nature and scale of the proposed development it is considered that the issues arising from the proximity/connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment) as there is no likelihood of other significant effects on the environment.	• No • No
• Conclusion		
• There is no real likelihood of significant effects on the environment. • EIA not required.	• There is significant and realistic doubt regarding the likelihood of significant effects on the environment. • Schedule 7A Information required to enable a Screening Determination to be carried out.	• There is a real likelihood of significant effects on the environment. • EIAR required.

Inspector: Ian Campbell

Date: 12th December 2024

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)