

From: Martha Dillon [redacted]
Sent: Tuesday 3 January 2023 14:30
To: Development Plan
Subject: The retention of the land at park na coille under threat to development.

I am writing on behalf of my neighbours and myself to reiterate a submission previously sent. A few points to highlight again.

1. This is a unique fenced off 10.5 acres of mature trees and undergrowth.
2. It is unspoilt and chemical free.
3. Full of wildlife which we encounter here.
4. The trees absorbing carbon and releasing oxygen, resulting in clear air which is so important to the residents and those in the nearby nursing home.
5. The biodiversity and ecosystems of all the animals, birds, plants and fungi found here work together like a web to maintain balance and support life.

The destruction of this area would be a terrible mistake. Much is been said about climate change, so everything possible should be considered to preserve these areas, not just for our generation, but future ones as well.

Yours sincerely. Martha dillon and neighbours. [redacted]

Review of Ecology Reporting for Proposed Residential Development at Drumbiggle, Co. Clare (Planning Reference: 21599)

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INTRODUCTION

The report sets out a review of the ecology reporting prepared for a proposed residential development at Drumbiggle, Ennis, Co. Clare (Planning Reference: 21/599). The following reports were reviewed:-

- *“Natura Impact Statement: Proposed Residential Development, Drumbiggle, Co. Clare”* by MKO Planning and Environmental Consultants (2021a) and
- *“Revised Ecological Impact Assessment: Proposed Residential Development, Drumbiggle, Co. Clare”* by MKO Planning and Environmental Consultants (2021b).

NATURA IMPACT STATEMENT

This section provides a review of the report entitled "*Natura Impact Statement: Proposed Residential Development, Drumbiggle, Co. Clare*" by MKO Planning and Environmental Consultants (2021a).

Firstly, both the desk study and survey data for bats which the NIS relies on are insufficient. Regarding the desk study, the NIS has failed to identify records of a Lesser Horseshoe Bat roost c. 480m south-west of the site in an outbuilding at Cahercalla hospital. These records are from the National Parks and Wildlife Service (NPWS). The proposed development site would constitute suitable foraging habitat for Lesser Horseshoe bats within 500m of the roost site. This is not considered in the assessment. This goes against the Waddenzee ruling (C-127/02), where the court emphasised the importance of using the best sci

entific knowledge when carrying out an appropriate assessment. European Commission guidance also notes '*It cannot be held that an assessment is appropriate where information and reliable updated data concerning the habitats and species in the site are lacking (C-43/10 paragraph 115)*' (European Commission, 2018).

The reliance on pre-assessment surveys for potential tree roosts on the site is insufficient and inappropriate for the purposes of Article 6(3). European Commission Guidance notes that the assessment '*should contain complete, precise and definite findings*' (European Commission, 2018). It is stated in the NIS that not all areas of the site were accessible, therefore it cannot be ruled out that further potential tree roosts are not present. In both the 2006 and 2022 updated version of the *Bat Mitigation Guidelines for Ireland* by Marnell, F., Kelleher, C. & Mullen, E. (2022) the following is stated for Tree Surveys: '*Several dawn or dusk surveys spread over a period of several weeks from June to August will greatly increase the probability of detecting significant maternity roosts and is recommended where development proposals will involve the loss of multiple trees.*' With surveys during April and May, there is potential for maternity tree roost sites to be missed. Therefore, the NIS has failed to accurately assess all potential impacts due to the lack of adequate baseline data. It is outlined that all bats are indeed protected under Annex IV of the E.U. Habitats Directive. A total of 34% of Bat species recorded by the static detectors were *Myotis* sp., of which regularly roost in tree holes such as the Natterer's bat. The extent to which potential tree roosts are used on the site is not outlined in the NIS and thus does not contain a complete, precise and definite finding.

The NIS consistently outlines that '*No potential foraging grounds*' of Lesser Horseshoe Bats will be impacted by the proposed development. This is likely due to the mapping of NPWS potential foraging grounds for the SACs affected, which does not identify the site as potential foraging habitat. However, this statement has no standing. The bat survey completed has confirmed regular usage of the site by Lesser Horseshoe Bats, even at the beginning of the bat survey season. This clearly classifies the site as foraging grounds for this Annex II species. Therefore, foraging grounds for Lesser Horseshoe Bats

will indeed be affected by the site clearance and tree felling works required by the proposal. This has not been accurately assessed.

The conservation objectives for the Newhall and Edenvale Complex SAC state that there should be no significant decline in the extent of potential foraging grounds within 2.5km of qualifying roosts, and that Lesser Horseshoe bats normally forage in woodlands/scrub, which is the habitat on the subject site. It also states that there should be no significant loss of linear features within 2.5km of qualifying roosts. The proposed residential development will result in the loss of both foraging grounds (confirmed by surveys and suitable woodland/scrub habitat) and linear features. The NIS does not quantify the loss of these features but still states there would be no significant loss. Habitat loss is not outlined in the residual impacts sections but fragmentation is noted. The site clearance and removal of linear features cannot result in no loss of potential foraging habitat, and only the western boundary will be retained. This does not constitute a complete, precise and definite finding and there is no basis for this conclusion.

The NIS also outlines for the bat survey results that only 3% of records were for Lesser Horseshoe Bats. However, the records of common species such as the Common pipistrelle and Soprano pipistrelle will typically always be the majority, since Lesser Horseshoe Bats are rarer as a species and have a considerably lower abundance in Ireland. Nonetheless, 56 passes of Lesser Horseshoe bat passes were recorded during the surveys. Again this is at the beginning of the season and no surveys were undertaken from June-August when the species would be considered to be most active. Therefore, the statement that '*bat activity was low*' for this time period is misleading, and the assessment therefore of foraging habitat for Lesser Horseshoe Bats is insufficient.

The impacts in Section 5 'Assessment of Potential Effects & Associated Mitigation' does not assess impacts pre-mitigation. Mitigation and environmental control measures are at the forefront of the impact assessment. However, impacts must be assessed in the absence of mitigation measures and taking the precautionary principle. The European Commission (2018) guidelines state '*Mitigation measures must be directly linked to the likely impacts that have been identified in the appropriate assessment and can only be defined once these impacts have been fully assessed and described in the appropriate assessment*' (European Commission, 2018). Therefore, impacts have not been fully assessed and described, prior to the introduction of mitigation.

In the Impact Assessment section, the NIS identifies potential disturbance and fragmentation of habitat impacts on Lesser Horseshoe bats. It has failed to outline or describe the likely habitat loss and displacement impacts that are likely to arise. As Lesser Horseshoe bats are confirmed to be using the site for foraging/commuting habitat, this habitat will be at least partially lost as a result of the construction of the residential development. Furthermore, the disturbance is likely to have a knock-on effect of displacing the species from the area. This site has woodland/scrub habitat but is bounded by residential

and commercial developments. The loss of this habitat will be permanent and therefore also has potential to displace this species entirely from this area of south-west Ennis.

The NIS also does not adequately assess cumulative impacts relating to light spill within 2.5km of SAC Lesser Horseshoe bat roost sites. The survey results also note light spill from the residential development to the east, as a reason why this corridor is not used by Lesser Horseshoe bats. Developments within 2.5km of the SAC roost site that all have lighting may have a significant cumulative impact on Lesser Horseshoe bat foraging ranges.

The NIS does not provide a review of existing baseline data for the Ennis North WwTP, which discharges into the River Fergus. The most recent Annual Environmental Report (AER) for the wastewater treatment plant is from 2019 and would have been available at the time of writing the NIS. This AER states that the plant is non-compliant with the Emission Limit Values (ELVs) set out in its discharge licence. Thus there is potential for an increase in loading to the plant, arising from the proposed development, to exacerbate existing baseline water quality issues in the River Fergus affecting QIs of the SAC. While the NIS does identify foul water as a potential impact, sufficient baseline data on the WwTP has not been provided in order to undertake an accurate assessment. This also applies to potential cumulative impacts relating to the non-compliant WwTP.

ECOLOGICAL IMPACT ASSESSMENT

This section provides a review of the report entitled "*Revised Ecological Impact Assessment: Proposed Residential Development, Drumbiggle, Co. Clare*" by MKO Planning and Environmental Consultants (2021b).

In both the 2006 and 2022 updated version of the *Bat Mitigation Guidelines for Ireland* by Marnell, F., Kelleher, C. & Mullen, E. (2022) the following is stated for Tree Surveys: 'Several dawn or dusk surveys spread over a period of several weeks from June to August will greatly increase the probability of detecting significant maternity roosts and is recommended where development proposals will involve the loss of multiple trees.' The bat surveys completed for the EclA, and the NIS, rely on dusk and dawn surveys on the 23rd of April and the 12th of May, with static detectors set up on site in between this time period. There are indeed multiple trees on the site that are required to be felled. The EclA acknowledges the potential for 4 trees on the site to have moderate bat roost potential but surveys are inadequate to accurately detect and therefore assess impacts on these potential tree bat roosts. Table 3 in the Guidelines notes that surveys in Spring from March to May are rarely useful for tree surveys. There is potential therefore for tree roost maternity sites to have been missed by these surveys, and therefore not adequately mitigated.

Indeed, the EclA provides very little mitigation in relation to tree felling and potential impacts on bat populations. Despite identifying the potential for tree roosts, no guidelines for the felling of trees are provided in mitigation proposed. It would be standard to provide measures such as those included in the NRA 'Guidelines for the Treatment of Bats During the Construction of National Road Schemes' (2005). As noted in the guidelines, 'Tree felling poses an immediate risk of injury or death to bats and a number of measures can be taken to reduce this risk to a negligible level'. A derogation licence for the felling of trees, even as potential roosts, should be obtained. A bat derogation licence is also required for this loss of feeding, commuting and possibly roosting habitat - but this has not been obtained, nor was it outlined in the EclA. Circular Letter NPWS 2/07 directs that any application for a derogation licence be made in advance of seeking planning approval (NPWS, 2007).

The EclA also states that there will be 'no net loss of foraging habitat' for bats. However, the area of foraging habitat loss has not been quantified and thus cannot be compared to the additional tree planting along the western boundary that is proposed as mitigation. It is unclear how clearing the site and felling trees on this overgrown woodland and scrub site cannot result in a net loss of foraging habitat for bats, when planting is only proposed along the western boundary of the site for the operational phase.

The EclA also includes mitigation to offset foraging habitat loss and disturbance impacts due to lighting. Light spill mitigation is also provided. However, the updated Lighting Plan does show light spill on the proposed woodland walkway area to the western boundary. The horizontal luminance (lux) is given as 10 in many parts along this retained boundary. As per standard guidance for lighting and bats, Bat Conservation Ireland's *Bats and Lighting: Guidance Notes for Planners, engineers, architects and developers* (2010) the following bat species are particularly sensitive to elevated light levels: 'brown long-eared bat, whiskered bat, natterer's bat, Daubenton's bat and lesser horseshoe bats'. Daubenton's bats prefers a light level of 1 lux; therefore a lux level of 10 at some points along this retained foraging / commuting route is far too high and may result in displacement of bats and deter them from using this area, which is a key mitigation in both the EclA and NIS.

Regarding surveys, the EclA states that the limitations are that the site contained areas of impenetrable scrub. For potential impacts on mammalian fauna, the report notes that there was no evidence of badger, fox or hare recorded during the walkover survey but disturbance may arise, and the impact is assessed as short-term slight negative. The assessment does not outline the potential for a badger sett, for example, to be present in this impenetrable scrub. This leads to uncertainty and the assessment does not take account of the limitations noted in the multidisciplinary survey.

The EclA states that for mitigation to offset impacts on habitats: '*Planting within the site will be of native species which are indigenous to the local area*'. The updated landscape plan includes species that are not native to Ireland and are not indigenous to the local area. For example, ornamental shrubs such as *Eleagnus pungens 'Maculata'* and *Choisya ternata*.

The EclA fails to state that the site is located on an area of 'High' groundwater vulnerability status as outlined in the Geological Survey of Ireland online map viewer. However, the assessment of watercourses notes potential groundwater pollution, but in the evaluation only mentions surface water and a slight negative impact. Furthermore, no mitigation has been provided for the protection of ground water in excavations etc.

Cumulative impacts have not been assessed prior to the introduction of mitigation. The EclA cumulative impacts section refers to measures to protect biodiversity and water quality as set out in an earlier sections. Impacts must be assessed pre-mitigation. Residual impacts are impacts assessed after the introduction of mitigation.

The cumulative impacts also do not mention the cumulative impact of foraging and commuting habitat loss for Lesser Horseshoe bats in the wider Ennis area. This is a key pressure on the species and in combination with past and future plans and projects, particularly with residential developments the loss of this site could indeed be significant. This cannot be an accurate assessment, especially with the omission of the data on the Cahercalla roost site c. 500m from the site boundary.

Similar to the NIS, the EclA states on multiple occasions that the site is not identified as a potential foraging ground for Lesser Horseshoe bats. The Clare County Development plan notes the following: *'To ensure that there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 3km of known roosts'*. Again there is a roost c. 500m from the site at Cahercalla hospital, and the site is located within 2.5km of the Newhall and Edenvale Complex SAC roost and the Pouladatig Cave SAC. The bat survey conducted at the site confirmed that the site is an actively used foraging habitat for Lesser Horseshoe bats. Furthermore, no evidence has been provided to ensure that there is no net loss of habitats, with the entire site cleared, and just the western boundary retained. The loss of habitat, identified to be used for foraging by the species, has not been defined or quantified.

CONCLUSIONS

The review has concluded that the Natura Impact Statement is not sufficient for the purposes of Article 6(3) of the Habitats Directive.

The bat surveys on which the NIS and SAC rely are inadequate to accurately assess all potential impacts arising from the proposed development. There is a lack of data on the use of potential tree roosts on the site which has not been adequately surveyed. Not all areas of the site were accessible and this has not been reflected in the assessment. There is also an omission in the desk study data, where NPWS Lesser Horseshoe bat roost records show a roost c. 500m from the site and this was not outlined in the reporting.

Furthermore, statements made in both the NIS and EclA on foraging grounds for Lesser Horseshoe bats have no basis and are misleading. Both reports frequently mention that the site is not identified as potential foraging grounds for Lesser Horseshoe Bats, but the surveys conducted for the reports have done precisely that. Surveys completed also cannot reflect the usage of the site later in the season, where activity is likely to be higher.

The extent of habitat loss that will occur as result of the development has also not been quantified, although the EclA notes that there will be no net loss. Impacts in both reports have also not been assessed prior to the introduction of mitigation. Mitigation outlined in particular in the EclA, does not appear to have been applied to adhered to in updated landscape or lighting plans.

It is therefore concluded that this review has found that the ecology assessments carried out for the proposed residential development at Drumbiggle, Ennis, Co. Clare are inadequate and do not sufficiently assess all impacts that may arise from the proposed development.

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