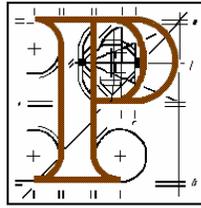

An Bord Pleanála



Ref.: **PL03.229645**

Development: **Chapel, crematorium and ancillary works at Tullyvarraga, Shannon, Co. Clare.**

Planning Application

Planning Authority: Clare County Council

Planning Authority Ref.: 07/2019

Applicant: Ilaunmanagh Ltd..

Type of Application: Permission

Planning Authority Decision: Grant permission (17 no. conditions)

Planning Appeal

Type of Appeal: Third Party (4 no.)

Appellants: Residents of Gleann an Oir
Donnacha Minogue
Cllr. Gerard Flynn
Rod McAuliffe

Observers: An Taisce

Inspector: Conor McGrath
Date of Site Inspection: 16/09/08

1.0 INTRODUCTION

This report relates to 4 no. third party appeals against the decision of the planning authority to grant permission for the proposed development, subject to 17 no. conditions.

2.0 SITE LOCATION AND DESCRIPTION

The appeal site is located at Tullyvarraga, Ilaunmanagh, on the southern side of Shannon Town. This irregularly shaped site, comprising a stated area of 0.52ha, generally comprises rough grazing land. The site is bounded to the north by a large open drainage channel, flowing east. A second drainage channel runs inside a high earth embankment along the north-eastern site boundary, which is otherwise formed by mature hedgerows. The southern boundary is generally undefined, while an internal hedgerow runs northeast to southwest. The site is separated from the shores of the River Shannon by embankments / polders, to the east and south of the site.

Within an overgrown and wooded area to the southwest of the site are the remains of what appears to be a house, referred to on the drawings as *existing buildings*. Further west is Ilaunmanagh Cemetery, situated on a local high point. Lands to the north are in use as sports grounds and sports pavilion. The site is accessed from the public road, Sli na Mara, to the north over a poorly surfaced access road which serves adjoining sports grounds and the cemetery. The appeal site has frontage of approx. 10m to this road, adjacent to a bridge over the adjoining drainage channel.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The proposed development comprises the construction of a chapel and a crematorium on the site, connected by a covered walkway, backing onto the northern site boundary. The chapel comprises approx. 214-sq.m., with stated seating capacity for 84 no. mourners and a ridge height of 8.63m. The crematorium building is single-storey structure, approx. 6.6m high, with a floor area of 111.6-sq.m. Two cremators are proposed within the building, which are to be powered by gas, stored in tanks to the east of the building. the chimney stack associated with the crematorium rises to 9.68m.

To the south of the buildings, it is proposed to construct a remembrance wall of limestone and render, within a landscaped area. Parking for 12 no. cars is proposed on the site. An on-site effluent treatment system is to be provided on the eastern side of the site, discharging to a percolation area.

4.0 RELEVANT PLANNING HISTORY

PA ref. 06/1270: This previous application for the same development on this site was withdrawn.

PA ref. 08/8007: Part 8 application by Clare County Council for an extension to Illaunmanagh Burial Ground, to the west of the existing cemetery. The Clare Co. Co. e-plan system indicates that no decision has been made on this application to date.

5.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

5.1 Decision

In considering the application, the planning authority requested further information on the development, which included the following matters:

- Car parking and access issues.
- Impacts on habitats and on adjoining designated sites.
- Operational details of the proposed crematorium and proposed stack height.
- Boundary details and retention of trees on the site.
- Details of the percolation area.

By order dated 20/12/2007, the planning authority decided to grant permission for the proposed development, subject to 17 no. conditions, including the following:

2. An air monitoring programme shall be agreed with the planning authority to assess the effectiveness of proposed control measures. Where monitoring results indicate a deterioration in the quality of the ambient air, emission limits may be imposed. Nothing in the development shall cause dust, fumes or other discharges to environmental media, such as could give rise to reasonable cause for complaint by occupiers of adjoining properties or infringe the amenity value of the area.
3. Development contribution of €3,768.95 in accordance with the development contribution scheme.
4. Special Development Contribution of €100,000 toward the upgrading of the adjoining road network and car parking area which is necessary to facilitate the development and the overall area, in accordance with S.48(2)(c).
5. All tree trimming and removal shall take place from the end of Augusts to October to limit disturbance on wintering wildfowl. In line with recommendations of NPWS, follow up bird surveys shall be undertaken during and after construction to assess the effect on the local bird population.
6. Surface water drainage management plan to be agreed.
12. Oils and chemicals shall be suitably bunded.
13. The WWTS and percolation area shall be installed in accordance with details submitted and EPA Manual. Installation and construction shall be certified and a maintenance contract shall be kept in place.

-
16. In the case of abnormal emissions, malfunction or breakdown leading to potentially harmful emissions, the operator shall take appropriate actions.
 17. The temperature of the combustion chamber shall be agreed with the planning authority prior to development commencing.

5.2 Internal / Technical Reports

- **Planning:** An EIS is not required for the development. Road upgrading in the area and improvements to the car park are to be carried out by county council subject to payment of a special contribution. Details required by NPWS can be dealt with via conditions. The development will not impact negatively on the visual amenity of the surrounding area, having regard to the significant tree cover. Boundary details are acceptable. The development materially contravenes the open space zoning of the site. It is otherwise acceptable and material contravention was recommended.
- **Area Engineer:** Special contribution required to construct car park, drainage and lighting, to carry out road restoration on the access road, improve visibility at the cemetery entrance and widen the road from the roundabout to entrance of cemetery.
- **Environment:** Conditions recommended.
- **HSE:** Conditions recommended.
- **National Parks and Wildlife Service:** The site adjoins designated sites. Further information is required on the management of drainage run-off during and after construction. Fuel storage and re-fuelling shall be undertaken on suitably bunded areas. Further wintering bird counts should be undertaken during and after construction to assess the effects of the development on local bird populations.
- **An Taisce:** An EIA is required for this form of incineration. The design should be in keeping with the landscape and should be multi-denominational. Details on site acquisition and rezoning are required. There is a risk of flooding. Inadequate regard was had to impacts on flora and fauna. Light pollution from the development should be avoided. Inadequate car parking arrangements. Effluent and run-off pollution of designated sites.

5.3 Objections / Observations

The planning authority received a number of submissions on the application which raised the following broad issues:

- Contravention of the open space zoning.
- Procedures involved in the disposal of the lands.
- Historical importance of the site.
- Impact on adjoining designated sites.
- Emissions and public health impacts.
- Public safety.
- Traffic and parking inadequacies.
- Operational details inadequate.
- Viability.
- Inadequate site area.

-
- Inappropriate location.
 - Impact on expansion of the cemetery.

6.0 GROUNDS OF APPEAL

Four third party appeals against the decision of the planning authority to grant permission for the proposed development were received, which are summarised below:

6.1 Donnacha Minogue

- The inappropriate manner of the land transfer.
- Invalid public notices regarding the material contravention procedure.
- Inappropriate commercial use of lands zoned as open space.
- The development does not meet the guidelines for site selection set out in UK guidance document LG1/232/36.
- The site is too small. There is no area for strewing ashes and only a small contemplation area.
- No account is taken of wind direction.
- The site is poorly serviced and has no mains gas connection. No other facilities in UK operate off gas tanks.
- Access arrangements are deficient and the site is not accessible by public transport.
- The traffic impacts of this regional facility will impact detrimentally on the area.
- Noise impacts have not been addressed.
- No site selection process was undertaken for this inappropriate site. Proximity to a graveyard does not justify the development.
- The viability of the development is questionable.
- There is no requirement on the developers to comply with PG05/2(04).
- No emission modelling has been carried to assess impacts on the local environment.
- Mercury abatement should be a mandatory condition of operation.

6.2 Rod McAuliffe

- The health effects of air (mercury) emissions.
- The proposed gas tanks raise safety concerns.
- The site is too small and does not allow freedom of movement through the site.
- Use of a separate car park is inappropriate for a commercial development.
- There should be separate entrance and exits from the site.

6.3 Cllr. Gerard Flynn

- The development is contrary to the guidelines for the protection of green areas and areas of conservation.
- The impartiality of the decision is open to question.
- An EPA licence should be a requirement due to the risk to public health.
- An EIA should be carried out for the development.
- Impact on adjoining designated sites and environment of the area.
- Conditions attached to the decision do not adequately address emissions from the facility. The development should be required to comply with UK standards.

-
- Independent monitoring of emissions should be carried out. Condition no. 16 is inadequate.
 - The application should have been referred to NPWS.
 - Hours of operation should be controlled.
 - There will be significant traffic volumes generated in a residential area.
 - This is an unsuitable location for the development.

6.4 Residents of Gleann an Oir

- The full requirements of condition no. 2 were not adequately brought to the attention of councillors in considering the material contravention procedure. There should be no uncertainty in relation to these public health matters.
- There are no proposals to mitigate the safety and amenity impacts for residents and visitors to the area, which the additional traffic will generate.
- It is not clear that environmental impacts can be adequately mitigated by condition. The consequences of such accidents would be serious.
- On-site effluent disposal is inappropriate adjacent to a cSAC, particularly given the proximity of the municipal wastewater treatment plant.
- There will be disturbance of the local environment and wildlife.
- An EIA should be sought due to proximity to a cSAC. The development will alter the nature of the area and deprive residents of an important natural and recreational amenity.

7.0 RESPONSE TO GROUNDS OF APPEAL

7.1 First Party

- The applicants have the consent of the landowners, Clare County Council, to the making of the planning application.
- The decision to grant permission was subject to the adoption of a motion by councillors to materially contravene the development plan.
- Experience at similar facilities in the country indicate that traffic volumes are not likely to exceed 20 no. cars.
- Fewer numbers attend cremations than funeral services.
- Cremations will not exceed four per day initially.
- Clear signage will direct traffic onto the distributor road network in the area, without impacting on residential areas.
- A car park will be provided to serve the sports grounds, cemetery and crematorium, providing 106 no. spaces. 12 parking spaces are provided within the site.
- Special contributions for road upgrading will benefit all facilities in the area.
- 6 no. on-site visitor spaces will be available for chief mourners and family of the deceased. All other mourners will be directed to the main car park.
- Noise emissions will be minimal and the nearest house is 200m from the site.
- The facility will comply with conditions attached to other crematorium facilities in the country.
- The question is not whether this is the most appropriate site, but whether the proposed development is acceptable.

-
- The environmental assessments conclude that the development will not have significant negative impacts on the habitat status of the cSAC.
 - The visual impact of the development will be minimal.
 - The proposed land-use is complementary to the adjoining cemetery.
 - The cremator will be fitted with abatement filter system to meet current and future (UK) standards for emissions. The system will be automated, monitored and digitally recorded to ensure transparency.
 - Condition no. 1 sets out the operating procedures to be in place prior to operations commencing.
 - The small amounts of waste arising will be disposed of by a licensed collection company and will be appropriately recorded.
 - The principle waste will be domestic in nature, e.g. packaging.
 - The waste water treatment system will be installed in accordance with the EPA Manual.
 - The development does not fall into a category requiring the submission of an EIS, however, evaluations of potential environmental impacts have been prepared.
 - Given the value of the development to the community and suitability of the site, material contravention of the open space zoning should not prevent the development.
 - The site is small relative to the extent of lands zoned for open space and the unique characteristics of the proposal make the creation of a precedent for further similar development unlikely.
 - The facility is a modern addition to the range of services and facilities in the mid-west.
 - Application of UK standards will facilitate monitoring by Irish authorities.
 - Appeals do not reflect experience elsewhere nor the technology available.

8.0 OBSERVERS

8.1 An Taisce

- The proposal involves the insertion of a commercial development in open space, a sensitive landscape-designated area, which is subject to a range of restrictions.
- The ecological assessment was inadequate and drainage matters were inappropriately left for later agreement.
- Inadequate consideration was given to the effects of climate change and flooding, particularly in regard to the on-site effluent disposal system.
- The traffic impacts of this regional facility have not been adequately assessed.
- There was no adequate evaluation of the need for an EIS in the case of this sub-threshold development.

9.0 PLANNING CONTEXT

9.1 Clare County Development Plan 2005

CDP 43: Proposals for development on the coast, within a flood plain or adjacent to a river or its flood plain will only be permitted where it can be clearly demonstrated that

it does not place itself at risk of harm to life or damage to property through flooding nor increase the flood risk in the relevant river catchment.

CDP 46: In areas identified as being vulnerable landscapes the Planning Authority will only normally permit proposals for development of the highest quality in terms of siting and design and where the development will not adversely impact upon to a significant extent upon the character, integrity or uniformity of the landscape.

CDP 52: The Planning Authority will normally only permit development where it can be clearly demonstrated that :

- There is no direct or indirect adverse affect on areas designated as sites or candidate or potential sites of national, European or international importance for wildlife and
- There will be no direct or indirect impact upon protected species and their habitats;
- There will be no adverse impact upon features of major importance to wild flora and fauna;
- There are no adverse impact upon features of geological or geomorphological importance recognised by the Geological Survey of Ireland;
- There are no significant adverse effects on local habitats or species.

9.2 South Clare Economic Corridor LAP 2003

POLICY ENV2: Protection of areas of nature conservation

Proposals for development will only be permitted where it can be clearly demonstrated that:

- A: There is no direct or indirect adverse affect on areas designated as sites or candidate or potential sites of national sites or international importance for wildlife;
- B. There will be no direct or indirect impact upon protected species and their habitats;
- C. There will be no adverse impacts upon features of major importance to wild flora and fauna;
- D. There are no adverse impact upon features of geological or geomorphological importance;
- E. There are no unacceptable effects on local biodiversity or wildlife corridors.

POLICY ENV3: Flora, fauna and wildlife habitats

Proposals for development will only be permitted where it can be clearly demonstrated that there will be

- a) No adverse impacts upon features of major importance to wild flora and fauna or their habitats,
- b) No adverse impacts to features of geological or geomorphological importance;
- c) No unacceptable effects on local biodiversity or wildlife corridors.

POLICY ENV4: Landscape conservation

Proposals for development within the open countryside will normally be permitted only where it can be clearly demonstrated that:

- A. There are no adverse effects on the character of the landscape, and

B. A high standard of site layout, design and building materials is incorporated to conserve and enhance this landscape character.

ENV5: Protection of vulnerable landscapes

Proposals for development within the areas designated as vulnerable landscapes will normally be permitted only where it can be clearly demonstrated that:

- A. The proposed development does not intervene with views of water from any point within the vulnerable landscape area, or
- B. The view of the skyline is not significantly impinged upon by the proposed development when viewed at a reasonable distance from the ridgeline.

POLICY I8: Sewage disposal

Proposals for development will be permitted in locations where the council, in consultation with the appropriate authorities, considers that sewage disposal facilities and surface water drainage of adequate capacity and design are available, or can be provided in time to serve the development. Proposals for development which rely upon sewage disposal via septic tank effluent treatment system will only be permitted where the council is satisfied that ground conditions are adequate to treat and dispose of the effluent arising from the septic tank.

POLICY I10: Flood risk management

Development proposals, including the filling of land, in floodplains and other areas which are at risk from flooding or perform a flood control function will only be permitted where it can be demonstrated that such development:

- Has been designed to minimise risk of inundation and will not contribute to or increase the risk of flooding elsewhere,
- Has adopted all reasonable measures to improve the management of flood waters on and adjacent to the site and to assist the protection of properties within the vicinity,
- Does not impede the flow of floodwater or the ability of the floodplain to store water and to flood naturally and takes account of the impact on riparian habitat and wetland,
- Incorporates building design measures and materials to assist evacuation and minimise damage from inundation,
- Can provide for the maintenance of any approved privately funded flood defence measures to the satisfaction of the Council.

Shannon

The appeal site is zoned as Open Space in the South Clare Economic Corridor LAP 2006, *To conserve and enhance land for open space and amenity purposes.*

OS3: Shannon Estuary

The Shannon estuary, together with the Fergus estuary, forms the largest estuarine complex in Ireland. The estuary features intertidal mudflats, fringed with saltmarsh vegetation. It contains a number of important habitats listed in Annex I of the EU Habitats Directive and supports a range of mammals (the only known resident population of bottle-nosed dolphins in Ireland), fish (including three species of Lamprey, Twaite Shad and Salmon) and invertebrates (including the freshwater pearl mussel) listed in

Annex II of the EU Habitats Directive. The estuary is a candidate Special Area of Conservation (cSAC) and much of it has been designated a Special Protection Area (SPA), primarily to protect the large numbers of migratory birds present in winter. Overall the Shannon and Fergus Estuaries support the largest numbers of wintering waterfowl in Ireland.

Part of the estuarine land falls within the Shannon Town boundary and therefore requires policies for protection within this Plan. OS3 takes in the entire landward side of the Shannon estuary within the town boundary, incorporating the tidal mudflats, the flood protection barrier, Illaunmanagh Point, Illaunagowan Point and Illaunaconeen Point. Policies E12, ENV2, ENV3 and ENV4 as set out in Part A, Chapter 4 of this document shall apply. The Council proposes to designate this entire area a nature reserve and formalise the pedestrian routes along the estuary.

It is proposed to develop a tourist information centre on the protection barrier at Illaunagowan Point to promote the estuary for ecologically sensitive tourist-related development.

Ut3: Sea Defences

The Council will require new development proposals within 200 metres of the sea defences to reappraise the adequacy of the existing sea defence structures and reinforce these where necessary. The Council will require a suitably qualified engineer's report on the adequacy of the sea defences to be submitted with appropriate planning applications.

10.0 ASSESSMENT

- Procedural Matters
- Requirement for an EIS.
- Land use and development principle.
- Design and layout.
- Emissions.
- Drainage.
- Roads and parking.
- Special Contributions
- Other matters arising.

10.1 Procedural matters:

Third parties have raised issues relating to the procedures followed by the planning authority in the material contravention process, particularly regarding the notices published in this regard. I consider, however, that it is the decision of the planning authority to grant permission in this instance which is the matter before the Board. The legality of that decision, or the procedures involved in it, are not matters for determination in this appeal.

Similarly, the manner in which the land was transferred to the applicants, or any alleged bias on behalf of the Council are not a matter for consideration by the Board. Any concerns in this regard should be directed to other, more appropriate, authorities.

10.2 Requirement for an EIS

The proposed development, comprising the construction of a chapel and crematorium on a site of 0.52ha. is not of a class of development mandatorily requiring an EIS. While the site adjoins areas designated for protection, it is not itself designated as a European site or otherwise designated under the Wildlife Act. Given the proximity of the site to such sites, however, it may be considered appropriate to consider whether the development would be likely to have a significant effect on the environment.

Having regard to the provisions of Schedule 7 of the Planning and Development Regulations 2001-2006, and to the nature and characteristics of the development, in particular,

- The scale of development proposed and the pattern of development in the surrounding area;
- The information and guidance available in relation to emissions from crematoria;
- The ecological assessments carried out for the proposed development and the reports of the National Parks and Wildlife Service thereon, and;
- The nature of impacts likely to arise,

I do not consider that an EIS is required in respect of this development.

10.3 Land use and development principle

The appeal site, in common with adjoining lands, is zoned as Open Space in the South Clare Economic Corridor LAP 2006, To *conserve and enhance land for open space and amenity purposes*. To the north of the site, lands are zoned for community use and have been developed as sports grounds in recent times.

While not specifically identified in the zoning matrix, the planning authority have determined that the proposed development would materially contravene this zoning objective and in this regard the procedures under S.34(6) of the 2000 Act, as amended, were instigated. I concur with this determination.

The appeal site is located beyond the southern edge of development in Shannon, on the shores of the Shannon. The distributor road, Bothar Sioda, approx. 200 north of the site, comprises the southern boundary of development in this area. Lands between the site and this road are in use as sports fields, with an associated pavilion building. The cemetery, located in an elevated position to the west of the site, is the subject of a proposed extension to the west, which was recently put out to tender.

Juxtaposing the proposed use with an existing cemetery is not inappropriate, however, it does not in itself justify the selection of the subject site. The two uses are mutually exclusive and do not require such co-location.

The proposed development is essentially a commercial one with associated structures, services and traffic movements. It would represent the most southerly extension of development toward the estuary in this area. The first party have not provided any assessment of the fundamental suitability of the site for the proposed development, particularly in the context of the generally restrictive nature of development plan objectives relating to this area.

It is an objective of the LAP (OS3) to designate the area as a nature reserve. Similarly, the County Development Plan designates this area as a vulnerable landscape, wherein it is policy to only permit development which would not adversely affect the character, integrity or uniformity of the landscape.

These policies are generally regarded as appropriate and reasonable and it is considered that the development of lands in the area would be inappropriate and detrimental to the character and amenity value of the area.

10.4 Design and layout

The appeal site comprises an area of approx. 0.5ha, however, the configuration of the site makes it's rational development difficult. The proposed development, comprising chapel and crematorium, connected by a walkway, lies on the northern site boundary, closely bounded by access roads and parking provision. The nature of the development and it's ancillary requirements in terms of services and infrastructure, would result in a cramped form of development which would be at odds with the required dignity of such a facility. The design of buildings is not considered to be unacceptable, however, and the site is largely screened from view from the east, south and west.

The basis for the selected site boundaries, and resulting form of development are unclear and do not appear to be based on property boundaries. The difficulties arising with the appeal site are evidenced in the proposed off-site parking and access arrangements, whereby there is only minimal on-site parking provision.

The development will also necessitate the loss of trees and hedgerow from the site, which on larger site, might otherwise be avoidable. In this regard, the development would appear to be contrary to the landscape and open space objectives of the development plan and LAP.

In the absence of any national standards or guidance in relation to crematoria, I refer the Board to (UK DOE guidance, "The siting and Planning of Crematoria", LG/232/36 (copy appended). This document makes recommendations regarding the appropriate location and layout of such developments, and while the proposed development does not propose the strewing of ashes on the site, it would still appear to fail to comply with these guidelines. In this regard I refer particularly to issues of access, parking and circulation as well the need to provide an appropriate setting for the development.

10.5 Emissions

Concerns have been expressed regarding the health implications of stack emissions from the proposed development. There are no national standards regarding emissions from crematoria in Ireland. As suggested in the planning application and, as previously adopted Board, UK Process Guidance Note PG05/02(04) (copy appended), is considered to represent a reasonable basis for the assessment of the proposed development and its impacts. This guidance note requires that mercury and dioxin abatement plant be installed in new crematorium facilities.

There is a suggestion in the further information response to the planning authority that a mercury abatement system may not be initially installed, prior to operation of the facility. While this is contradicted in the first party appeal response, which indicates that abatement plant will be provided, I regard this uncertainty as unsatisfactory. Any decision to grant permission for the proposed development should therefore require the installation of abatement plant prior to first operation of the facility. I note that the planning authority decision did not require such measures.

At further information stage it was indicated that stack height (9.8m) was to be in excess of the minimum required height, calculated in accordance with UK (D1) guidelines. I note however, that PG05/02(04) indicates that the stack height calculated on this basis, should be adjusted to take account of local meteorological data, topography, emissions and structures (para 6.26). There is no evidence from the information available that these local circumstances were considered in the calculation of the 9.8m stack height.

It would appear that, subject to installation of necessary abatement plant and determination of the final stack height, compliance with the requirements of the PG05/02(04) can be achieved. I consider that in the absence of any national standards or guidelines on emissions from such developments, compliance with emission limit values as set out in the DEFRA guidance note should be conditioned in any decision to grant permission in this instance. Any development should be subject to appropriate monitoring.

On going monitoring of emissions is recommended in PG05/02(04), the results of which should be made available for inspection. In their appeal response, the first party indicate that the facility will be completely “*automated with continuous monitoring and digital recording of emissions*”. This would appear to satisfactorily address concerns regarding emissions; however, provision should be made for independent monitoring if so required by the planning authority at a particular time. Similarly, a maintenance contract should be entered into between the operator of the crematorium and the cremator supplier/manufacturer to ensure regular maintenance of the cremator, with details of such maintenance programme to be available for inspection by the public.

I consider that condition no. 2 of the planning authority decision could be revised, requiring continuous monitoring in a manner to be agreed with the planning authority, based on Sections 5.6 – 5.13 of PG05/02(04).

I note condition no. 16 of the planning authority decision is based on para. 5.5 of PG05/02(04) and can be regarded as reasonable.

The proposed development would not appear to require a waste licence / permit. In this regard I note that “waste” is defined in the 1996 Waste Management Act and Waste Management (Amendment) Act 2001 as

- Any substance or object belonging to a category of waste specified in the First Schedule or for the time being included in the European Waste Catalogue which the holder discards or intends or is required to discard and anything which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste until the contrary is proved.

Human remains are not listed in the European Waste Catalogue, nor do they appear to fall within any category or class described in the First Schedule of the 1996 Act. Cremation would not be regarded as incineration of waste or as a waste recovery or disposal activity. It is clear from correspondence on the file that the Environment Section of the planning authority were in contact with the EPA in relation to this development and that the advice from the EPA, related to the application of DEFRA guidance note PG05/2(04), as discussed above.

10.6 Drainage

The site is described in the ecological assessments as an area of poorly managed, wet pasture which was formerly part of the upper reaches of the Shannon, reclaimed through poldering. The site is bounded by drains to the north and east which contained a considerable flow of water at time of inspection.

Shannon WWTP is located to the east of the site, with rising mains passing along Sli na Mara to the east. It may not be possible to access the plant, however, due to the pressurised nature of these sewers. It is proposed to install an on-site proprietary effluent treatment plant and percolation area on the eastern side of the site. According to the interim groundwater protection scheme for the area, the site overlies a locally important aquifer, which is moderately productive in local zones only, of low vulnerability. The groundwater protection response is R1: acceptable subject to normal good practise.

The planning application was accompanied by a site characterisation form. This indicates that the water table lies at 1.3m bgl and a t-value of 41 was obtained during tests undertaken in February 2007. Trial holes were filled in at time of inspection, however, based on the information available on the file, the proposed on-site disposal of effluent would appear to be acceptable.

The site and surrounding area is generally low-lying. I note that the adjoining graveyard, and its proposed extension, is located in a more elevated position than the appeal site. The site is separated from the adjoining polder / embankment by a drainage channel to the southeast. It is proposed to discharge surface water run-off to the drain in the northeastern corner of the site, which discharges to the estuary. It is indicated that a valve will be installed to prevent back-pressure on the outlet. No assessment of the volumes of storm water arising or the capacity of the drain to accommodate such flows has been provided. Similarly, no assessment of the impact of storm conditions, which may prevent discharge into the estuary, is provided.

I note policy UT3 in relation to Sea Defences, which requires an engineer's report on the adequacy of the sea defences with planning applications within 200 metres of the sea defences. This matter was not raised in the application.

I note also that no flood assessment of the development has been carried out. I would regard the submission of even a preliminary assessment of the potential for inundation / flooding of the site to be a minimum requirement for development in this low-lying area. This is particularly so given the likely effects of climate change into the future. Similarly, the adequacy of the sea defences should be assessed in this regard. I consider,

therefore, that the policies and objectives of the development have not been complied with.

These are considered to be **new issues** in the consideration of this appeal. In the event of the Board being minded to grant permission for the proposed development, I would recommend that these matters be fully resolved before any such decision is made.

10.7 Ecology

The site adjoins the Shannon Estuary, which is designated as a cSAC and an SPA, but is not itself designated for conservation purposes. At further information stage, details were requested to address NPWS queries on the development. The resulting assessments conclude that there are not rare, protected or scarce species of plants within the site. The habitats of the site are of no conservation value and there will be no significant loss if development proceeds.

The installation and proper maintenance of the propriety wastewater treatment system is proposed to address negative impacts on the estuary.

The impact of tree-removal trimming on winter wildfowl will be avoided if such activities are carried out outside the winter months. The assessment notes that the loss of tree cover could result in on-site activities having localised disturbance within the adjoining saltmarsh, particularly at high tide. Additional native tree planting will be carried out along the site boundaries.

The assessments describe feeding by waterbirds in the vicinity of the site as variable and sporadic, dependent on tide, winds, disturbance etc. No long-term operational impacts on winter wildfowl usage of the site are expected in terms of noise or emissions.

Run-off during and after construction may reduce water-quality and negatively impact on estuarine habitats and associated fauna. Measures to address this are stated to include embankments and shallow drains to allow settlement and the implementation of standard environmental procedures to address potential fuel leakage or spillage. No details in this regard have been provided by the applicants, however.

I note the response of NPWS to the ecological assessments. While most of these matters could be appropriately conditioned, I consider that the drainage aspects of the development should have been considered in more detail, particularly having regard to the proximity of development to the adjoining drainage ditches, prior to a decision being made on the application.

10.8 Roads and parking.

The appeal site is currently served by a poorly surfaced road, which leads from the Sli na Mara to the adjoining cemetery. The junction of Sli na Mara / Bothar Sioda to the north has been recently upgraded with the construction of a new roundabout associated with the ring road leading northeas. Despite such works, Sli na Mara requires widening to facilitate any increase in traffic volumes using the entrance.

Metal gates separate the access road from the public road / Sli na Mara, inside which is a large parking area, which appears to primarily serve the adjoining sports grounds. This

road is bounded on both sides by playing fields and runs for approx. 180m before turning left and then traversing the drainage channel adjoining the site.

The development provides 12 no. on-site parking spaces, 6 no. of which are to be made available for mourners. Parking for others attending services at the site is to be provided at the car park to the north, due to the lack of space within the appeal site. Mourners will then walk to the facility. It appears that agreement has been reached with the planning authority whereby a special contribution will be paid in respect of road upgrading, footpath and lighting provision and other works to be carried out by the local authority, in order to facilitate this development. No details of the upgrading works for the access road have been provided.

I consider, however, that notwithstanding that such upgrading works, the parking facilities serving this commercial development, are excessively remote from the site. I note that the proposed extension of the adjoining cemetery is to be provided with 34 no. on-site parking and in this regard it does not appear that the planning authority considered the subject car park adequate to serve its needs.

Third parties have raised the potential impacts of traffic on residential amenity and safety in the surrounding area. In this regard, I note that Shannon is characterised by a series of self-contained suburbs, each generally defined and bounded by distributor roads. According to the LAP, the road network of the town is designed to facilitate the development of these neighbourhoods. It is an objective of the development plan to provide a new ring road to the southeast of the town, which has been partly constructed. This ring road would serve regional traffic attending the proposed development, while the existing distributor road network of the town would otherwise adequately serve the traffic generation of the proposed development. Having regard to the road layout and pattern of development in the surrounding area, I do not consider that the proposed development would negatively impact on the safety or residential amenities of the area.

10.8 Special Contributions

Conditions no. 4 of the planning authority decision requests the payment of a special Development Contribution of €100,000 toward the upgrading of the adjoining road network and car parking area, which is necessary to facilitate the development and the overall area. Details provided by the planning authority indicate the contribution is in respect of

- Preparation and surfacing of the car park and access road.
- Footpaths and kerbs.
- Drainage.
- Fencing.
- Road markings.
- Road widening from roundabout to car park entrance.

Section 48(2)(c) of the Planning and Development Act 2000 provides that payment of a special contribution may be required in respect of:

- (a) a particular development, in circumstances where
- (b) specific exceptional costs are incurred, and where
- (c) these costs are not covered by a scheme made under this section.

With reference to these three criteria I consider that:

- (a) The special contribution is applied to this specific development and does not relate to categories of development which are situated within the area.
- (b) The special contribution relates to specific exceptional costs, as the works appear to be compatible with the terms of Section 48 (12)(a) and are not covered by a development contribution scheme formulated in accordance with this section of the Act, and
- (c) The costs involved are not covered by a scheme made under this section.

Having regard to the considerations set out above I do not consider that the planning authority acted unreasonably in attaching a special contribution condition in this case. The subject works will benefit the subject development, but would also benefit the adjoining sports grounds and the existing cemetery (which is to be enlarged). This is acknowledged in the condition, which states that the works are required to facilitate development in this overall area. I therefore consider that in any decision to grant permission on this site, the applicants should be required to pay a proportional amount toward such works.

The first party did not appeal against condition no. 4 of the decision to grant permission and the details submitted by the planning authority, in relation to how the special contribution was calculated, were not circulated.

11.0 CONCLUSION

I consider the open space zoning and landscape policies of the development plan relating to this area to be reasonable. Development of the nature proposed would be contrary to these policies and the juxtaposition with the adjoining cemetery would not, in my view, overcome objections which might otherwise arise to this development.

The development of the site in the manner proposed would also be inappropriate on the basis of the cramped form and layout, having regard to the nature of the use proposed, and the remoteness of proposed parking provision. I do not consider that the development would provide an appropriate setting for a use of the nature proposed.

In accordance with the requirements of the development plan, I consider that the drainage and flooding implications of the development should be addressed prior to any decision to grant permission on the site.

12.0 RECOMMENDATION

Having regard to the foregoing I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

Reasons and Considerations:

1. The appeal site is located in an area zoned Open Space: To *conserve and enhance land for open space and amenity purposes* in the South Clare Economic Corridor LAP 2006. This area is also designated in the County Development Plan as a vulnerable landscape, wherein it is policy that proposals for development will normally be permitted, only where it can be clearly demonstrated that the development will not impinge in a significant way upon the character, integrity or uniformity of the landscape. These policies and objectives are considered to be reasonable.
It is considered that the proposed development and its associated traffic movements and activities, would erode the landscape character of this area and would be contrary to the above policies. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development, by reasons of the restricted nature of the site would result in a cramped form of development which would fail to provide an appropriate setting for the proposed crematorium, and would fail to provide adequate access and parking facilities within relative proximity to the development. In this regard, it is considered that the proposed development would result in an inappropriate form of development, and would be contrary to the proper planning and sustainable development of the area.
3. Having regard to the low-lying nature of the appeal site and the pattern of drainage in the area, as well as its proximity to the Shannon Estuary and associated flood embankments, the Board is not satisfied, on the basis of the information available on the file, that the proposed development would not be placed at risk of harm to life or damage to property through flooding, nor exacerbate the risk of flooding of these lands. The proposed development would therefore constitute disorderly development and would be contrary to the proper planning and sustainable development of the area.

Conor McGrath
Inspectorate