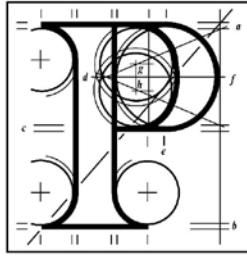


An Bord Pleanála



Inspector's Report

An Bord Pleanála Ref.: PL03.245706

Development: Demolition of house and construction of replacement house, garage, septic tank and all ancillary site works at Caherycahill, Liscannor, Co. Clare

Planning Application

Planning Authority:	Clare County Council
Planning Authority Reg. Ref.:	15/169
Applicant:	Domhnal & Elaine Slattery
Type of Application:	Permission
Planning Authority Decision:	Grant Permission

Planning Appeal

Appellant(s):	Muriel Noble Lyon's, Lynch and O'Dea
Type of Appeal:	Third Party
Observers:	None
Date of Site Inspection:	21 st of January 2016
Inspector:	Angela Brereton

1.0 SITE LOCATION AND DESCRIPTION

The subject site is located in the townland of Caherycahill on the western side of the L1088 and is approx. 400m to the north of Liscannor village and the R478. It appears as a backland site and is located to the rear of an existing dwelling to the south that fronts onto the adjoining L1088. The existing splayed access is proximate to entrances to the dwellings to the south east.

An access drive provides access to the existing habitable house on the subject site and this runs along the north western boundary of the adjoining dwelling to the south. The driveway and site frontage are gravelled. The eastern boundary is defined by trees and shrubs, which provide some screening for the adjacent property. The rear southern boundary is defined by a low stone wall.

The grassland to the north appears of better quality than the land to the south west which is boggy with rushes. The site slopes down from north to south. The rear garden is primary grass with some shrubs along the eastern site boundary. The water table appears to be high and the ground is soft and wet under foot. The area of the existing septic tank and percolation area was visible as a darker shaded area on site and the ground was very wet in this area. The site visit was in January after a period of sustained rain.

The site is elevated and commands view to Liscannor bay to the south and the R478 a designated scenic route is c.400m to the south west. It can be seen in the distance in view of its higher vantage point. There are a number of other rural houses in the area, with varying styles, although none similar to the white flat roofed house type proposed for the subject site.

2.0 PROPOSED DEVELOPMENT

It is proposed to demolish the existing dwelling and to construct a replacement dwelling house, single storey garage, revised landscaping, to replace the existing septic tank with proposed new waste water treatment system and soil polishing filter and all associated site works.

The application form provides that the area of the site is 2.41ha. The existing building to be demolished is 345sq.m. In the original plans submitted the proposed ground floor area was shown as 236.2square metres and the first floor as 216.2square metres i.e. the replacement houses would be 452.4square metres. The drawings show the outline of the existing house to be demolished relative to the proposed house to be built.

A Report has been submitted with the application from Mark Quinn Consulting Engineers Ltd noting a number of deficiencies with the current house proposed for demolition.

Floor plans, sections and elevations including photographic images/montages from various viewpoints showing the existing and proposed house on the subject site have been submitted.

Following the Council's F.I request revised plans showing a reduction in floor area and height have been submitted. These are discussed further in the context of the Assessment below.

Appendix B of the information submitted provides a Site Characterisation Form, Site Assessment and Recommendations for the replacement of the existing septic tank with a new pwwts and soil polishing filter and all associated site works.

It is proposed to connect to the group water scheme.

3.0 PLANNING HISTORY

The Planner's Report refers to the following applications granted in close proximity to the site:

- Reg.Ref.95/21 – Mr & Mrs Fursey and Mary O'Dea were granted outline permission to erect a dwelling house and septic tank.
- Reg.Ref.00/1489 – Muriel Noble was granted permission for a granny flat extension on the adjacent property to the south east of the subject site.

4.0 PLANNING AUTHORITY APPLICATION

Technical Reports

Irish Water were initially concerned that the drawings and specification provided does not provide IW with sufficient data to make a determination and decision.

An Taisce seeks to ensure that the proposed development is compliance with rural policies and objectives in the CDP including design, landscape designations and in keeping with the Habitat and Water Framework Directives and other relevant considerations. They are concerned that the modern house design is not in character with the area. They are also are concerned that the site is in an area of extreme vulnerability and that waste water be carefully planned and maintained.

Submissions received from local residents include the following:

- The proposed dwelling should be moved closer to the western boundary of the site.
- The house and in particular the east gable will impact adversely and cause overshadowing, overlooking and loss of privacy to the property to the south.
- This is a relatively large house for such a rural location and it will not be in character with the area.
- Landownership, right-of-way and boundary issues.

The Planner's Report

This had regard to the locational context of the site, planning history, policies and to the submissions made. They do not object to the demolition of the existing house. They provide that as this proposal seeks to upgrade and replace an older system, therefore improving the method of wastewater treatment on site is acceptable. They were concerned that the scale, design and massing of the proposed contemporary replacement dwelling on this

elevated site would appear a visually prominent feature in the local landscape and from the village of Liscannor. Also, particularly when viewed relative to the dwelling to the east would result in a negative visual impact on this site. It is noted that a Habitats Directive Screening Report was carried out and their findings concluded that an AA was not required. They recommended that Further Information be sought to include the following:

- While they do not object to a replacement dwelling or a contemporary design, the PA is concerned about the siting and scale of the proposed dwelling and its proximity to an existing dwellinghouse with regard to potential for impact on the visual and residential amenities of the area. They request that a revised proposal be submitted to address these concerns.
- They advise that a contour survey of the subject site and adjoining lands be submitted.
- Documentary evidence to demonstrate that they have sufficient legal interest in the lands of the subject application site including the adjoining access road/right of way.

Further Information response

David H. Leahy Architects has submitted a response on behalf of the applicants which includes the following:

- Revised plans have been submitted showing a reduction in height and floor area of the proposed dwelling.
- Details from Land Registry including Folio reference no. and a map showing the associated lands have been submitted.
- A response has also been made to each of the observations raised including relative to design, water management and legal issues.

Planner's Response

The Planner had regard to the F.I submitted and provides an analysis of this relative to the existing and proposed dwelling house. They considered that the applicant in the revised plans has addressed the siting and design of the dwelling to the east. They noted that a contour survey has been submitted and that the height of the proposed dwelling is now reduced. They have regard to the land registry details submitted. They provide that outstanding issues have been addressed by the applicants and that a comprehensive landscaping plan would be required to visually integrate the dwelling and this could be addressed by way of condition. They provide that as there is no increase in floor area no development contributions would be required. They recommend that permission be granted subject to conditions.

5.0 PLANNING AUTHORITY DECISION

On the 6th of October 2015 Clare County Council granted permission for the proposed development subject to 8no. conditions, which include the following:

- Condition no.1 – Permission granted in accordance with plans submitted on 23rd of March and the 10th of September 2015.
- Condition no.2 – Comprehensive landscaping scheme to be submitted.
- Condition no.3 – Relates to finished floor levels.
- Condition no.4 – Relates to external finishes.
- Condition no.5 – Disposal of surface water.

- Condition no.6 – Undergrounding of services.
- Condition no.7 – Relates to the proposed wwts being installed and maintained in accordance with current standards.
- Condition no.8 – Garage use ancillary to main dwellinghouse.

6.0 GROUNDS OF APPEAL

Two separate Third Party Appeals have been submitted and these include the following:

6.1 Muriel Noble

Michael J. Duffy, Consulting Chartered Engineer has lodged a Third Party Appeal on behalf of Muriel Noble and her grounds of appeal include the following:

- The proposed on-site wastewater treatment system will not work based on the site suitability assessment carried out for the application.
- The proposal by its mass and proximity will impinge on the enjoyment of her home with a catastrophic loss of privacy in a rural location.
- The proposal will significantly reduce the value of their property.

Site Suitability Assessment

- The assessment carried out with this application is fatally flawed and they provide a discussion of this.
- The agent who carried out the assessment confirms that this site is incapable of discharging wastewater to ground. Based on the no. of bedrooms the design population equivalent should be 10 rather than 8 PE as proposed – the tank capacity is incorrect.
- The visual inspection of the site is flawed and they note the high water table. They consider that the discharge will not percolate to ground.
- The proposal is within the buffer zone of GSI recorded Bore Hole.
- The location of the new system has been selected without any trial hole of percolation tests. T and P test assumptions are flawed.
- They are concerned about impact on surface water (stream) and proximate open well to the south east. These are two critical hydro-geological features not discussed.
- They query on what basis the replacement wwts is required and consider that the existing septic tank is most likely discharging to the stream as there is no discharge to ground.
- The proposal is in contravention of the EPA Guidelines.
- The Planner did not adequately review the proposed replacement wwts and made a mistake by assuming that an 'advanced' replacement treatment is better than the existing septic tank.
- The engineering facts emerging from this assessment are that the site cannot discharge effluent to groundwater, no matter what form of treatment is selected.
- The proposal is in contravention of policies CDP 8.1/8.2 and 9.1/9.2 of the Clare CDP.

Design

- This is an excellent contemporary design for a new dwelling but not on this site.

- The size, scale and proportion are not appropriate to this site which is a difficult shape and in close proximity and unsympathetic to the adjacent dwelling and the surrounding area.
- The landscaping condition will not mitigate the visual dominance of the proposed replacement dwelling on this elevated open landscape.
- It would not comply with planning policy relative to design and layout.
- The sense of 'place' associated with the status quo will be eradicated by this proposal.
- It will be overbearing is contrary to good practice in the Clare Rural House Design Guide.
- It contravenes the CDP objectives 16.3 and 16.6 relative to scenic routes.
- The site is in an area of special control in an area of strong urban pressure. If this were a first time dwelling the applicants would not comply with this objective CDP3.11.
- This proposal is in deliberate contravention of CDP 3.14 as the existing dwelling proposed for demolition is not substandard and was built in the 1990's.
- The proposal was not appropriately considered and they consider a split decision to allow demolition of the habitable house and refuse the proposed dwelling would be appropriate.
- The existing wwt's is sub-standard, permission for a larger house with an increased hydraulic loading cannot be considered.
- Under normal greenfield circumstances they would not be entitled to permission by virtue of the CDP.

6.2 Lyons, Lynch and O'Dea

P.Coleman & Associates Consulting Engineers has submitted a Third Party appeal on behalf of Mary O'Dea, Richard, Dermot, Cyril, Albert, James Lyons and Noreen Lyons Lynch, who are registered as co-owners of the land adjoining the site of the subject application relative to the Council's grant of permission. Their grounds of appeal include the following:

- They have concerns regarding the applicant's legal ownership of the land.
- The applicants are not the full registered owners of the site outlined in red and do not have the consent of their clients who own part of this land.
- They are concerned that despite some alterations shown in the plans submitted in the F.I that the application still includes some of their client's lands.
- The applicants have only purchased the right-of-way i.e. lands shown in 'yellow' and do not own this or the land coloured 'green'.
- Any revision to site boundaries as outlined on the original application requires a new application.
- Permission should not have been granted for this proposed development without their clients consent.
- They are concerned that the design of the proposed development will be visually inappropriate and incongruous in such a high amenity area and will not assimilate into the local landscape.

7.0 RESPONSES

7.1 **Clare County Council** refers to the Planner's Report and provides that:

Having regard to the existing use established onsite, the intended use of the proposed development, the policies of the current Development Plan and the pattern of development in the area, it is considered that, subject to the conditions attached to the planning permission as granted, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would otherwise be in accordance with the proper planning and development of the area.

7.2 A **First Party Response** has been submitted to the two separate Third Party Appeals by HRA Planning Ltd., Chartered Town Planning Consultants. This includes the following:

Muriel Noble

Site Suitability Assessment

- The appellant has not substantiated her argument with any site specific technical data that suggests that the wwts as proposed would not meet the requisite standards and best practice.
- The site suitability assessor was undertaken by a suitably qualified person who has experience in assessing such sites that display similar site characteristics and ground water regimes.
- Their design response proposals have been successful in treating and disposing waste water in accordance with the EPA waste water treatment manual for single dwellings.
- The site assessor has provided a briefing note which rebuts in detail the technical arguments presented by the appellant, and demonstrates how the wwt design response is appropriate in this instance and consistent with best practice.
- It is the professional opinion of the assessor that the proposed design response will in fact present an improved ground water solution superior to the existing situation. They provide details of the principle points made by the assessor in this respect.
- The P.E. loading arising from the replacement dwelling relative to bedroom nos. is unlikely to increase the P.E, loading established by the existing dwelling.
- They submit that the proposal is consistent with best practice guidelines and recommendations in relation to wwt for single dwellings and is compliant with the EPA Code of Practice and recommendations.

Design

- The residential use of this site has already been established and this proposal is for a replacement house – and as such complies with Policy 3.14 of the CCDP 2011-2017 *as varied*.
- They have regard to the landscape character and note the scenic route 'Cliffs of Moher to Lahinch' to the south.
- They note that there is a dispersed settlement pattern in the area consisting of numerous one-off dwellings to the north of Liscannor.
- They consider that the location of the existing dwelling is not within a sensitive landscape or scenic viewpoint and is situated on the landward side of the scenic road.

- The scale of the replacement dwelling is unlikely to appear incongruous with the varied scale, form and settlement pattern of the area and when viewed from any part of the scenic road.
- The footprint of the new house would now in view of the revised plans be no closer than the existing house to the neighbouring dwelling.
- In order to avoid any overlooking high level windows are proposed on the east elevation. The privacy of the neighbouring dwelling is therefore preserved.
- They consider that the proposed design is acceptable on this site and in character with the area.

Lyons, Lynch and O'Dea

The First Party note that this appeal relates to landownership and visual impact. They consider that the visual impact/design has been addressed relative to their response to the Third Party above.

Landownership issues

- They note the concerns regarding landownership issues and provide that no development is proposed on third party lands nor is development reliant upon works outside of the applicant's ownership.
- They provide further clarification on boundary and right of way issues.
- They note that all development works are contained in an area within the full ownership of the applicant and there is no evidence presented by the applicant challenging these facts, which have also been accepted by the Council.

In summary relative to both appeals they provide that sufficient information has been submitted to confirm that the proposed development is in compliance with the provisions of CCDP 2011-2017 (as varied) vis a vis wwts and ground water protection and the preservation of views from the scenic road. Also that visually the proposal can be assimilated into the environment without injury to the visual and residential amenities of the area and is in compliance with the proper planning and development of the area. They include a map illustrating LCA and Scenic Routes relative to the appeal site and a Response from the Site Assessor.

7.3 Third Party response to First Party

Michael J Duffy Consulting Chartered Engineer has submitted a response on behalf of Muriel Noble which includes the following:

- The proposal is not in accordance with the prescribed procedure and acknowledged guidelines or best practice for the protection of ground or surface waters.
- The proposal will devalue the applicant's property and impinge on her property rights.
- The proposal is not in compliance with the Water Framework Directive 2000/60/EC and associated Regulations relative to issues concerning pollution of surface and groundwater.
- The applicant has demonstrated that this site cannot treat wastewater arising with a discharge to groundwater.

- The applicant would not qualify for permission for a dwelling in an area on a green-field site because they do not fulfil the requirements in the CDP, also the proposal is in contravention of CDP 3.14.
- There has been no input from the Council's Environment Department and alternatively the EPA are tasked with advising P.A's and public bodies on such issues.
- Having regard to Table 6.3 and Section 6.3 of the EPA Code of Practice this application should have been refused as soon as this application was appraised.
- The only relevant evidence is the Site Suitability Assessment submitted with this application. There is concern about ponding of effluent as the site cannot discharge to groundwater.
- Their client does not have a problem with the design of the existing permitted dwelling. She does have a problem with the proposal because in addition to an overdevelopment of the site unsuited to the area, there is a significant issue of wastewater treatment.
- The proposal is the epitome of urban generated demand for holiday housing in a sensitive rural location.

8.0 PLANNING POLICY

Clare County Development Plan 2011-2017 (as varied)

The subject site is located within an Area of Special Control (Strong Urban Pressure) and along a National Route. Objective CDP3.11 New Single Houses in the Countryside within 'Areas of Special Control' (Map 3B refers) - regard is had to addressing the criteria in categories A-C relevant to demonstration of Local Need.

CDP 3.14 refers to the replacement of substandard habitable houses in the countryside. The Objectives are as follows:

- To permit the proposed demolition of a habitable but substandard dwelling and its replacement with a new single dwelling, subject to normal site suitability considerations;*
- To permit the replacement of a dwelling damaged by fire, flood or other natural disaster subject to normal site suitability considerations;*
- In such circumstances where these sites occur in 'Areas of Special Control' the provisions of Objective CDP 3.11 (i.e. 'Local Need' requirement) will not apply;*
- Notwithstanding the above, it is Council policy to protect the County's vernacular building stock from demolition where restoration and extension is an option (see CDP 18.3).*

CDP 18.3 seeks: *To facilitate proposals which enhance and protect other structures and areas of architectural merit.*

Policy 3.15 refers to Refurbishment of a Derelict Dwelling/Structure in the Countryside.

Policy 8.3.7 and CDP8.8 refers to wastewater treatment systems for un-serviced developments.

Chapter 16 has regard to Heritage Landscapes and Scenic Routes. CDP16.2 refers to the objectives for Settled Landscapes. 'Settled Landscape' designation – CDP16.2 refers.

Policy CDP 16.6- Scenic Routes (Map 16A - Appendix 7 refers). As shown the site is located proximate to a scenic route within The Cliffs of Moher and Lahinch area.

Policy CDP 19.2 – Refers to Design and the Built Environment and includes contemporary design CDP 19.3 and Fig. 19.1. Section 19.5.1 refers to inclusion of Energy and Efficiency in house design.

Appendix 1, A1.2.1 addresses rural residential development and it refers to the County Clare Rural House Design Guide and to wastewater treatment systems.

North Clare LAP 2011-2017

This notes that Liscannor is classified as a ‘small village’ in Table 3.1 Urban and Rural Settlement Strategy of the CCDP 2011-2017. General Objectives include: *To ensure that the village maintains and increases its existing permanent population levels* and: *To facilitate the provision of a wastewater treatment plant to serve the settlement.*

A land use zoning map of the village is included, it is noted that the subject site is outside of and to the north of the boundaries of Liscannor. Therefore the policies and objectives of the CCDP 2011-2017 apply.

Code of Practice Wastewater Treatment Disposal Systems serving Single Houses

This document (2009) by the EPA relevant to single houses (p.e <10) and replaces SR6:1991 and the EPA Manual 2000 for ‘Treatment Systems for Single Houses’. The objective is to protect the environment and water quality from pollution and it is concerned with site suitability assessment. It is concerned with making a recommendation for selecting an appropriate on site domestic wastewater treatment and disposal system if the site is deemed appropriate subject to the site assessment and characterisation report. The implementation of the Code is a key element to ensure that the planning system is positioned to address the issue of protecting water quality in assessing development proposals for new housing in rural areas and meeting its obligations under Council Directive (75/442/EEC).

EU Water Framework Directive

The purpose of the EU Water Framework Directive (WFD) ‘is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;
- (b) promotes sustainable water use based on a long-term protection of available water resources;
- (c) aims at enhanced protection and improvement of the aquatic environment, inter-alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;

- (d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and
- (e) contributes to mitigating the effects of floods and droughts’.

EU Habitat Directive

The aim of the EU Habitat Directive is ‘to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies’.

9.0 ASSESSMENT

9.1 Principle of Development

The site is located in the rural area to the north of the village/seaside resort of Liscannor. Chapter 3 of the Clare CDP 2011-2017 as varied provides the urban and rural settlement strategy for the County. The subject site is located in the rural area that is an area of Special Control and is designated as ‘Strong Urban Pressure’ Policy CDP13.11 refers. However as this proposal is for a Replacement House Policy CDP13.14 applies and the local needs criteria is not relevant. Table 3.2 notes that the Replacement of a substandard/damaged dwelling is allowed on suitable sites both within and outside of areas of special control. Therefore while a replacement dwelling maybe acceptable in principle regard is had to the issues raised.

The Third Parties are concerned that the proposed replacement house will appear overly visually dominant in the landscape and will not be in character with the rural vernacular and visual amenities of the area, having regard to views from the scenic route. Also that the proposed design and layout will have an adverse impact on the residential amenities of the area, and that there are a number of outstanding legal issues relative to access, rights-of-way etc. There is also concern about the suitability of the site for a wwts having regard to the high water table and percolation issues.

In response the First Party stipulates that this proposal is for a replacement house and that the principle of a dwelling has been established on these lands. Therefore issues relative to the establishment of local need do not apply in this case. They note that the revised plans have reduced the height and bulk of the proposed dwelling and consider that the design and layout will not now adversely impact on adjacent properties or visually on the character of the area. They also consider that the proposed pwwts is an improvement on what is already on the site and that their site suitability assessment concurs that the site is suitable for the proposed pwwts system. They consider that sufficient legal interest has been established in the documentation submitted.

Therefore while it is considered that the principle of the proposed dwelling is in accordance with planning policy relative to replacement dwellings, it needs to be established whether the proposed contemporary design of house type is acceptable in this location, whether the proposed pwwts will be an improvement on the existing and whether the proposed development is in compliance with the proper planning and development of the area. Other issues such as sufficient legal interest and the impact on the character and

amenities of the rural area overlooking Liscannor Bay and close to a scenic route are also discussed in this Assessment below.

9.2 Land Ownership issues

The issue of land ownership has been raised by the Third Parties. It is noted that this was also raised at planning application stage. The Council's F.I request included that the applicant submit documentary evidence to demonstrate that they have sufficient legal interest in the lands which are the subject of this application including the adjoining access road/right of way. In response the First Party submitted a copy of the Land Registry record and folio and filed plan showing the area of land within the landholding associated with the subject site. The Planner's Report noted that land registry details have been submitted which demonstrate that the applicants purchased the site in 2004. Also land registry details dating from 1997 demonstrate the right of way over the access laneway.

The revised Site Layout Plan provides that the area of the site is 0.1694sq.m. This includes the site boundaries and the right-of-way/wayleave shown yellow. It also includes shaded 'blue' *client's land within neighbour's boundary* and in green *'neighbours land within client's boundary*. The Third Parties note that the Applicants have purchased the right-of-way over the access road or at least part of it but do not own this land. They provide that the applicants have no permission to include their land 'green' section and 'yellow' section within their site boundary for this application. They provide that the revision of site boundaries as outlined on the original application requires a new planning application and that permission should not have been granted without their consent.

While it is provided that the existing house on the subject site was constructed in the 1990's details of when this was granted permission have not been included in the documentation submitted. The registry details however provide that the applicants are the owners of these lands, since 2004 i.e. it therefore appears they were not the original owners of the house. Taking all of this into account it is also noted that there are no alterations proposed to the access or the lane/driveway in the current planning application. The First Party response notes the concerns regarding landownership issues and provides that no development is proposed on third party lands nor is development reliant upon works outside of the applicant's ownership. They provide that the planning application red line site boundary extends to illustrate the existing access to the public road via the existing right of way. The land within the right of way shall remain unmodified.

It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of S.34(13) of the Planning and Development Act: "A person shall not be entitled solely by reason of a permission under this section to carry out any development". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts..."

9.3 Demolition of the Existing House

The existing house proposed for demolition is habitable and appears in reasonable condition. The design consists of a more traditional form at a number of different levels. The Third Parties question the need for demolition, since it was constructed in the 1990's. A Site Layout Plan, Floor plans and elevations showing the existing house have been submitted. Regard is had to the criteria of CDP3.14 for Replacement of a Substandard Habitable dwelling in the countryside.

An Engineers Report has been submitted with the current application which provides details of the construction and condition of this house. This provides that the severity of the structural deficiencies that were noted during the inspection, are such that it would not be possible to renovate them without major demolition works. Extensive works would need to be carried out to all elements so that the works would comply with current structural etc standards. They consider that this would lead to difficulties with certification recently introduced under the Building Control (Amendment) Regulations. Also a replacement house, would be more viable and fully compliant with current Building Regulations. In this context it must be noted that compliance with these regulations are dealt with under separate remit.

The existing dwelling architecturally is considered to be more reflective of the vernacular of the area, particularly having regard to the design and massing and materials used. Visually externally it appears in reasonable condition and it is not visually obtrusive. However the comments relative to deficiencies in the Engineer's Report have been noted. This is not a traditional house but is a modern house and is of no particular vernacular merit. While the dwelling is considered to be habitable the applicants are concerned about its defects and seek a replacement dwelling of a more contemporary design.

9.4 Design and Layout of the Replacement House

Policy CDP 19.2 of the Clare CDP refers to Design and the Built Environment and encourages contemporary and innovative architectural solutions. Section 19.4.6, notes that Design Statements, can provide a rationale, for a particularly innovative design, or demonstrate how the context of a particular setting has been taken on board or respected. Appendix 1 A1.2.1 refers to Rural Residential Development and has regard to Siting and Design. It also refers to the County Clare Rural House Design Guide 2005. This includes a Section on Contemporary relative to Modern House Design: *The success of the building will be its ability to merge with the surrounding landscape whilst illustrating sustainable design, innovative use of context, site layout, building mass and form, materials, energy management, space heating, landscaping, passive design, plan design and finish.*

It is noted that in response to the Council's Further Information request the applicants have submitted revised plans including a revised Site Layout Plan. These show that the floor area of the proposed dwelling has been reduced from 452.4square metres to 344.99sq.m. i.e the ground floor is now shown as 176.89sq.m and the first floor as 168.1sq.m. Therefore the total reduction in floor area proposed is 107.41sq.m. The proposed dwelling has also been

reduced in height at parapet level from 7.4m to 6.4m. Drawings showing hatched the reduction in area from the original design proposed have been included. These also show the more angled line of the existing house. It is now noted that the g.f.a for the existing house is 345sq.m and the proposed house is a similar floor area. The existing house has 6no. bedrooms and the proposed house has 5no. (albeit some larger) bedrooms.

It is now proposed that the house be set back c.5.5m from the eastern site boundary. This elevation is the one that faces the rear of the properties to the east. The revised elevations also show that the ground and first floor windows are now to be high level to prevent overlooking. As shown on the revised plans the proposed house while the overall depth will be increased will not be closer to the eastern boundary than the existing house. There is also some screening provided by planting which should be augmented and retained.

To command the views of Liscannor Bay balconies are proposed at first floor level in the southern (rear) elevation. In the interests of the privacy of the Third Party and adjacent dwelling to the south east it is recommended that the master bedroom balcony area be omitted. Further large windows are proposed in the western elevation which looks towards adjoining agricultural land. It is noted that the Third Party owners of the land to the west are concerned that these first floor windows in the west elevation will cause overlooking and will affect the potential of their land in the future. This elevation is shown set c.5.5m from the current site boundary. It is considered that the windows are overly large and would command views to the west. In view of the main aspect large windows and balcony proposed to the south of the proposed kitchen/dining room area it is recommended that these windows are reduced in size and are higher level not exceeding 1m (rather than in excess of 2m currently shown) in depth. If the Board decide to permit it is recommended that these modifications be conditioned in the interests of the visual/residential amenity of the area.

As has been mentioned in the legal issues section above there are no changes proposed to the existing access or driveway. The existing house does not include a garage, the cars are parked in the drive in front of the property. The proposed garage is shown located in the gravel frontage area as 17sq.m, with a flat roof to match the house design and a height of 3.3m. It would appear that the garage in view of its small size maybe more appropriate for use as a storage shed. However if the Board decide to permit it is recommended that a condition similar to condition no.8 (restricting the use to ancillary to the dwelling) of the Council's permission be included.

9.5 Impact on the Character and Amenities of the Area

The site is located within a 'Settled Landscape' Policy CDP16.2 refers. The objectives include to sustain and enhance the quality of life and residential amenity with regard being given to avoiding intrusions on scenic routes. It is also noted that sites have been selected to avoid visually prominent locations. This includes regard to criteria (vi) of this Policy which seeks: *That design for buildings and structures reduce visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.*

Section 19.3 notes that in the countryside buildings form part of the rural landscape. Section 19.4.3 refers specifically to rural design i.e: *The challenge for new built form in the countryside is to sit into that 'place' and enhance the character of the area.* Reference is also made to the County Clare Rural House Design Guide. The Government Policy on Architecture notes: *'Contemporary architecture and design also have an important role to play in the design of rural buildings that make the best use of their location while still blending into and enhancing the natural landscape.'*

It is noted that the Third Parties are concerned that the design and bulk of the proposed replacement dwelling will appear overly dominant and will not be in character with its elevated setting and will appear visually prominent particularly when seen from the scenic route (R478 Lahinch to Cliffs of Moher). This lies c.350m to the south west. The dwelling is located in the 'Settled Landscape' where regard is had to avoiding intrusions on the scenic route. It is considered that while the design of the proposed house is not in character with the vernacular in the area that it will be visible as a different form in the wider landscape on the landward side and set back from this route.

It is also noted that An Taisce are concerned that the modern design is not in character with other dwellings in the area and landscape considerations and recommend that it should be upgraded or refused. The Third Parties are concerned that the massing and volume of the proposed dwelling does not comply with the traditional form in an elevated open landscape. The contiguous elevation shows the profile of the house relative to adjacent properties and photomontages has been submitted showing the existing and proposed dwelling from various view-points. The existing house has a variation in height whereas the proposed dwelling is more bulky in form.

However it is also noted that there is a variation of house types, including holiday homes in the area, proximate to the village of Liscannor. In view of the reductions in bulk and height proposed in the revised plans submitted in the F.I it is not considered that the proposed replacement dwelling house will detract from the character and visual amenity of the area but will produce a more contemporary style that can be assimilated in view of contours and landscaping. If the Board decide to permit it is recommended that it be conditioned that a Landscaping Scheme be included.

9.6 Regard to water and wastewater issues

Policy CDP 8.7 of the Clare CDP 2011-2017 as varied seeks to facilitate the provision and improvements of adequate wastewater facilities to serve existing towns and villages. CDP 8.8 provides that it is an objective: *To permit the development of single dwellinghouses only where it is demonstrated to the satisfaction of the Planning Authority that the proposed wastewater treatment system is in accordance with the Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses EPA (2009).*

This site in view of its rural location is unserved relative to waste water disposal and currently has a septic tank and percolation area to serve the existing house. As noted on the site visit, the watertable is high and the adjoining land to the south is boggy with rushes. There is a stain on the

ground in the rear garden area of the subject site which along with the ground being wet and soggy underfoot in this location indicates the existing system is in poor working order with poor percolation. It is noted that the site slopes gradually to the south.

A Site Characterisation Form has been submitted with the application. This provides that the site is in an area of extreme vulnerability – Mapping Data has been included. Section B.5 and Table B.2 of the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single House (p.e.<10)' 2009 includes that areas with a groundwater response of R2¹ are *acceptable subject to normal good practice*. It also notes that *where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Section 6 are met and that the likelihood of microbial pollution is minimised*. Table B3 provides the recommended minimum distances between a receptor and a percolation area or polishing filter.

The replacement dwelling is to be served with potable water supply via the existing connection to the Caher Cahill Liscannor Group Water Scheme. It is provided that the installation of a new wwts, complete with percolation area/soil polishing filter to current EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single House (p.e.<10)' 2009 will be best suited to the south of the site. The Site Layout Plan shows the location of the proposed wwts in the southern part of the rear garden area.

The Site Assessment notes that the depth of trial holes was 0.90 which is the same depth from ground surface to bedrock (photographs are included). The depth of ground surface to water table was 0.70. It notes that the likely T value is 90. Table 6.2 EPA Code of Practice provides the minimum depth requirements for on-site systems discharging to ground i.e.1.2m and at the base of polishing filter 0.9m.i.e minimum depth of unsaturated subsoil to bedrock and the water table. The Assessment further provides that an engineered solution would be necessary i.e: *the examination of the sub-soil indicates that the top soil and next layer/horizon is relatively free draining, however at a depth of c.700 below ground level the impermeable layer of clay poses a problem. Site improvement works will be required at this site, i.e an advanced wwts complete with soil polishing filter and imported good quality sub-soil will be required.*

The Recommendations section of their Assessment provides details including that it is proposed to install a two chamber pre-cast tank with a minimum capacity of 3200litres – 150l/person/day x 8 p.e (as a margin of safety for this site) to comply with current standards. The secondary treatment system will be an Anua 'Puraflo' Peat Filter Modules (3no.) together with the appropriately sized lift pump and concrete chamber. They provide details of the polishing filter and also note that a cut-off drain will be constructed. This includes: *The cut-off drain will be stone filled...and extended so that surface water is discharged into the stream that forms the eastern boundary of the Applicants holding*. It is also provided that the soil polishing filter and the entire wwts will be constructed so as to maintain the required separation distances with respect to boundaries, dwellings, road, trees, etc. This also notes that the

system will be installed as per EPA and Local Authority requirements and that on-going maintenance will be necessary.

9.6.1 Issues relative to the suitability of the site

The Third Party is concerned about the suitability of the site for the disposal of waste water and their appeal has been submitted by a Chartered Engineer who makes a number of comments relative to issues with the Site Suitability Assessment that has been carried out. This includes concerns with the trial holes and percolation tests. They note that 'P' tests were not carried out and consider that is an acknowledgement that there cannot be a discharge to groundwater. They also suggest that because of the topography that the water table encountered is closely related to the open well 30m to the S.E. and that groundwater in the trial hole emerges as surface water in this open well.

Table 6.1 of the EPA Code of Practice provides that the minimum distances to adjacent septic tank should be 7m and 10m to the percolation area and 3m to the site boundary and 10m from a watercourse/stream. It is noted that the Third Party is concerned that it has not been recorded on the Site Assessment that there is a mapped open well less than 30m SE of the boundary of the site. They also refer to the stream and to the proposal being within the buffer zone of a recorded borehole.

Table 6.3 provides an interpretation of percolation test results and "in cases where $3 < P < 75$ the site may be suitable for a secondary treatment system and polishing filter at ground surface or overground if the soil is classified as Clay..."

The Third Party is concerned that the capacity of the tank for 10 P.E. is incorrect and that it should be at least 3.5m³. They also consider that the proposed polishing system will not work because they have demonstrated that a discharge to groundwater is not possible. They are concerned that if the wwts cannot discharge to ground that it will discharge to the stream. They also note that the existing septic tank is most likely discharging untreated effluent to the stream. They therefore do not consider that the more advanced treatment system proposed will overcome this issue. They provide that the Council's condition no.5 cannot be complied with on the basis of the site suitability assessment which indicates that the site cannot discharge water to ground. They consider that the proposed development is therefore in contravention of Clare CDP 2011-2017 (as varied) CDP Policies 8.1 (Protection of Groundwater resources) CDP 8.2 (Protection of Water resources), CDP 9.1(a) and (b) (Water Framework Directive) and CDP 9.2 (Protection of Water Resources).

9.6.2 Regard to First Party Response

The First Party response notes that the Site Suitability Assessment was undertaken by a qualified assessor who has practical experience in the successful execution of similar design responses on similar site conditions elsewhere in Co. Clare. They consider that the proposed design response is in compliance with the EPA Code of Practice requirements and will in fact present an improved ground water solution superior to the existing situation. They note that the P.E. loading arising from the replacement dwelling

(comprising 5 bedrooms) on the new wwts and on the site, is unlikely to materially increase the P.E loading established by the existing dwelling with 6 bedrooms. They submit that the proposed development is consistent with best practice guidelines and recommendations in relation to wwt for single dwellings.

The First Party include a 'Briefing Note' by their Engineer who is a qualified assessor. This provides that the methodology employed in the site assessment and the system designed is completely in line with the requirements of EPA Code of Practice. It includes that the engineered solution complies also in relation to the vertical separation distances between the invert level of the proposed treatment system and the water table level. It provides that the proposal as designed for this specific site is with a view to improving the existing situation and in order to minimise the potential risk of both bacteriological and microbial pollution of the ground and/or surface waters. Also, that the capacity of the proposed septic tank is correct on the basis and design PE. A Bord na Mona 'Puraflo' intermittent peat filter system is recommended as part of the overall wwts for this site. This Report considers that the discharge to groundwater is achievable on this site in accordance with the EPA Code of Practice and provides details of another site with similar issues where this has been seen to work well.

It is provided that the wwts as it currently exists on site is not fit for purposes and is not compliant with current guidelines including the EPA Code of Practice. The engineered solution proposed will ensure that any risk of microbial and bacteriological pollution of ground water is minimised. This proposal offers a better option in that it will reduce the risk to ground and surface waters.

The Third Party response reiterates that the Site Assessment has shown that the site is not capable of discharging effluent to groundwater and does not comply with the EPA Code of Practice. They are also concerned that the proposal will not comply with the Water Framework Directive and associated Regulations which are concerned with the pollution of ground and surface waters.

9.6.3 Conclusion regarding waste water issues

Regard is had to all the issues raised by the parties and as noted in this Assessment above. However the pertinent issue in this case is that this application is for a replacement house. There is an existing septic tank and percolation area on site that is not working properly, as provided in the documentation submitted the proposed more advanced system will be an improvement on this. Having regard to the Site Characterisation Form the site is clearly not ideal or particularly suited for a wwts. It is considered that if this were an application for a one-off-house that having regard to current standards it would be recommended that permission be refused based on the poor site suitability issues relative to concerns regarding discharge to groundwater. However that is now not considered to be an option in view of the presence of the existing house and wwts on the site. If the existing badly working system is retained, this is worse relative to issues concerning pollution of ground and surface waters. It is considered that the proposed

advanced pwwts provides a better and improved option for this site provided it is properly managed and maintained. Should the Board decide to permit it is recommended that a condition similar to the Council's condition no.7 relative to the wwts be included.

9.7 Appropriate Assessment

A Habitats Directive Project Screening Assessment has been completed by the Council. This provides that there is no impact on habitats in SACs or SPAs. It concludes that significant impacts can be ruled out. Having regard to the NPWS website the closest Natura 2000 sites are the Inagh River Estuary SAC which is c.1.8kms from the site and the Cliffs of Moher SPA which is c.3.6kms. It is noted that the Site Characterisation Form provides that there is a small stream along the eastern boundary of the site. Therefore there could potentially be a source/pathway/receptor route between the site and other watercourses that ultimately discharge to these Natura 2000 sites. This has not been investigated. Nevertheless, provided good construction management practices are pursued and the wwts is properly constructed and maintained in accordance with standards, the risk of any significant effects on the Conservation Objectives of these Sites would not arise.

Having regard to nature and scale of the proposed development which is for a replacement house and pwwts and the nature of the receiving environment and the distance to the nearest European sites, it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.8 Development Contributions

As noted in the Design and Layout Section above as there is no increase proposed in the revised plans relative to floor area of the replacement house the issue of development contributions does not arise. It is also noted that Clare County Council has not included a development contributions condition.

10.0 CONCLUSION AND RECOMMENDATION

Having regard to the documentation submitted, to relevant planning policy in the Clare CDP and to the relevant Guidelines, to the issues raised in the Third Party grounds of appeal and to the responses made and having visited the site, it is considered that the principle of a contemporary replacement house is acceptable on this site. The Assessment above has provided an analysis of the main issues relative to the impact of the proposed replacement house on the character and amenities of the area, on neighbouring property and on the visual amenity including the scenic route. Regard has also been had to the legal issues raised. The pertinent issue regarding the replacement of the waste water treatment system has been discussed in some detail.

Having regard to all these issues it is considered that the proposed replacement house as shown on the revised plans and subject to the modifications and conditions recommended above is acceptable on this site. Also, that the replacement of the wwts provided it is properly constructed and maintained will be an improvement on the current situation.

It is therefore recommended that permission be granted subject to the conditions below.

11.0 REASONS AND CONSIDERATIONS

Having regard to the established residential use on site it is considered that the proposed development to include the demolition of the existing house and the provision of a replacement house and new improved waste water treatment system and other associated works subject to compliance with the conditions set out below, will not impact adversely on the character and amenities of the rural area. The proposed development would not seriously injure the residential amenities of adjacent properties or the visual amenities of the area or be prejudicial to public health. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 10th day of September 2015 and by the further plans and particulars received by An Bord Pleanála on the 2nd day of December, 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The first floor windows as shown in the western elevation of the revised plans shall be high level and reduced in area to one metre in depth.
 - (b) The balcony area for the master bedroom shall be omitted.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

3. Prior to the commencement of development details of the external finishes, including fenestration and for the balcony to the living/dining room area shall be submitted for the written agreement of the Planning Authority.

Reason: In the interest of visual and residential amenity.

4. The sites shall be landscaped in accordance with a scheme of landscaping details of which shall be submitted for the written agreement of the planning authority before the development commences. This shall include:
 - a) The retention and augmentation of existing boundary hedges;
 - b) The provision of landscaping of indigenous species along the south, north and western boundaries of the site. Species to be used shall not include either cupressocyparis x leylandii or grisellinia.
 - (c) The landscaping shall be completed before the dwelling is first made available for occupation.

Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6.
 - (a) The existing septic tank and percolation area shall be de-commissioned and removed from site prior to the installation of the replacement waste water treatment system.
 - (b) The replacement treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 23rd day of March, 10th day of September and 2nd day of December 2015, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.
 - (c) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
 - (d) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the replacement dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(e) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(f) Within three months of the first occupation of the replacement dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

7. (a) The proposed replacement house shall be used as a single dwelling unit and shall not be used as a guest house or for bed and breakfast accommodation.

(b) The proposed garage shall not be used for human habitation, or any commercial activity or for any other purpose than a purpose incidental to the enjoyment of the dwelling house.

Reason: In the interest of residential amenity and orderly development of the area.

8. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

9. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and Public Holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects",

published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interests of sustainable waste management.

11. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

Angela Brereton
Planning Inspector
Date: 18th of February 2016