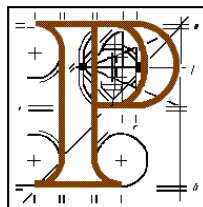


An Bord Pleanála



Inspectors Report

Development: Dwelling house, garage, entrance, effluent treatment system and site works at Ballyvonnavaun, Doora, Co. Clare .

Planning Application

Planning Authority: Clare County Council
Planning Authority Reg. Ref. 15/442
Applicant: Cathal Duggan and Edel O'Connell
Type of Application: Permission
Planning Authority Decision: Grant

Planning Appeal

Appellant(s): Declan Bell

Observers: None

Type of Appeal: Third Party

Date of Site Inspection: 18/05/2016

Inspector: Gillian Kane

1.0.0 SITE LOCATION AND DESCRIPTION

- 1.0.1 The subject site is located on the western side of the L7144, a narrow winding road leading south from the R469 to the R458, approx. 6km south-east of Ennis, Co. Clare. The site is located approx. 1.2km north-east of the M18.
- 1.0.2 The site is elevated above the local road and is currently accessed via an agricultural entrance at the northern end. To the north of the site is a single storey dwelling (Appellants property) and to the west of the site, accessed via a narrow unsurfaced laneway is another residential property (Appellants fathers dwelling). The southern boundary of the site is comprised of a stone wall, separating the site from this laneway. The northern boundary of the site, adjoining the appellants property is comprised of dense hedgerow on the site and a tall belt of trees on the Appellants property. The western boundary of the site is comprised of a dense hedgerow. The ground topography rises from the roadway (east of the site) in a westerly direction, resulting in the subject site being approx. 1m higher than the local road. On the date of my site visit, the site was thickly overgrown with the result that the trail hole could not be found.
- 1.0.3 Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

2.0.0 PROPOSED DEVELOPMENT

- 2.0.1 Permission was sought for the construction of a dwelling house of 218.5sq.m., a detached garage of 30sq,m (*revised to an integral garage at FI stage*), roadside entrance, and effluent treatment system on a site of 0.27ha.
- 2.0.2 The application was accompanied a Site Suitability Report, details relating to the Applicants links to the rural area, letter of consent to join local group water scheme and a letter of consent from the site's legal owner (applicants mother).
- 2.0.3 Two objections to the proposed development were submitted to the Council.

2.1.0 Reports on File following submission of application

- 2.1.1 **Planning Report:** Applicant complies with SS10 policy of the development plan which refers to 'local rural person', 'local rural housing need' and 'local rural area'. Further information required

regarding location of neighbouring wells. Proposed house design is acceptable but further information required regarding location of proposed garage. Horizontal alignment of road is poor but adequate sightlines are available. Applicant must demonstrate that the proposed development is not a flood risk. Further information required.

2.2.0 Further Information Request

- 2.2.1 The applicant was requested to provide the following information:
1. Proposals to address concern regarding location of garage and landscaping proposals
 2. Flood Risk Assessment
 3. Details of neighbouring well and details of site size.

2.3.0 Further Information Response

- 2.3.1 The Applicant responded to the FI request with the following:
1. Revised plans showing omission of detached garage and house design reconfigured to accommodate an integrated garage. Updated site layout plan to show non-deciduous planting on western boundary and in north-western corner.
 2. Flood Risk Assessment
 3. Updated drawing showing location of neighbouring well and site size of 0.28ha.

2.3.2 The FI was deemed to contain significant further information was required to be re-advertised.

2.3.3 Two objections to the proposal were submitted to the Council.

2.4.0 Reports on File following submission of FI

2.4.1 **Planning Report:** High level windows should be required on northern elevation at first floor to address concerns of neighbouring site. Findings of the flood risk assessment are acceptable. Distance between proposed percolation area and neighbouring well is acceptable. Recommendation to grant permission.

3.0.0 PLANNING AUTHORITY DECISION

3.0.1 By order dated 26/02/16 a notification of decision to **GRANT** permission subject to 15 no. conditions. Condition no. 2 is an occupancy condition, condition no. 3 requires high level windows on the northern elevation at first floor and condition no, 4 requires a FFL as shown in the plans.

4.0.0 **PLANNING HISTORY**

4.0.1 **PL03.109467** (Planning Authority reg. ref. P98/1106) Outline planning permission was sought for the erection of a house and septic tank. The Board refused permission for the following reasons:

1. The site of the proposed development is located in an area where it is the policy of the planning authority as expressed in the current Development Plan for the area generally to prohibit development outside the development boundaries of settlements and development clusters located within those areas designated as special development zones. This policy is considered reasonable. The proposed development, which is not located within the development boundary of a settlement or a designated development cluster would, therefore, be in conflict with the objectives of the Development Plan and be contrary to the proper planning and development of the area.

2. The additional traffic turning movements which the proposed development would generate on a narrow and substandard road at a point where sightlines are restricted in both directions would be contrary to the proper planning and development of the area.

5.0.0 **NATIONAL POLICY**

5.1.0 **Sustainable Rural Housing Guidelines for Planning Authorities 2005**

5.1.1 The guidelines refer to criteria for managing rural housing requirements whilst achieving sustainable development. Among the policy aims identified for sustainable rural housing are;

- Ensuring that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated.
- Managing pressure for overspill development from urban areas in the rural areas closest to the main cities and towns such as the gateways, hubs and other large towns.
- The planning authority should establish if the proposal is intended to meet a genuine rural housing need.

5.1.2 The subject site is located in an area identified as being a '**Area Under Strong Urban Influence**'. The guidelines stress that development driven by cities and larger towns should generally take place within their built up areas or in areas identified for new

development through the planning process. Appendix 3 of the Guidelines state that the key development plan objectives in these areas should be on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan. In addition policies will also normally include references to:

- The types of situations considered as constituting rural generated housing.
- Measures that will be put in place to facilitate the availability of an appropriate level of housing options in smaller settlements for other housing requirements,
- The criteria that will be applied by the planning authority generally in assessing rural generated housing proposals e.g. in relation to evidence of an applicant's links to the area in question, and
- The measures to be adopted to ensure that development permitted to meet the requirements of those with links to the rural community continues to meet the requirements for which it was permitted.

5.1.3

Appendix 3 of the Guidelines provide the development plan objectives relevant for such areas. The key development plan objectives in these areas should be to on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan. In addition policies will also normally include references to:

- The types of situations considered as constituting rural generated housing. (See also Section 3.2.2.),
- Measures that will be put in place to facilitate the availability of an appropriate level of housing options in smaller settlements for other housing requirements,
- The criteria that will be applied by the planning authority generally in assessing rural generated housing proposals e.g. in relation to evidence of an applicant's links to the area in question, and
- The measures to be adopted to ensure that development permitted to meet the requirements of those with links to the rural community continues to meet the requirements for which it was permitted.

- 5.1.4 The Guidelines require that new houses in rural areas are sited and designed to integrate well with their physical surroundings and generally be compatible with:
- the protection of water quality in the arrangement made for on-site wastewater disposal facilities
 - the provision of a safe means of access in relation to road and public safety and
 - the conservation of sensitive areas such as natural habitats, the environs of protected structures and other aspects of heritage.

6.0.0 LOCAL POLICY

6.1.0 Ennis and Environs Development Plan 2008- 2014

6.1.1 As per the notice of Clare County Council dated 18/09/2013, in accordance with the requirements of Section 11A(3)(b) of the 2000 Planning and Development Act (as amended by the Electoral, Local Government and Planning and Development Act 2013) both Ennis Town Council and Clare County Council decided, pursuant to the provisions of Section 11A(2) of the Act not to continue to review the Ennis and Environs Development Plan 2008 - 2014 and not to prepare a Draft Ennis and Environs Development Plan 2014 - 2020. The Electoral, Local Government and Planning and Development Act 2013 provides in this case that the existing Ennis and Environs Development Plan 2008 - 2014 (as varied) will continue to remain in force to the extent provided for by that plan

6.1.2 The subject site is identified as being within an area of Special Control / 'Strong Urban Pressure' on Map A / Settlement Hierarchy. **Section 4.4.2** of the plan states that these areas display the greatest pressures for development due to proximity to the immediate environs or close commuting catchment of large towns including the hub town of Ennis, rapidly rising population, location in areas of considerable pressure for development of housing due to proximity to urban centres and proximity to major transport corridors with ready access to urban areas. Areas which are under strong urban pressures are primarily located along the Limerick – Shannon – Ennis – Galway road corridor. The entire countryside area located within the Ennis and Environs Plan area is therefore designated as area under strong urban pressure. In these areas, the key objectives of the Council are: a) To facilitate the genuine housing requirements of the local rural community (rural generated housing), subject to satisfactory site suitability and technical considerations and b) To direct urban-generated development to

areas zoned for new housing development in the adjoining main growth area.

- 6.1.3 **Policy SS10** of the plan states that for new single houses in the countryside within areas of special control it is the policy of the Development plan to permit a new single house for the permanent occupation of an applicant who falls within either of the Categories A or B or C below and meets the necessary criteria.
- 6.1.4 **Section A1.14** of the plan outlines the Council's development management policies on rural housing. **Section A1.23.3** outlines the Council's policies on water supply, stating that for group waster schemes a letter of consent to join must be provided. **Section A1.23.5** outlines the Council's policies on waste water disposal, stating that for single rural houses the Planning Authority require a site suitability assessment, including an assessment of groundwater vulnerability, percolation and water table tests. The results should indicate whether a conventional septic tank should be installed or whether a proprietary wastewater treatment system is necessary. The treatment system serving a single dwelling should be located within the site and not be connected to any other dwelling. The treatment system should be one which has the approval of the Irish Agreement Board.
- 6.1.5 In relation to Flood Risk Management **Policy W11** states that no development will be permitted on lands designated as 'Flood Risk Area'. Proposals for development, including the infilling of land, in floodplains or any other areas which have been identified as being at risk from flooding or perform a flood control function, will not normally be permitted. Proposals for development in such areas will only be considered where it can clearly be demonstrated that the development:
- a) 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 area;
 - b) Has been designed to minimise risk of inundation and will not contribute to or increase the risk of flooding either on the subject site or elsewhere;
 - c) Has adopted all reasonable measures to improve the management of floodwaters on and adjacent to the site and to assist the protection of properties within the vicinity of the site;
 - d) Does not impede the flow of floodwater or the ability of the floodplain to store water and/or to flood naturally;

- e) Takes account of the impact it will have on riparian habitat and wetland;
- f) Incorporates building design measures and materials to assist evacuation and minimise damage from inundation;
- g) The developer can provide for the maintenance of any approved privately funded flood defence measures to the satisfaction of the Council.

6.1.6 The Council's policy on Strategic Flood Risk Assessment is set out in **Policy W12**, stating that it is the policy of the Council to ensure that proposals for development in areas where there is a risk of flooding shall have regard to the OPW/DoEHLG planning guidelines The Planning System & Flood Risk Management (and Technical Appendices) – Guidelines for Planning Authorities (Nov 2009) and any future OPW flood assessment information and that such proposals must also demonstrate that appropriate mitigation measures can be put in place.

6.1.7 The subject site is located in the Western Corridor Working Landscape. **Policy EN13** states that it is the policy of the Development Plan:

- a) To permit development in these areas that will sustain economic activity, and enhance social well-being and quality of life - subject to conformity with all other relevant provisions of the Plan and the availability and protection of resources;
- b) That selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design, are directed towards minimising visual impact;
- c) That particular regard should be given to avoiding intrusions on scenic routes and on ridges or shorelines. Developments in these areas will be required to demonstrate:
 - i) That sites have been selected to avoid visually prominent locations.
 - ii) That site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, public amenities and roads.
 - iii) That design for buildings and structures reduce visual impact through careful choice of form, finishes and colours and that any site works seek to reduce visual impact of the development.

6.1.8 **Policy EN11** states that proposals for development outside of built-up areas will be considered when it can clearly be demonstrated that: a) There will be no unacceptable effects on the character of the landscape and b) The proposed development will conserve and

enhance the subject landscape through the incorporation of a high standard of site layout, design and building materials. In the case of proposals for residential development outside of built-up areas, regard must be had to the **County Clare Rural House Design Guide**.

6.2.0 Draft County Clare Development Plan 2017- 2023

6.2.1 The draft County Development Plan 2017 -2023 was published in June 2016. The draft plan includes the area covered by Ennis & Environs Development plan. Chapter 3 of the plan shows the subject site remaining within an area of special planning control. area under strong urban influence. Rural housing policies remain the same as those in the Ennis & Environs development plan. The flood risk zone of the subject site is changed from being in zones B and C.

7.0.0 GROUNDS OF APPEAL

7.0.1 A third party appeal has been lodged on the grounds that the subject development is not in accordance with the proper planning and sustainable development of the area. The Board is requested to refuse permission. The grounds of the third party appeal can be summarised as follows:

- Appellants (D. Bell) house is to the north of the subject site and the appellants fathers (K. Bell) house is to the west of the subject site.
- The proposed dwelling is directly in front of K. Bells house, between his house and the public road. The proposed development would seriously injure the visual and residential amenity of K. Bells house.
- The proposed substandard and piecemeal development would result in K Bells house being backland development and would be contrary to the proper planning and sustainable development of the area. The proposed development would reduce the value of his home and cause problems should he wish to extend in the future.
- The proposed development would negatively affect the visual and residential amenity of the appellants property. Photos taken from the appellants living room which directly faces the site are submitted. It is submitted that the conditions attached by Clare CC acknowledge the injury to the appellants privacy and visual and residential amenities.

- The proposed screening will block light to the Appellants open plan living room and kitchen which were designed to maximise light.
- The proposed screening will not provide adequate privacy from the proposed two storey dwelling.
- The Appellants well is 2.5m from the site boundary. The assertion that this well is up-gradient of the proposed septic tank is based on a statement in the site suitability report rather than any evidence. That the well is up-gradient cannot be confirmed. Photos of well attached. This is a matter of public health.
- Outline planning permission was refused on the grounds that the number of boreholes and wells in close proximity to the site would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.
- The Appellants farmyard is 20m from the site boundary. Future residents of the site may not be accustomed to living beside a farm and the issues involved with such an operation.
- The Applicants have another 3 acre plot in a more suitable location.
- The application form includes the applicants mother Edel O'Connell who does not have a housing need. She lives in a house along this road and owns another house in Manusmore. Permission should be refused on the grounds of precedent.
- The proposed development would create extra traffic on this substandard road. The road is narrow, has a poor surface, a number of dangerous bends and a humpback railway bridge which restricts visibility. The extra traffic generated by the proposed development would be prejudicial to traffic safety.
- Outline deplaning permission was refused in the past on traffic grounds.
- The proposed development is inherently unsuitable and is contrary to the proper and sustainable development of the area.
- Appeal accompanied by land ownership details

8.0.0 RESPONSES

8.1.0 Planning Authority Response

8.1.1 The Planning Authority responded to the appeal stating that they consider the revised plans and proposed landscaping to address the concerns of the Appellant. The Council states that the proposed waste water treatment system complies with the EPA's Code of Practice and does not interfere with the operation of the Appellants

farm yard. The proposed development complies with the Council's settlement locations policy of the Ennis and Environs Development Plan 2003 -2014. The road network can adequately cater for the traffic likely to be generated by the proposed development. The Board is requested to grant permission.

8.2.0 Response of First Party to Appeal

8.2.1 The response of the First party to the third party appeal can be summarised as follows:

- The proposed infill site is not in front of the D. Bells house and is offset from both houses with a clear distance of approx. 50m. Clare CC have conditioned screening which will adequately protect the visual amenity and privacy of the neighbouring dwellings.
- The proposed development will not result in K. Bells house becoming backland development as his dwelling was constructed first. The proposed development will integrate K. Bells house into the overall development.
- The value of D. Bells house will not be affected by the proposed development. If the proposed development is not constructed the value of D. Bells house will be affected by the subject site which will be overgrown and derelict.
- The proposed dwelling will be of a high architectural standard and will enhance the surrounding area.
- The proposed development would not constitute substandard or piecemeal development but will provide continuity of development. A similar arrangement exists across the road.
- D. Bells house is located 50m from the proposed development and so has adequate room to extend.
- D. Bell has not appealed the Council's decision to grant permission.
- The proposed development will not have a negative impact on the Appellant K. Bell's house due to existing screening which will be further supplemented.
- The proposed screening will not be as high as the existing 35ft existing screening and therefore will not block light to the Appellants house.
- The Appellants open plan living area is to the north and is shaded by the main part of the house.
- The proposed non-deciduous screening will provide adequate screening and will establish quickly.
- Overlooking from first floor windows will not occur due to the existing 35ft high trees along the boundary and the proposed

high level windows. The proposed dwelling has been carefully orientated to avoid overlooking.

- The Appellants well is permanently tarred over and water is supplied by the local group water scheme since 2003.
- The well is above the invert level of the proposed percolation pipework. Separation distances are in excess of the minimum requirements. No public health issues arise.
- Groundwater flows from the northwest to the southeast in accordance with the topography of the area.
- The site suitability report was carried out in accordance with national standards and the EPA Code of Practice.
- Historic planning decisions are not relevant considering how much environment infrastructure and products have changed.
- The appellants farm is not a fulltime working farm and the main animal housing agricultural sheds are 200m from the proposed development.
- The Appellants concern regarding change of ownership is not a planning consideration.
- Alternative sites were discounted due to lack of screening. The subject site is a mature site that can instantly absorb the proposed development.
- Occupancy of the proposed development is strictly controlled by the Councils conditions.
- The local road L7144 is capable of accommodating the traffic likely to be generated by the proposed development as prior to the construction of the M18 Ennis bypass, it was used as a temporary bypass into Ennis. Only local traffic uses the road. Residents south of the railway line use exit 11 of the M18 and residents north of the railway bridge use the nearby exit 12.
- The construction of the M18 bypass and the upgrade and maintenance of the L7144 road surface addresses previous traffic refusal reasons.
- The poor quality of the local road may be due to construction traffic carrying out work on the Appellants home or the flow of surface water from his impermeable tarmac driveway and car parking area.
- Sightlines at the subject entrance are suitable. The Council have granted permission 5 no. times for development in the area. The Council have attached a public infrastructure financial condition.
- The proposed development is a well screened infill development with minimal visual impact. One-off houses should be located on well screened infill sites that consolidate existing developments.

The Applicant is a local with a genuine housing need. The Board is requested to grant permission.

- The response is accompanied by 4 no. photographs.

9.0.0 OBSERVATIONS

9.1.0 None on file

10.0.0 ASSESSMENT

10.0.1 On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the Proposed Development
- Rural Housing
- Waste Disposal
- Visual Impact
- Appropriate Assessment

10.1.0 Principle of the Proposed Development

10.1.1 The subject site is located in an area identified in both national and local policy (Sustainable Rural Housing Guidelines, Ennis & Environs Development Plan 2008-2014 and the Draft Clare Development Plan 2017 – 2023) as being an area under strong urban influence. The Sustainable Rural Housing Guidelines for Planning Authorities require applications for new residential development in areas under strong urban influence to be compatible with the protection of water quality in the arrangement made for on-site wastewater disposal facilities, the provision of a safe means of access in relation to road and public safety and the conservation of sensitive areas such as natural habitats, the environs of protected structures and other aspects of heritage. These issues are discussed in greater detail below.

10.2.0 Rural Housing

10.2.1 Policy SS10 of the plan states that for new single houses in the countryside within areas of special control it is the policy of the Development plan to permit a new single house for the permanent occupation of an applicant who falls within either of the Categories A or B or C below and meets the necessary criteria.

10.2.2 Of relevance to the subject appeal is Category A. Category A is Local Rural Persons who can satisfy the definition of 'local rural

person', and 'local rural area' and must have a 'local rural housing need'. A **local rural person** is defined as "a person who was born within the local rural area, or who is living or has lived permanently in the local rural area for a minimum of 7 years at any stage(s) prior to making the planning application. The '**Local Rural Area**', for the purpose of this objective, is defined as the rural area generally within a 10 km radius of where the applicant was born, living or has lived. An applicant who satisfies a '**Local Rural Housing Need**' is defined as a person who does not or has not ever owned a house in the surrounding rural area (except in exceptional circumstances) and has the need for a dwelling for their own permanent occupation.

- 10.2.3 In the cover letter submitted with the application, the agent states that the Applicant for the proposed development is Cathal Duggan and states that the application form includes the name of his mother Edel O'Connell (the site owner) for mortgage reasons. The Appellant disputes this, stating that the application form has both names. I note that both Cathal Duggan and Edel O'Connell have signed the application form. As the application has been submitted in both names and signed by both parties, the Board must accept that both are applicants.
- 10.2.4 The form states that Cathal Duggan lived in Manusmore from 1992 to 2012 and Ballyvonnaun from 2012. He is currently living with his parents (Edel O'Connell) in Ballyvonnaun, within 10km of the subject site. Both applicants qualify as local rural persons living in a local rural area – the first two tests of category A.
- 10.2.5 The third test of Category A is the need for a home for permanent occupation. Edel O'Connell has a home in Ballyvonnaun and so has no housing need. According to the application form Cathal Duggan has never owned a home. No details of his need for a place of permanent occupation have been provided. He is employed in Loughville, Ennis approx. 7km from the subject site and so his housing need could be described as urban generated. No evidence of a need to live at the subject site has been submitted. The third test of Category A has not been complied with.
- 10.2.6 In areas identified as being under strong urban influence, both the Sustainable Rural Housing Guidelines and the Ennis & Environs development plan recommend that urban generated housing be directed to to areas zoned for new housing development in cities, towns and villages in the area of the development plan. The subject

proposal does not accord with this key objective of the Guidelines, as it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

- 10.2.7 I do not accept the Applicants agents position that the proposed dwelling is an infill site. Infill development refers to the development of a site between two or more one-off houses, usually in the form of ribbon development. The subject site is not between two dwellings on the same road frontage. In the approx. 150m between the subject site and the applicants family home there is only one other house – that of the appellant (Declan Bell). The appellants house is to the immediate north but the appellants fathers dwelling (Kieran Bell) is on an elevated well screened site, to the west of the subject site and accessed via a narrow unsurfaced laneway. There is no evidence of Kieran Bells house or associated outbuildings from the public road. There are no dwellings to the south of the laneway. There is no ‘gap’ in road frontage development for the proposed development to fill. If the subject site was developed it would read as a form of ribbon development, being the third dwelling along this stretch of road. Appendix 4 of the Sustainable Rural Housing Guidelines recommends against the creation of ribbon development for a variety of reasons relating to road safety, future demands for the provision of public infrastructure as well as visual impacts. It is considered that the proposed development would constitute undesirable ribbon development in a rural area outside lands zoned for residential development and would, therefore, be contrary to the proper planning and sustainable development of the area.

10.3.0 Waste Water Disposal

- 10.3.1 A site suitability report was submitted with the application. The report notes that the subject site lies over a regionally important aquifer of extreme vulnerability. The bedrock type in the area is limestone and the soil type of the site is Ballincurra brown earths. The groundwater protection response of the area is R2². The report notes that the groundwater flow is south-easterly with a

watercourse greater than 100m from the site. Wells in the surrounding area are up-gradient of the proposed system and separation distances can be achieved.

- 10.3.2 The report states that a 1.7m trial hole was dug (photos submitted but no location specified). The water table was not encountered. The percolation T test result was 3.34min/ 25mm. The P test result was 17.14 min / 25mm. The recommendation of the site suitability test is to install a mechanical aeration waste water treatment system with gravity discharge to a polishing filter of 3x10m percolation trench. The recommended trench invert level is 98.45m
- 10.3.3 The EPA code of practice states that where the T value is between 3 and 50 – as in the subject case – that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater. Where the P value is between 3 and 75, the site is suitable for a secondary treatment system with polishing filter at ground surface or overground.
- 10.3.4 The code of practice recommends that where a site is in a ground water response area R2², the site is suitable subject to normal good practice and there is a minimum thickness of 2m unsaturated soil / subsoil beneath the invert of the percolation trench of the proposed system or where a secondary system is proposed, a minimum thickness of 0.3m unsaturated soil / subsoil with P/T values from 3 to 75, (in addition to the polishing filter which should be a minimum depth of 0.9m), beneath the invert of the polishing filter - i.e. 1.2m in total for a soil polishing filter. The ground level at the proposed location of the polishing filter (see drawing no. 1527-Fi-02) is 6.166mOD, with the distribution box for the polishing filter proposed at 5.546mOD (i.e. 0.62m below the ground level). The site characterisation form uses different ground level measurements, showing the FFL of the proposed dwelling as 99.59 and the invert level of the percolation trench as 98.45 (i.e. 1.14m below the FFL of the proposed dwelling). Using the Malin OD, this equates to the invert level of the percolation trench as being at 5.026mOD. The ground level of the proposed polishing filter is 6.166m and the invert level of the percolation trench is 5.026, therefore the proposed system does not comply with the 1.2m requirement of the code of practice. I note that this does not correlate with the site characterisation form which states that the proposed percolation trench will be 1.2m above the indigenous soils / subsoils. Should the Board decide to grant permission this

can be resolved through the introduction of additional topsoil with a P/T value of 3-75.

10.3.4 The appellant states that his well is 2.5m from the site boundary. Table B.3 of the Code of Practice recommends minimum distances between a receptor and a percolation area / polishing filter, based on the ground water response of the area. The recommended separation distance from an up-gradient domestic well to the polishing filter is 15m. Where the domestic well is alongside (no gradient) the distance is 25m and where the ground water flow is unknown the recommended distance is 30-40m. The separation distance between the appellants well and the proposed polishing filter is approx. 53m and therefore in excess of the minimum standards of the code of practice.

10.4.0 Flood Risk

10.4.1 Flood Risk Map E2 of the Ennis and Environs development plan shows the subject site as being located in a Flood Risk Zone A and Flood Zone B. Residential development is categorised as a highly vulnerable development and therefore must comply with the justification test before it can be permitted in flood risk zones A or B.

10.4.2 The applicant prepared a flood risk assessment for the proposed development. The report notes the topography of the area, stating that the site ranges in height from 4.401m OD at the existing gate to a high of 7.322mOD in the northern corner. The assessment notes the invert level of the stream 80m to the east of the site (0.875m to 0.759m) and states that this results in a 2.5m difference between the bank of the stream and the level of the site entrance. The assessment states that flood waters would need to rise by approx. 5m before the proposed dwelling was at risk.

10.4.3 Two flood events within 2.5km of the subject site are noted in the FRA: the first in 2002 in Killow and the second recurring flood event at the Manus River. The Killow flood event is described as tidal and fluvial and fluv and the Manus river event is described as “flooded all winter, every winter. Cause if rainfall / runoff. No roads or houses affected.”

10.4.4 The FRA provides a copy of Map 22 of the Shannon CFRAMS study, showing the extent of coastal and fluvial flooding in the Ennis area. The subject site is shown as being in a defended area and outside of the both the coastal and fluvial flood extent areas. The

assessment notes that with a FFL of 6.846mOD, the proposed dwelling will be outside all of the recorded water levels at the identified nodes. The assessment refers to the flooding caused by Storm Desmond in 2015 and states that no flooding was recorded on the site after the storm and that on Dec 9th 2015 the site was unsaturated.

- 10.4.5 The assessment notes the high end (+30%) and mid-range (+20%) future scenarios for flood risk. The assessment states that even with an increase of 1m at the high end (increase from 5.32mOD to 6.32mOD), the FFL of the proposed dwelling (6.846mOD) would still be outside the flood risk. The assessment states that the minimal area of hard standing and roof proposed will result in negligible run off and so the proposed development will not directly increase flood risk elsewhere through the displacement of flood water or alterations to flow paths.
- 10.4.6 The assessment notes that the flood risk zone of the subject site is changed to Flood Risk B and C in the Draft Clare County Development Plan 2017-2023. The assessment concludes that this means the site has a lower risk of flooding. The FRA concludes that the proposed development is appropriate and is not vulnerable to any adverse impacts of flooding and will not cause any adverse impacts elsewhere.
- 10.4.7 Section 5.15 and Box 5.1 of the Flood Risk Management Guidelines 2009 set out the steps in the application of a justification test, stating that the following criteria must be satisfied:
1. The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of these Guidelines.
 2. The proposal has been subject to an appropriate flood risk assessment that demonstrates:
 - The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk;
 - The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible;
 - The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk

management measures and provisions for emergency services access; and

- The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.

The acceptability or otherwise of levels of residual risk should be made with consideration of the type and foreseen use of the development and the local development context

10.4.8 As a starting point, the proposed development fails the first criteria: the subject lands have not been zoned or designated for residential development. The proposed development has been subject to an appropriate FRA that demonstrates that the proposed development will not increase flood risk. Whilst the FRA did not include measures to minimise flood risk or references to existing flood protection, I am satisfied that the findings of the FRA are reasonable.

10.5.0 Visual Impact

10.5.1 The Appellant states that the proposed two storey dwelling will overshadow and overlook his dwelling and will negatively affect the privacy and enjoyment of his home. The proposed dwelling is approx. 35m from the front elevation of the appellants home. The separation distance, the proposed screening and the existing planting along the northern boundary is sufficient to prevent any overlooking or overshadowing of the appellants property.

10.5.2 The County Clare Rural House Design Guide 2005 shows the subject site as being in the landscape area Shannon Estuary and Fergus Floodplains. The guide states that rural buildings in such areas reflect the more sheltered and tree-covered environment of this part of County Clare. Painted rendered single storey farmhouses with attic rooms are common, as are groups of farm buildings around large single or two storey farmhouses. The guide notes the rapid urbanisation of the area with urban built forms and housing estate designs being discordant features in this landscape.

10.5.3 The FFL of the proposed dwelling is 6.846mOD. The overall height of the proposed dwelling is approx. 8m. Drawings 1527/Fi-01 and 1527-Fi-02 show the FFL of the surrounding dwellings to be 8.439 (K Bell to the east of site, single storey dwelling), 7.525 (Declan Bell to the north of the site, single storey dwelling) and 9.606 the

applicant's family home (single storey with attic accommodation to the north).

10.5.4 The proposed dwelling with the central main two storey element and ancillary single storey elements to the side attempts to reflect the traditional form and scale of vernacular rural buildings. The multiplicity of projecting dormers (three on the front elevation, three on the rear elevation and one each on both gables of the pitched roof) however, detracts from what should be a simple roof profile. Further, no details are given of the proposed materials and finishes of the dwelling, garage or site entrance. The scale and bulk of the dwelling on a relatively limited plot is out of character with the wider area, as can be seen in the contiguous elevation submitted (drawing no. 1527-Fi-02 refers). The proposed use of non-native trees (cherry laurel, and red robin proposed) along the northern and western boundary is not appropriate in this rural area. Nor is the proposed use of ornamental trees, the vast lawn area and vast area of hard standing, all of which are more appropriate in suburban and urban locations.

10.5.6 It is considered that the proposed development of a two storey dwelling, on an elevated site in a rural area with predominantly single story dwellings does not comply with the principles of the County Clare rural house guide and does not accord with policy EN11 of the Ennis & Environs development plan.

10.6.0 Appropriate Assessment

10.6.1 The subject site is 80m west of the River Rine, a tributary that ultimately flows into the Lower Shannon River SAC (002165), approx. 1.3km to the south. The NPWS data form describes the SAC as a very large, long site approximately 14 km wide and 120 km long, encompassing: the drained river valley which forms the River Shannon estuary; the broader River Fergus estuary, plus a number of smaller estuaries e.g. Poulnasherry Bay; the freshwater lower reaches of the Shannon River, between Killaloe and Limerick, plus the freshwater stretches of much of the Feale and Mulkear catchments; a marine area at the mouth of the Shannon estuary with high rocky cliffs to the north and south; ericaceous heath on Kerry Head and Loop Head; and several lagoons. The underlying geology ranges from Carboniferous limestone (east of Foynes) to Namurian shales and flagstones (west of Foynes) to Old Red Sandstone (at Kerry Head). The salinity of the system varies daily with the ebb and flood of the tide and with annual rainfall fluctuations seasonally.

10.6.2 The conservation objectives for the SAC are to restore or to maintain the favourable conservation status of each of the following the qualifying interests:

- Freshwater Pearl Mussel *Margaritifera margaritifera*
- Sea Lamprey *Petromyzon marinus*
- Brook Lamprey *Lampetra planeri*
- River Lamprey *Lampetra fluviatilis*
- Atlantic Salmon *Salmo salar* (only in fresh water)
- Sandbanks which are slightly covered by sea water all the time
- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Coastal lagoons
- Large shallow inlets and bays
- Reefs
- Perennial vegetation of stony banks
- Vegetated sea cliffs of the Atlantic and Baltic coasts
- *Salicornia* and other annuals colonizing mud and sand
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- Bottlenose Dolphin *Tursiops truncatus*
- Otter *Lutra lutra*
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)

10.6.3 There is no direct or indirect direct source-pathway-connector between the subject site and the SAC. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

11.0.0 RECOMMENDATION

11.0.1 I have read the submissions on file, visited the site, and have had due regard to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities 2005, and the Ennis and

Environs Development Plan 2008- 2014. It is considered that the proposed development does not comply with the rural settlement policies of the Guidelines or the Development Plan, does not comply with the provisions of the County Clare Rural House Design Guide and therefore would be contrary to the provisions of the development plan and therefore would not be in accordance with the proper planning and sustainable development of the area. I recommend permission be REFUSED for the following reasons:

1. Having regard to the location of the site within "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Ennis and Environs Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development is located within Areas under Strong Urban Influence as set out in the current Development Plan for the area, where emphasis is placed on the importance of designing with the landscape and of siting of development to minimise visual intrusion as set out in Policy EN11 of the Development Plan and the current Clare Rural House Design Guidelines, which Guidelines are considered to be reasonable. Having regard to the topography of the site, the elevated positioning of the proposed development, together with its depth and scale, and the resulting extensive driveway it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment and would set an undesirable precedent for other such prominently located development in the vicinity. The proposed development would,

therefore, be contrary to the proper planning and sustainable development of the area.

3. It is the policy of the planning authority as set out in the current development Plan to control urban sprawl and ribbon development. This policy is considered to be reasonable. The proposed development would be in conflict with this policy because, when taken in conjunction with existing [and permitted] development in the vicinity of the site, it would consolidate and contribute to the build-up of ribbon development in an open rural area. This would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Gillian Kane
Planning Inspector
13/06/16