



An
Bord
Pleanála

Inspector's Report PL03.247946

Development	Log Cabin style house, garage, workshop and all associated site works.
Location	Cloonamirran, Mountshannon, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	16/471
Applicant(s)	Wieger Oord
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Wieger Oord
Observer(s)	None
Date of Site Inspection	19 th of April 2017
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1.1. The application site is located on the southern side of the Regional Road (R352), 3km to the east of Mountshannon. It is to the east of a 'T' junction with a local road to the north. A large recessed entrance has been created into a wooded area. Within the site are two mobile homes in which the applicant is currently living. There are also two other storage type sheds. A large area has been cleared and surfaced in gravel in the vicinity of the mobile homes and paths have been laid around the wooded area, some surfaced with gravel. There is a pipe from one of the mobiles into the wooded area to serve as a drainage system, including for foul effluent.
- 1.1.2. This is an area of ribbon housing close to the northern shores of Lough Derg. There is a stream approx. 30m from the western boundary of the site and a drainage ditch along the southern boundary of the site.
- 1.1.3. Sightlines at the entrance to the R352 do not appear adequate and are particularly restricted in an easterly direction, due to the roadside boundary and trees. The applicant has erected a high level mirror to aid visibility in this direction.

2.0 Proposed Development

- 2.1.1. It is proposed to erect a Log Cabin style house and install a wastewater treatment system and polishing filter and associated site works.
- 2.1.2. The application form provides that the area of the landholding is 2.1ha. The application site is 0.86ha. The g.f.a of existing buildings (temporary mobile homes) is 75sq.m. The proposed house is 53.04sq.m and shed (indicated as garage and workshop on the Site Layout Plan) is 70sq.m. i.e a total of 133.04sq.m.
- 2.1.3. An onsite treatment system is proposed i.e. Irish wastewater P6 System & Polishing Filter. A Site Characterisation form has been submitted.
- 2.1.4. A letter regarding the applicant's local need is enclosed.
- 2.1.5. Banner Consultants have submitted details and drawings, including a Site Layout Plan showing the proposed development.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 16th of January 2017, Clare County Council refused permission for the proposed development. The 5no. reasons for refusal are summarised as follows:

1. The P.A are not satisfied that the site can be drained properly on the basis of the information submitted and having regard to the soil characteristics of the area, notwithstanding the use of a proprietary wastewater treatment system. The proposal would be prejudicial to public health and to the proper planning and sustainable development of the area.
2. The achievement of adequate sight distances along the R352 would require extensive removal of trees and hedgerow some outside the control of the applicant which would be contrary to Objective 17.12 of the CDP. The proposal would therefore endanger public safety by reason of traffic hazard and would impact on the visual amenities of the area.
3. The proposed development is located in a pNHA Cloonamirran Wood (site code 001686). The development as proposed relative to its adverse impact on this area of the pNHA would contravene objective CDP 17.5 and would be contrary to the proper planning and sustainable development of the area.
4. Having regard to the proximity of the site within Cloonmirran Wood to the Slieve Aughty Mountain SPA (site code 004168) and to a number of other Natura 2000 sites the P.A is not satisfied based on the information submitted that the proposed development would not adversely affect the integrity of these sites. The proposed development would therefore materially contravene Objective 17.3 of the CDP 2011-2017 as varied and be contrary to the proper planning and sustainable development of the area.
5. Having regard to the nature and extent of the existing unauthorised development that has taken place on site to date it is considered that to permit further development on this site would be inappropriate, would seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planner's Report

The Planner had regard to the locational context of the site, planning history and policy and to the submissions made. They had regard to the policies and objectives in the CCDP 2011-2017 and noted that the subject site is not located within an Area of Special Control and is located in the open countryside. The site is located in Cloonamirran Wood which is a designated wetland area and a pNHA. They had concerns about the disposal of waste and the pwmts proposed and therefore considered the proposal would be prejudicial to public health. They also had regard to the amount of unauthorised development that has occurred on site.

In view of the setting within dense woodland they did not consider that the proposed dwelling would be visually obtrusive and recommended that no further clearing of woodland occur. They had concerns regarding traffic safety and inadequate sightlines at the access along the R352. The removal of a large proportion of trees to improve sightlines would be contrary to planning policy. They noted the proximity of Natura 2000 sites and having regard to the woodland and wetland nature of the site they determined that on the basis of objective information supplied that significant effects cannot be ruled out relative to AA. They recommended refusal of the proposed development.

3.3. Extension of Time

Subsequent to this and prior to the decision being issued an extension of time request from Banner Consultants on behalf of the Applicant was granted by the Council until the 16th of January 2017. It is noted that during this time a meeting was held with the Planners and the Applicant to discuss the issues of concern. It was provided that no further information was submitted to overcome the recommended reasons for refusal.

3.4. Other Technical Reports

Clare County Council – Environment Section

They had regard to the site characteristics and have serious concerns with the location and design of the polishing filter and the ability of the soil to treat and dispose of the wastewater arising from the development. They consider that the current proposal is not acceptable.

3.5. Prescribed Bodies

Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs

They note that the development is located within the Cloonamirran Woods pNHA (site code:001686) and CDP policy relative to conservation of such natural heritage areas. They recommend mitigation measures to reduce the impact of the development on the pNHA i.e: *The Council needs to be satisfied that the integrity of the pNHA will not be negatively impacted upon by the development.*

An Taisce

They note the need for compliance for Rural Development in the CDP and have concerns about issues relative to design, water management and public and road safety.

3.6. Third Party Observations

None noted.

4.0 Planning History

4.1.1. The Planner's Report notes that there is no planning history on the subject site.

Note is had of the following 150m to the east:

- Reg.Ref.05/1220 – Outline Permission to construct a dormer bungalow, garage, entrance, waste water treatment unit/percolation area and associated site development refused to Peter Berse at Cloonoolia South, Mountshannon for 3no. reasons relevant to would lead to undesirable ribbon development,

would conflict with landscape objectives and be visually intrusive, traffic safety relevant to inadequate sight distances.

5.0 Policy Context

5.1. Clare County Development Plan 2017-2023

This is now the pertinent Plan. Chapter 2 sets out the Core Strategy. As shown in Fig.2.2 the site is located within Zone 7 – North East Clare: *This zone contains an area around Scarriff/Tuamgraney. It has some access difficulties as it is a significant distance from other service centres. The area, in time, might be linked to Zone 1, but in the medium term the development of a significant service centre is important. This approach promotes balanced growth throughout the zone to achieve the maximum social, economic, health and cultural benefits for all citizens.*

Section 2.4.3 refers to the Settlement Hierarchy and Strategy. This recognises the role of all towns, villages and, importantly, the countryside as components of a balanced Settlement Strategy in County Clare. Table 2.1 refers and Mountshannon is included in the ‘Larger Villages’.

Chapter 3 deals with Urban and Rural Settlement Strategy. *The aim of the Settlement Strategy is to ensure that future development is directed in a balanced plan-led manner to rural and urban areas throughout the county as appropriate.*

Objectives are included for Larger Villages CDP 3: *To ensure that the large villages throughout the county maintain existing population levels and services and to ensure that future growth is balanced and sustainable and is relative and appropriate to their scale, size and character.*

Objectives are also given for the Countryside CDP 3.8: *To ensure that the countryside continues to play its role as a place to live, work and visit having careful regard to its carrying capacity and environmental sensitivity.*

Section 3.2.5 refers to Single Housing in the Countryside and in accordance with the Ministerial ‘Sustainable Rural Housing - Guidelines for Planning Authorities (DoEHLG)’. A distinction is made between rural generated housing and urban generated housing. It is noted that the latter can lead to ribbon development. *Urban generated pressure for housing, if not properly managed, can result in ribbon*

development and piecemeal/haphazard development along the approach roads to larger settlements. Map 3A of the CCDP shows the Settlement Hierarchy. Map 3B shows Areas of Special Control. The application site is in the rural area outside these areas. Objective CDP 3.12 refers to Rural Housing outside Areas of Special Control. Section 8.2.3.4 refers to Strategic Regional Roads and notes that: *Regional roads provide an important function in linking smaller towns and villages with the larger urban centres and with national primary and secondary routes.* Objective CDP 8.5 refers. It is noted that the access to the site while to the R352 is not to a Strategic Regional Route.

Section 8.4.3 refers to Wastewater Management. Objective CDP 8.27 includes:

c) To permit the development of single dwelling houses 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)';

Section 14.3.2 supports the conservation and preservation of the Natura 2000 sites. Objective CPD 14.2 refers. Section 14.3.3 refers to Appropriate Assessment. Objective CPD 14.3 refers. Section 14.3.4 refers to Natural Heritage Areas and Objective CPD 14.4 seeks to support the protection and conservation of these. Objective CDP 14.17 refers to the Protection of Trees, Woodlands and Hedgerows.

Appendix 1 contains the Development Management Guidelines. Section A1.3.1 refers particularly to Rural Residential Development. This has regard to Siting and Design, Road Frontage, Plot Size and Wastewater treatment systems.

Section A1.9.2 refers to Sight Distances.

5.2. The Sustainable Rural Housing Guidelines 2005

This seeks to encourage and support appropriate development at the most suitable locations. Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working full-time or part-time in rural areas.

Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.
- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.

Section 4.4 is concerned with Access and restriction of such on National Primary and Secondary Roads. Regard is also had to Roadside Boundaries Section 4.5 is concerned with Protecting Water Quality and Site Suitability issues.

5.3. 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).

5.4. 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'.

5.5. 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'.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A First Party Appeal has been submitted by Banner Consultants on behalf of the applicant Wieger Oord. This seeks to address the Council's reasons for refusal and includes the following:

Disposal of Effluent

- The applicant has a site assessment carried out by an approved site assessor and trial holes were dug and percolation tests completed and they consider that the results of this professional assessment should be accepted.
- They consider the Council's comments are inaccurate and note the different location of the trial holes and that there is no peat present in the location where it is proposed to install the polishing filter.

- They consider that the Council's first reason for refusal is flawed and should be overturned.

Sight Distances

- They contend that it is possible to exit this site safely without alterations to the existing boundaries and note the applicants have been using this access for the past 35 years.
- However, they have submitted a map with the setback required to achieve the road designers sight distance clearly shown.
- They have erected a high level mirror on the advice of the Council's own roads engineer who visited the site.
- They also note a right of way can be used as an alternative access to the site.
- They believe the existing exit is safe but can be improved if required without any significant impact on the site.

Impact on the pNHA

- The NPWS does not have a problem with the location of a small house within the pNHA and they refer to a letter on file to that effect.
- They note that other residential developments have been allowed nearby within this Heritage area.
- This is a sustainable and environmentally friendly house which will blend into the landscape and not interfere with views.
- The site is located outside of the 'pressure' area and is in an area of population decline.
- Details are provided relative to the applicant's need to reside on the site.

Proximity to Natura 2000 sites

- No substantial works have or will be carried out on this site. The proposed development will replace the existing mobile homes. There will be no impact on the area outside of the site. To refuse relevant to the SPA is flawed and should be overturned.

Unauthorised Development

- They provide that the existing entrance and access road were installed by the applicant's family over 35 years ago and are not unauthorised.
- They note that the mobile home is the only place for the First Party to live and will be replaced if permission is granted.
- It is provided that the only future interference on site will be minimal and will be the installation of a 10m x10m soil polishing filter, which is very small in the context of the landholding.

Conclusion

- The First Party loves this site and it has been in his family for over 35years. They have protected and preserved this site over time and will continue to do so. He has nowhere else to live and his housing need should take precedence over the minor interference necessary to permit him to have a modest energy efficient log cabin on the site as his home.

6.2. Planning Authority Response

Clare County Council have submitted a response to this appeal which includes the following:

- The proposed development is located in a pNHA Cloonamirran Woods characterised by a peat land naturally recolonised by woodland species and it is an objective of the CDP to preserve trees in this location.
- The proposed wwts is unacceptable given the characteristics of the site, and the entrance onto the regional road is deficient in terms of available sight lines.
- It would be contrary to CDP 17.5 which seeks to promote the conservation and protection of the area designated as an NHA (including proposed sites). In this instance it is apparent that the proposal will affect the p NHA.
- Having regard to the woodland and wetland nature of the site and precautionary principle the need for AA cannot be ruled out.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. Regard is had to the Clare County Development Plan 2017-2023, which is now the relevant plan. Table 2.1 refers to the Settlement Strategy. It is noted that the nearest town Mountshannon is included as a 'Large Village'. The subject site is in the countryside outside of a recognised settlement. Section 2.4.3 refers to Settlement Hierarchy and Strategy. (Map 2 A refers). This notes: *The areas outside those identified as urban generated pressure are structurally weak or areas with a strong agricultural economic base.*
- 7.1.2. Map 3B shows Areas of Special Control. It is noted that the subject site is outside the Rural Area Under Strong Pressure on the eastern side of Mountshannon and the northern side of Lough Derg. It is also outside of the area indicated as Heritage Landscape to the south. Objective CDP 3.12 refers to New Single Houses in the Countryside outside the 'Areas of Special Control'.
- 7.1.3. The First Party notes that the applicant's desire to live here is not contrary to the development plan policy on settlement location. They provide that the erection of this modest house will not lead to a demand for services in this area. It is noted that the applicant is living in a mobile home since he has to sell his home as his house was repossessed and he has no place else to live. He does not wish to become dependent on local authority housing and his family have owned the land for over 35 years and it is provided that they have effectively preserved the trees and habitat for all of this time.
- 7.1.4. It is also of note that Section 3.2.6 of the CDP refers to Site Suitability. This notes that in addition to compliance with relevant settlement policies, considerations relating to siting, design, environment, heritage, amenity and traffic considerations are also of paramount importance in the consideration of any development. As noted above Section 3.3 of the Sustainable Rural Housing Guidelines 2005 has similar considerations. Therefore, regard is had to these issues, along with impact on heritage and the environment in this Assessment below.

7.2. Unauthorised Development issues

- 7.2.1. Regard is had to the unauthorised development on site, which includes the installation of two mobile homes and the container and shed and drainage system from the mobiles. It also includes the considerable gravel surfaced area and the clearance of trees in parts of this woodland site. The applicant provides that the access is not unauthorised due to it being in situ for over 35 years. Regard is had to the OSI mapping and it is noted that the access appeared to have been in existence in 2000. While it is noted that the existing access is in situ for some time, it appears to be unauthorised in that there is no record of permission having been retained. Regard is also had to article 9 of the Planning and Development Regulations 2001 (as amended) which provides Restrictions on Exemption. This includes where a development would: (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, (iii) endanger public safety by reason of traffic hazard or obstruction of road users. The Council's concerns regarding inadequate sightlines are also noted. Therefore, it is not considered that access to the site would constitute exempted development.
- 7.2.2. The First Party note that the mobile homes are the only place for the applicant to live and they hope that if this application is successful that they will be replaced by the new dwelling. While regard is had to these issues raised, relative to the First Party housing need, it is noted that the issue of unauthorised development and Enforcement is not within the remit of the Board, rather it is an issue for the Council. It is also considered that this proposal must be considered from first principles i.e as an application site for a house and garage and associated works, and not from the principle of being a replacement dwelling for the unauthorised mobile homes.

7.3. Design and Layout

- 7.3.1. This proposal seeks to provide a log cabin style house of c.53sq.m and a shed of 70sq.m on this 0.86ha site. The plans show that the modest 2 bedroom house is to have a steep pitched roof, shown c.6.1m in height with an overhang area in front. It is also proposed to provide a separate larger shed/garage building c.70sq.m, shown 6m to ridge height. The floor plans indicate that it is to be used as a garage/fuel shed

and workshop. This is to be a steel framed building with external finishes of painted steel roof sheeting and side cladding. The Site Layout Plan shows the existing access and the proposed dwelling and larger shed area relatively centrally located.

- 7.3.2. It is of note that An Taisce consider that the log cabin and separate garage with workshop within the protected woodland is not acceptable and suggest that the applicant chooses another design and another site due to the woodland and the close locality to Lough Derg. They are also concerned that trees and flora should not be disturbed.
- 7.3.3. Section 17.4.5 of the CCDP 2017-2023 notes that: *The challenge for new built form in the countryside is to fit comfortably into that 'place'. In terms of new houses in the countryside, the County Clare Rural House Design Guide is a useful reference.* This includes that Boundaries are important as is site design. In this case the site area has been cleared and there are woodland boundaries.
- 7.3.4. The First Party contend that this is an energy efficient and environmentally sustainable house that will blend into the landscape. It is considered that the proposed log cabin will blend into the surrounds but the larger shed construction will be more prominent.

7.4. Access issues

- 7.4.1. There is an existing access from the site onto the R352 Regional Road. Appendix 1 of the current CDP contains the Development Management Guidelines. Section A1.9.2 refers to Entrance Sight Distances. This provides that for a design speed of 85m the required sight distances are 160m in either direction, and notes how this is calculated having regard to the visibility splay and the set back of 2.4m. The Council's second reason for refusal is concerned that the proposed development would endanger public safety by reason of traffic hazard because it has not been shown that 160m sightlines are available in either direction measured from a point set back 2.4m from the road. They are also concerned that in order to improve sight distances at this location the removal of an extensive amount of mature landscaping would be required which would be contrary to planning policy. It is noted that the visibility at the entrance is insufficient and is less adequate in an easterly direction due to the bank of trees along the road frontage.

- 7.4.2. In response the First Party provide that it is possible to safely exit from this site and that the entrance and access road into the site has been in use by the applicant's family for over the last 35 years. They acknowledge that adequate sight distances are not currently available at the entrance and have submitted a map with the set back to show that sight distances can be achieved. They also note that they have erected a mirror to improve sight visibility at the access. As seen on site this has been erected on top of the directional road sign to aid visibility when exiting the site and looking in an easterly direction.
- 7.4.3. They provide that there is an existing right of way through Mr Oord's lands which is used by the adjoining land owner, but which is owned by the applicant and can be used as an alternative access to the site. However, it is noted that this is not part of the existing application.
- 7.4.4. Regard is also had to Section 4.4 of the Sustainable Rural Housing Guidelines which is concerned to provide safe access and prevent traffic hazard. This includes regard to the need to avoid creating excessive entrances onto Regional Roads. Also the retention where possible of roadside boundaries: *Roadside boundaries, whether hedgerows, sod and stone bank, stone wall or other boundaries, provide important features that are elements of both the landscape and ecology of rural areas.*

7.5. Regard to Disposal of Effluent

- 7.5.1. The area is a heavily forested wetland area (Objective CDP 14.19 seeks to manage, enhance and protect the wetlands in County Clare). Part of the site has been cleared of trees and this includes the gravelled access road to the site, the larger area to the east and the area containing the two mobile homes and storage container and timber shed. Currently as was noted on site, there is an above ground drainage pipe from one of the mobile homes to an earthen bank in the forested area. All this is unauthorised development and in particular the drainage pipe is not considered good practice and may be prejudicial to public health. It is also noted that there is a ditch to the south of the site which fills with water during wetter periods.
- 7.5.2. A Site Characterisation Report has been submitted with the application. This notes that the existing landuse is mainly forestry, that there is a stream approximately 30m from the western boundary of the site and a drainage ditch along the southern

boundary of the site. A Site Assessment was undertaken. This provides that ground water is not a major risk given low vulnerability status of the site. It notes that the soil type indicates slow percolation. However, given the abundance of trees and light scrub on site it considers that the root structure should enhance the percolation area. It notes that the ground is uneven at the location chosen for the proposed system and therefore some earth works will be required. A number of trial holes were dug amongst trees including at a level lower than the caravans. Details are given of the results from 'T' and 'P' tests in the Site Assessment and photographs are included. The Site Characterisation Report concludes that the site is suitable for a packaged wastewater treatment system and polishing filter and that this shall be raised at least partially over existing ground levels.

7.5.3. It is also noted that the Site Characterisation Form provides that the proposed water supply will be from the mains, however the application form provides that it will be from a private well. The Site Layout Plan submitted shows the location of the bored well c.7m from the proposed ppwts.

7.5.4. It is noted that Clare County Council Environment Section has serious concerns about site characteristics and the ability of the site for the disposal of effluent. The site assessment encountered water ingress at 1650mm bgl with the water table setting at 1500mm and mottling recorded at 1000mm bgl. Clay loam is recorded to 700mm but this is more consistent with peat. It is noted that peat is unsuitable for percolation as it will eventually become saturated like a sponge especially in winter conditions. Taking the depth of peat out of the polishing filter design leaves about 300mm of clay subsoil above the winter time water table. They also note that a trial hole at a higher gradient nearer the proposed garage contained water nearly at ground level despite being open for several weeks. This indicates the erratic water table levels throughout the site and also the inability of the water to percolate as there is a reasonable gradient away from the second trial hole. It is also considered that a further concern is the ability to successfully construct a 50m sq. polishing filter among trees. While even if trees were removed to facilitate the development, the root systems would offer too many preferential flow paths for the effluent to flow through. The Council consider that the current proposal is not acceptable and reiterate this in response to the First Party grounds of appeal.

- 7.5.5. The First Party Appeal is concerned that the Council have not accepted the findings of the professional site assessment that has been carried out and consider that their first reason for refusal is flawed. They provide that there are inaccuracies relative to the location of the trial holes. The excavations for the trial holes were made about 25m from where the Council noted the presence of peat and are on higher ground and that there is no peat present in this location. They also provide that it is incorrect to state that only 300mm of suitable soil will exist under the proposed polishing filter as the soil and subsoil in the area proposed for the soil polishing filter is suitable for percolation. While they note the presence of some small tree roots these can be removed and a level bed of subsoil prepared for under the proposed soil polishing filter. They consider that the site is suitable for the proposed pwwts.
- 7.5.6. Regard is had to the Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.< 10). Table 6.2 of this 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. 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 ‘T’ and ‘P’ test values given are within this range.
- 7.5.7. The Site Characterisation carried out notes that the site is located in an area of a Locally Important Aquifer (L1) and the form provides is in an area of moderate vulnerability. Therefore, having regard to Table B2 in Annex B the site is in an R1 response area, where a wwts is acceptable subject to normal good practice. However, it is noted that the site is located not on agricultural land as is the case with the some of the other houses nearby but in a forested and wetland area. A variety of findings have been found in the ‘T’ and ‘P’ tests carried out in the trail holes in various areas of the site. Having regard to the particular characteristics of the site and the information submitted and the Council’s stated concerns, I am not satisfied that the proposed pwwts and polishing system will be easy to install or will work sufficiently so as not to be prejudicial to public health. Therefore, it is not considered that the proposal would comply with Objective CDP 8.27 c) of the CCDP 2017-2023 (as noted in the Policy Section of this Report).

7.6. Impact on the Character and Amenities of the Area

- 7.6.1. Natural Heritage Areas are designated sites of national importance for habitats and species in Ireland. NHAs are established under the Wildlife (Amendment) Act, 2000, but are conserved and protected under the Wildlife Acts, 1976-2000. A list of Natural Heritage Areas in County Clare is contained in Appendix 3 of the CCDP 2017-2023. Objective 14.4 relates to their protection and conservation. In this case the site is within part of the Cloonamirran Wood pNHA (site code 001686). Objective CDP 14.4 seeks: *a) To actively promote the conservation and protection of areas designated as an NHA (including proposed sites) and to only consider proposals for development within or affecting an NHA where it can be clearly demonstrated that the proposed development will not have a significant adverse effect on the NHA or pNHA;*
- 7.6.2. The First Party note that this is a pNHA and contend that the proposed dwelling will fit into the landscape and will not impact adversely on scenic views or the pNHA. While they provide that the NPWS does not have a problem with the location of a small house on this site, it is noted that there does not appear to be any comments from the NPWS on file. However, there is a letter from the Department of Arts, Heritage etc on file which recommends that: *The Council needs to be satisfied that the integrity of the pNHA will not be negatively impacted upon by the development.* The Council's third reason for refusal concerns that they are not satisfied in this respect.
- 7.6.3. Section of the 14.3.16 of the current CDP refers to Woodlands, Trees and Habitats. This notes that many of the woodlands of County Clare are protected areas for their habitat and amenity value, and these are listed in Appendix 3. The high amenity value of woodlands is recognised, as is their contribution to landscape diversity, habitat and carbon sink value. Objective CDP 14.17 seeks to preserve and conserve these areas. This includes: *c) To protect individual or groups of trees within the plan biodiversity and/or aesthetic reasons or by reason of contribution to sense of place, including groups of trees which correspond with protected habitats, or which support protected species, under the Habitats Directive; and e) To protect woodlands and hedgerows from damage and/or degradation and to prevent disruption of the connectivity of woodlands and hedgerows of the county.*

7.6.4. While the First Party response provides that the trees have been protected on the site, it remains that they have been removed to facilitate the area that has been cleared within the site and the current unauthorised development.

7.7. Screening for Appropriate Assessment

- 7.7.1. Section 14.3.2 of the CCDP 2017 -2023 relates to the protection of European sites. As per the EU Habitats Directive this includes SACs and SPAs. Objective CDP 14.2 refers. This includes: b) *To require all planning applications for development that may have (or cannot rule out) likely significant effects on European sites in view of the site's Conservation Objectives, either in isolation or in combination with other plans or projects, to submit a Natura Impact Statement in accordance with the requirements of the EU Habitats Directive and the Planning and Development Act, 2000 (as amended);*
- 7.7.2. Section 14.3.3 relates to Appropriate Assessment. There is a requirement to ensure that future developments do not have or perpetuate adverse effects on the conservation objectives and integrity of a European Site. Objective CDP 14.3 relates.
- 7.7.3. The Council have carried out a 'Habitats Directive Project Screening Assessment'. It is noted that the site is 700m from the Lough Derg (Shannon) SPA (004058). The development is also adjacent to the Slieve Aughty Mountains SPA (004168) and is between it and the Lough Derg SPA. They noted that the site may contain breeding birds directly connected with the adjacent SPA.
- 7.7.4. Regard is had to the Site Synopsis and Conservation Objectives for these sites (copies are included in the Appendix to this Report). The Objective for both these sites seeks: *To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.* The Slieve Aughty Mountains site is a Special Protection Area (SPA) under the E.U. Birds Directive, it is of ornithological significance and of special conservation interest for Hen Harrier and Merlin. It is provided that the mix of forestry and open areas provides optimum habitat conditions for these rare birds, which are two species listed on Annex I of the E.U. Birds Directive. The Site Synopsis includes: *Hen Harriers will forage up to c. 5 km from the nest site, utilising open bog and moorland, young conifer plantations*

and hill farmland that is not too rank. Birds will often forage in openings and gaps within forests.

- 7.7.5. The Lough Derg (Shannon) is a Special Protection Area (SPA) under the E.U. Birds Directive and is of importance for both breeding and wintering birds and the species noted are the Cormorant, Tufted Duck, Goldeneye and Common Tern. The presence of Whooper Swan, Greenland White-fronted Goose, Hen Harrier and Common Tern is of particular note as these are listed on Annex I of the E.U. Birds Directive. Parts of Lough Derg (Shannon) SPA are a Wildfowl Sanctuary. There is an additional Objective to the Conservation Objective noted above i.e: *To maintain or restore the favourable conservation condition of the wetland habitat at Lough Derg (Shannon) SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.* The Site Synopsis notes: *Most of the lower part of the lake is enclosed by hills on both sides, the Slieve Aughty Mountains to the west and the Arra Mountains to the east.* Therefore, it is considered that there is a possibility of ornithological linkage between the two SPA sites, and this could include a woodland/wetland area such as the subject site.
- 7.7.6. The Council's Screening Assessment also considered that the treatment system proposed would be in soil not capable of dealing with same. Regard was also had to the removal of topsoil within close proximity to watercourses. They had concerns about possible removal of habitat adjacent to the SPA and that it is unknown whether the proposed wwts for the development would impact on water quality in the Natura 2000 site. The Assessment concluded that on the basis of the objective information supplied significant effects cannot be excluded.
- 7.7.7. In this regard note is had of the Council's fourth reason for refusal. This includes that the proposal would materially contravene Objective 17.3 Natura 2000 Sites of the 2011-2017 CDP. Having regard to the now current 2017-2023 plan it is considered that inadequate information has been submitted to ensure that Objective CDP14.2 is complied with. Therefore, having regard to the precautionary principle, it is considered that it cannot be ruled out that the proposal would not impact adversely on water resources and on the qualifying interests of the Natura 2000 Sites.

8.0 Recommendation

- 8.1. In view of the documentation submitted, the submissions and site visit made, and the assessment above it is recommended that planning permission be refused for the reasons and consideration below.

9.0 Reasons and Considerations

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard due to the intensification of traffic movements on this narrow stretch of the R352, outside the speed limits of the settlement of Mountshannon at a point where the maximum speed limit applies and where visibility is currently restricted. Sightlines as specified under A1.9.2 of the Clare County Development Plan 2017-2023 are only achievable if a large area of trees and hedgerows were to be removed along the front boundary and this would be contrary to Objective CDP 14.17 regarding the preservation and conservation of Woodlands, Tree and Hedgerows and Section 4.4 (Access and removal of roadside boundaries) of the Sustainable Rural Housing Guidelines for Planning Authorities 2005. The proposal is therefore contrary to the proper planning and sustainable development of the area.
2. It is considered that, having regard to the poor drainage characteristics of the site, within this forested and wetland area, that the Board is not satisfied on the basis of the submissions made in connection with the planning application and appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. Therefore, the proposed development would not be in compliance with Objective CDP 8.27 c) (waste water treatment and disposal) of the CCDP 2017-2023, and would be prejudicial to public health.
3. It is considered that having regard to the forest and wetland nature of the site within Cloonmirran Wood pNHA (site code 001686) and the relative proximity to the Natura 2000 sites: Slieve Aughty Mountain SPA (site code: 004168) and the Lough Derg (Shannon) SPA (site code 004058) that sufficient documentation has not been submitted including relative to screening for Appropriate Assessment to rule out any likely significant impacts on the

European sites and their qualifying interests. This is contrary to Objective CDP 14.2 (European sites) of the Clare County Development Plan 2017-2023 and to the proper planning and sustainable development of the area.

Angela Brereton,
Planning Inspector

5th of May 2017