



An
Bord
Pleanála

Inspector's Report PL03.248074

Development	Completion of 2 no. two-storey dwellings and the construction of 8 no. two-storey dwellings and 5 no. storey and a half dwellings and associated site works, drainage etc. granted under planning permission 07/381
Location	'Springhill' Blackwattle, Ardnacrusha Co Clare.
Planning Authority	Clare Co Council.
Planning Authority Reg. Ref.	16/204.
Applicant(s)	Republic Land Development.
Type of Application	Permission
Planning Authority Decision	To Grant Permission.
Type of Appeal	First Party
Appellant(s)	Republic Land Development.
Observer(s)	Carmel Sheridan Gerard & Carmel Hickey Noel & Maeve Byrne

Date of Site Inspection

May 9th, 2017.

Inspector

Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located at Ardnacrusha, Co Clare. It is positioned on lands to the east of the R465 that connects Limerick city to the south with Broadford to the north. The site is accessed from Manor Grove via the R 463. The River Blackwater to the west flows southwards towards the Tailrace Canal prior to discharging to the River Shannon to the east of Limerick city.
- 1.2. The site comprises a partly developed housing estate 'Blackwater Demesne'. To the north and south of the site entrance and to the south of the subject site there are single dwellings in ribbon form along the road network. To the east and north there is agricultural land. Five houses have been completed on the site and are occupied. Two additional houses are currently under construction. The houses are large two-storey residences and the access road, footpaths and public lighting have been installed to service these properties. The foul water treatment plant is located on lands to the east. Site levels fall generally in a north-south direction.
- 1.3. Ardnacrusha village is primarily residential in the form of housing estates, with considerable ribbon development along the approach roads. There is no defined village core and with the exception of a small post office and a shop there are no other facilities such as school, church etc., in the immediate vicinity.

2.0 Proposed Development

- 2.1. The development as described in the public notices submitted with the application seeks the following:

Permission to complete 2 no. two-storey dwellings and construct 8 no. two-storey dwellings and 5 No. storey and a half dwellings and associated site works, including completion of site works, drainage etc. granted under planning permission 07/381.

- 2.2. Unsolicited further information was received from the applicant on 27/4/16 which included the following;

- Letter from Department of Agriculture, Fisheries and Food granting a Limited Felling Licence dated 19/6/09.
- Confirmation from Property Registration Authority regarding deletion of right of way on Folio 38468F.
- Letter from William Cotter (engineer) in response to matters raised in the objections.

2.3. Further information was sought on the application on 5/5/16 on the following matters;

- Density of the development as proposed, having regard to the pattern of development in the immediate area, which is dispersed.
- Layout and height of dwellings No 6-10.
- Form and management of individual dwellings on a shared wastewater treatment system from a public health and future management perspective.
- Revised site survey accurately indicating all existing levels on the site.

2.4. A response from the applicant was received on 8/12/16. The information provided for the following;

- Amendments to the overall site boundary, excluding dwellings 1-5 and dwellings 14 & 15 as these have been authorised under 07/381 and 09/280, resulting in 11 no. dwellings (6 no. two-storey and 5 no storey and a half) and reduced finished floor levels.
- It was confirmed that the treatment unit is in place and has a valid discharge licence and that it does not form part of the application having been permitted and completed under 07/381. Letter enclosed from the suppliers of the treatment plant who have the maintenance contract and who confirm that the treatment plant will not operate properly unless the 18 no. houses it was designed for are discharging into it.
- The density is considered appropriate as this is not a greenfield site and the infrastructure is in place.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 20 no. conditions. Apart from standards construction/engineering type conditions, the decision includes the following conditions of note:

Condition No 1(b) - Requires that 6 houses only be erected on the site (11,12,13, 16,17 & 18) and shall relate to the boundary received by the planning authority on 14th March 2016.

Condition No 2- Requires that units 6-10 inclusive and associated access road be omitted and replaced with public open space which shall be landscaped and incorporated into the central public open space area. The internal access road shall continue from the main spine road across the front of house No's 16-11 and terminate outside the area depicted by house No .10, with an appropriately sized turning bay or hammerhead. Turning bay or hammerhead to be provided outside the area depicted by house No. 6.

Condition No 3 – Boundary treatment between back gardens to consist of 2m high concrete block walls. The existing old garden wall on site to be retained.

Condition No 4 – Finished floor levels of the houses shall be as indicated in Dwg No. P-02 B received on 8th December 2016.

Condition No 5 – Part V requirements.

Condition No 8 – Landscaping plan to be submitted and agreed.

Condition No 9 – External finishes.

Condition No 12 – Internal roads, footpath, lightning and open space shall be in situ prior to the occupation of the dwellings.

Condition no 17 – Attenuation of storm water discharges.

Condition No 18 – Financial Contribution.

Condition No 19 – Bond to ensure satisfactory completion of the proposed development.

Condition No 20 – Bond to secure the future maintenance of the wastewater treatment system.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The **Planning Officer's** report of 27/1/17 does not consider that the proposal comes within the mandatory requirements for EIA, or fall within the sub -threshold criteria.

It is noted that the revised plans alters the description of the original proposal. It removes the retention and completion of two houses (No's 4 & 5) and removes permission sought for No's 14 & 15. The application now seeks permission for 11 no houses and substantially changes the site boundaries. The site edged in red is reduced from 4.78ha to 1.43ha, however the overall layout and form of the proposal remains the same

It is considered that the further information response does not address the density issues raised. While the floor levels of the dwellings 6-10 have been reduced by between 500mm and 700mm, the height remains the same and the overbearing impacts have not been addressed. The dwellings would also be visually obtrusive and overbearing from the R463.

It is concluded that the applicants have not fully considered the concerns of the Planning Authority. Having regard to the history of the site, the presence of an authorised private treatment system which may operate more efficiently with an increased loading and the residential zoning on the site, it is considered that the concerns raised could be addressed by condition.

The removal of houses 6-10 would address the concerns raised regarding overbearing impacts. The area should be used as additional open space, tied into the existing open space. It is acknowledged that the applicants have made the treatment plant a burden on the title of each dwelling, to ensure its future. It is accepted that the treatment system is already permitted, in place and in use. As added assurance, a specific bond of €100,000 (€7,692.30) /?? will be levied to facilitate any potential failure of the system in the future. It is acknowledged that this is an unprecedented arrangement. The figure is arrived at following consultation with the estates team, a review of the type of treatment system in place, historical events

with such systems and the degree of risk involved. The burden on the title will also be included by conditions.

3.2.2. Other Technical Reports

The **Housing Services** report of 4/5/16 stated that there is agreement in place on how Part V is to be complied with. The usual Part V condition should be attached.

The **Environment Section** in their report of 4/5/16 confirmed that a discharge licence for 18 no. houses was granted in early 2016. It is anticipated that eventually the site will be connected to a public sewer and this should be a condition of any permission.

3.3. Prescribed Bodies

An Taisce in their report of 7/4/16 stated that the development needs to be assessed for compliance with rural development within the County Development Plan including design, landscape designations and other relevant considerations. It is noted that this housing estate was agreed earlier and should be reviewed with regard to current demands and needs i.e. first time buyers and social housing. The houses are top grade and are not what is currently in demand.

Other issues relate to water management and compliance with EU Directives, and public and road safety in terms of the assessment of the individual and cumulative impact of an additional entrance onto the road.

Irish Water in their report of 13/4/16 raised no objection to the development, subject to connection agreement, if it is proposed to connect directly or indirectly to a public water/wastewater network operated by Irish Water.

3.4. Third Party Observations

The main issues raised in the third party submissions relate to the following;

- Density of development is excessive in this rural area.
- No street lighting or public footpath has been provided as per condition No 11,12,13,14 of 07/38.
- Lack of demand for these houses. No social housing provision.

- Raised site levels since original permission and impacts on adjoining property, flooding etc.,.
- Unsuitability of Site No. 6 for a dwelling. If permitted will result in overshadowing and overlooking of adjoining property.
- Impact of existing house on Site No 5 on adjoining property.
- Destruction of trees and hedgerow.
- Sand bank and potential for landslide.
- Legal issue with regard to right of way.

4.0 Planning History

The most relevant planning history relating to the site is as follows:

07/381 – Permission granted subject to conditions for the demolition of existing farm out buildings including derelict bungalow and for the construction of 16 no. dwelling houses, access road and proprietary treatment system on the site.

09/280 - Permission sought for 2 no. additional dwelling houses (14 & 15), partial demolition of existing stone wall, change of house type one site (No 12), relocation and realignment of boundaries to 6 no. sites and minor amendment to site boundary to that granted under 07/381 and subject to current planning ref no 09/79, including amendments to treatment plant, revised sewers, attenuation tanks and all associated site works. Permission granted subject to 16 no. conditions.

09/79 – Permission sought for changes granted under ref no. 07/381 i.e. change of house types on site No's 4-16. Permission granted subject to 8 no. conditions.

12/322 – Permission granted for the extension of the duration of planning permission 07/381 to 27/12/15.

14/508 – Permission sought for extension of duration of permission 09/280 and minor amendments to site boundary to that granted under 07/381 and subject to current planning ref no. 09/79, including amendments to treatment plant, revised sewers, attenuation tanks and all associated works. Granted and extended to 4/9/19.

On the adjoining site to the east planning permission was refused (09/281) for the

construction of 23 no. dwellings with access via the road granted under 07/381 and ancillary development on the grounds that it would (i) constitute a suburban form of housing development at the outer edge of the village, which does not have the services to support such a development (ii) be premature by reason of existing deficiencies in public water and sewerage facilities in the area and inadequate housing mix contrary to the provisions of the development plan.

With the exception of 14/508, which extends the duration of 09/280 (Sites 14 & 15), all other permission relating to the site have expired.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the **Clare County Development Plan 2017-2023**. Ardnacrusha is identified in the Settlement Strategy for the county as a 'Large Village'.

Volume 3 of the plan contains individual settlement plans and land use zoning details for each of the towns and villages in the municipal districts of the County. The plan for Ardnacrusha is contained in Volume 3(b) 'Shannon Municipal District'.

The site is zoned 'Low Density Residential' with the developed area to the front zoned 'Existing Residential'.

The zoning objectives are as follows:

Low Density Residential – The use of land to accommodate a low density pattern of residential development, primarily detached dwellings. The underlying priority shall be to ensure that the existing character of the settlement/area is maintained and further reinforced by a high standard of design. Proposed development must also be appropriate in scale and nature for the area in which they proposed to locate.'

Existing Residential – To conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Existing residential

zoned land may also provide for small-scale home based employment uses where the primary residential use will be maintained.

The site is subject to Specific Objective LDR Springhill which states *'There are existing permissions on part of the site. The development has been partly constructed with three dwelling built adjacent to and south of the site entrance.*

Relevant extracts from the Plan are appended to the back of the report for the information of the Board.

5.2. Natural Heritage Designations

The site lies c. 2km upstream of the Lower River Shannon SAC.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised below;

- Appeal is against Condition No. 1b, Condition No. 2 and Condition No. 20.
- Under the provisions of Condition No. 1b and Condition No. 2 the planning authority has sought to reduce the number of dwellings on the site by exclusion of sites 6-10 inclusive.
- During the course of this application, further information was submitted which amended the scheme including amendments to the overall site boundary excluding dwellings 1-5 and 14 & 15, which were all granted and authorised under previous permissions ref No's 07/381 & 09/280. This resulted in 11 no. dwellings as opposed to the 18 no. originally applied for. The floor levels generally were reduced and the finished floor levels of house 6-10 were reduced by up to 700mm.
- Planning permission has been granted a number of times on the site, including extensions to permissions. In 2014 an extension was granted for 90/280 which has an expiry date of 2019. It was granted under the current development plan and included increasing the number of dwellings by two. By the departments own logic and policies this permission must also be granted

for the full 11 no. dwelling, including site No's 6-10. The same development plan applies and accordingly the proposal should be judged under the same criteria.

- With regard to density, the recommendation is 2 per acre and is a recommendation not a requirement. This is not a greenfield site, it has infrastructure in place including hard core roads, foul and surface water sewers etc. The holding tanks, pumping station are all in place as authorised under 07/381.
- 09/280 authorised additional works including additional dwellings. The infrastructure has been designed for a minimum of 18 no. dwellings. Under these circumstances the density proposed is entirely reasonable. The Council would have come to the same conclusion when granting 09/280.
- The section drawings submitted (Dwg 16001/P10A) shows the relative height of dwellings 6-10 in relation to the dwellings behind. The floor levels of these houses was further reduced by between 500-700mm. The houses are 7.3 m to ridge level. The effect on the houses to the rear is minimal. Based on distance there is no overlooking and the houses will not be overbearing. Only the top section of the rear projection will be visible from the ground floor of the exiting dwellings. The planning authority could have conditioned that single storey dwellings be provided.
- The proposed development provides exactly what is envisaged in the plan *'attract some of the urban development pressure from Limerick and offset against the demand for one-off builds in the surrounding open countryside'*.
- Condition No 20 requires the payment of a bond of €100,000 to secure the future maintenance of the wastewater treatment system coupled with an agreement empowering the planning authority to apply such security in the event of non-maintenance of the system.
- It is not within the remit of the planning authority to retrospectively apply a condition on a previously authorised development. The treatment unit is currently in place and is complete and in possession of a valid discharge license and was granted permission under reg ref 07/381, which was

extended to 12/2015. The treatment does not form part of the current application as it is in existence.

- The condition is not enforceable as it has no completion date. When the development is complete, the developer will not be able to have the bond returned on the basis of some issue which may happen in the future.
- The development is unique in terms of the management of the treatment unit. The developer has incorporated an Owners Management Company (OMC), with all home owners obliged to become members on completion of their site purchase. The obligations of the OMC are described in Schedule 5 of the Deed (forwarded to Clare Co Council) and obliges the OMC to maintain the utilities and put in place a fund to address any costs associated with repairs. Condition 20 (b) conditions this and by seeking a bond, there is a doubling up on it.
- In accordance with the MUD Act the developers have transferred all common areas to the management company, but the developer is responsible for the development until such time as the development as a whole is complete.
- There is a bond in place and this will not be released until Clare Co Council are satisfied that the development has been satisfactorily completed.
- The only concern that could arise regarding the treatment unit would its maintenance following completion of the development. In this regard the Board is directed to the following;
 - The obligations of the Management Company under the estate deed of transfer and the MUD Act (provided to Clare Co Council)
 - (a) compliance with Section 19 of the MUD Act and the requirement for a sinking fund, the purpose of which would be to address any capital costs required in the repair/maintenance/replacement of any of the plant, equipment and common areas of the development.
 - (b) the 10 year maintenance agreement that has been paid in full by the developer.
- The precautions have been put in place by the developer at considerable expense to ensure that a viable and well managed estate is in place following

the completion of all development works would allay any concerns regarding the treatment unit and preclude any requirement for an additional bond.

6.2. **Planning Authority Response**

The planning authority notes that the existing site is served by a private treatment system. When the original permission was granted (07/381) it was anticipated that the development would eventually be connected to the Limerick main drainage scheme and the treatment plan was permitted as an interim measure. This was reflected in Condition No 7 of 07/381, which required that the development connect to the public sewer when available.

A discharge licence has recently been granted for the treatment system and it is now capable of treating and disposing of effluent. There are no immediate plans for a sewer at this location and as such the provision of a shared treatment system, where there are issues with existing systems in the area, is not considered appropriate. Notwithstanding the planning history relating to the site, the further development of the site in the absence of a public sewer, or plans in place for same, would be contrary to the proper planning and sustainable development of the area.

Having regard to the zoning on the site, the pattern of development in the area, the location of the site and proximity to adjacent properties, it is considered that the density proposed creates an overbearing impact on the adjoining properties/regional road and is out of character with the pattern of development and the density prevailing in the area.

6.3. **Observations**

1. **Carmel Sheridan**

- Supports the decision of Clare Co Council. The density proposed is too high in this rural area.
- The perceived needs of the County in 2009 are very different from those now being planned for in the 2017-2023 Plan.

- While amendments were made to the original sizes and location of the houses granted under 07/381, these do not compensate for the raised land levels on the site.
- The development of Site 6 and the proposed house are of particular concern. The right of way is still intact. All existing trees on the boundary drawing of Sites 1-6 are on observer's boundary. Hedgerows were removed and replaced with a concrete wall.
- Supports the Council's request for the creation of an open green space for Sites 6-10 inclusive.

2. Gerard & Carmel Hickey

- Refers to their objection to Clare Co Council where the issues have been set out in details. These may be summarised as follows;
- Contrary to the assertions made by the applicant on the effects of the development on houses to the rear, the photographs attached show the massive impact of the proposed houses on the observers' house.
- Contrary to the arguments made by the applicant's regarding previous planning history, planning permission was never granted for a house on Site 6. The site was to form a green area with an historical trees which was illegally felled.
- Disappointed with the level of inaccurate information submitted in relation to a number of aspects of the development including privacy, site levels, agreements etc., which were raised in previous correspondence.

3. Noel & Maeve Byrne

- Have concerns regarding the stability of the sand bank at the rear of their garden, which has collapsed in the past. The bank is c.15ft tall and a boundary wall has been built on top of it. This raises health and safety concerns, particularly during construction.
- The site is elevated and presents a flooding risk to adjoining properties. Clare Co Council has had to repeatedly deal with surface water discharge on the

Killaloe Road as run-off flowed from this site and blocked a culvert in front of observers' property.

- The problem will be exacerbated during construction.
- Ground levels on the site have been raised creating privacy issues. Houses 7, 8, 9, & 10 are objectionable on the grounds of height. House No 9 will face directly into rear bedroom window.
- The development will result in a loss of light to the rear garden area and the use of the garden.
- The proposed development due to its height will seriously impose on the character of the Blackwater area as it relates to the Killaloe Road. The imposing nature of the development as it dominates the skyline is evident since construction started on Site 5. It is completely out of character with existing settlements in the area.
- The visual impact of the development should be determined following the erection of a timber profile of the structures.

6.4. Applicants Response

- Planning permission has been granted on two occasions on the subject site.
- The wastewater treatment system has been installed to service the fully developed site. A discharge licence is in place since 2015. It is not identified by Clare Co Council as one of the systems they are experiencing difficulties with.
- The development plan states in relation to Ardnacrusha, with respect to future provision of any advanced systems for wastewater treatment and disposal that opportunities should be exploited between the Council and private developers to ensure that future housing proposals are capable of facilitating the servicing of not just the individual development but of the wider area, including other residentially zoned lands.
- This statement clearly indicated that WWTP's are a viable option. There are opportunities for the plant to facilitate other zoned lands.

- The imposition of a €100,000 bond is punitive. The treatment unit does not form part of the current application and it is outside the remit of a planning authority to retrospectively impose such a condition.
- Services have been installed to all of the site. The removal of 5 no sites as required by Clare Co Council will bring the economic viability of the development into question.
- The development will help to relieve the current shortage of houses.

7.0 **Assessment**

The main issues that arise for determination by the Board in this appeal relate to the following;

- Principle of the development in this location.
- Impacts on the residential and visual amenities of the area.
- Wastewater treatment.
- Appropriate Assessment.

7.1. **Principle of the development in this location**

The site is located in Ardnacrusha, identified as a Large Village in the settlement strategy for the county. The strategy for large villages is to provide for small-scale well designed residential, commercial and community developments which have regard to the character of the settlements. The objective is to ensure that existing population levels and services are maintained and that future growth is balanced and sustainable and is relative and appropriate to the scale, size and character of the village.

Ardnacrusha is unusual in that is primarily residential, composed of a number of residential estates (of varying densities), with significant ribbon development along approach roads. It lacks community, recreational and social facilities, being dependent on Partree to the south and the proximity of Limerick city. The village has a public water scheme, which I note is adequate to cater for the existing and the target population. It has no public waste water treatment system.

The appeal site is located within the settlement boundary and is zoned for low density residential development, with a recommendation of 5 houses per hectare. The proposed development will result in a density of > 12 house /hectare and the question that arises is whether this is an acceptable form of development in this location.

Under the provisions of the plan, the underlying priority for areas zoned Low Density Residential is to ensure that the character of the settlement/area is maintained. The area in the vicinity of the site is characterised by individual sites developed in ribbon form along the adjoining road network. However, the planning authority accepted the principle of a housing scheme with 18no. houses on the subject site, with a density and layout similar to that currently proposed. I note that with the exception of minor alterations under Reg Ref No 09/280, the boundaries of the site remain largely unchanged.

Whilst I accept that the location of the site is far from ideal, being well removed from the main area of the village (developed around the hydro-electric power station), which is itself deficient in terms of facilities /services and with no public footpaths providing connectivity with the village, and the density is higher than envisaged by the new development plan, having regard to the zoning provisions of the development plan and the planning history relating to the subject site, I accept that the proposed development is acceptable in principle in this location.

7.2. Impacts on residential and visual amenities of the area.

The issues raised by the observers relate to impacts on their properties arising from the significant variations in site levels. There are concerns that this would result in overbearing impacts and that their dwellings will be overlooked and overshadowed.

The observers' houses face towards the R463, with their rear boundaries contiguous with the appeal site. The houses would share a common boundary with 5 no. proposed houses (Site No' 6-10) on the appeal site. The houses would be two-storey dwellings with ridge heights of 7.1m (House Type H) and 7.2m (House G). In response to the request for further information the finished floor levels of these houses was reduced by between 500mm and 700mm and now ranges between 30.4m for Site No 6 to 29.8m for Site No's 7-9 and 30.0m for Site No 10. The finished floor levels of the adjoining house are significantly lower at c 26.5m.

I observed existing conditions both from the appeal site and from the rear of some of the observers' properties to the south/south west. Only the roofs of observers' properties to the south are visible from the appeal site. From observers' sites views towards the appeal site are curtailed by a high wall/embankment/mature screening. There is therefore no direct intervisibility between the appeal site and the rear of these properties. The upper sections of the roof of the house on Site No 5 are visible from locations within the site with the upper floors visible from the property to the southwest.

There will be no direct line of sight at ground floor level between the existing and proposed houses. With at least 30m between opposing first floor windows, the potential for significant overlooking does not arise. The windows at first floor level to both house types (H& G) serve bedrooms, ensuites etc which do not create the same potential for overlooking as living rooms, kitchens etc. Notwithstanding the difference in floor levels, I am satisfied that significant impacts on the privacy of observers' dwellings will not arise. I consider that the issues raised regarding overshadowing are unfounded having regard to the location of the proposed houses relative to observers' property. and there will be no loss of sunlight/daylight as a result. Similarly, the substantive separation distance ensures that the proposed development will result in significant overbearing impacts which would compromise the amenity of these dwellings.

The development as proposed reflects the planning history on the subject site. The site boundaries, layout and overall density (18 no. houses) of the development remains largely unchanged. Reductions have been made to floor and ridge levels and in the floor areas of some of the houses. Whilst it is argued by the observers that this is negated by raised site levels, I am in no position to verify what has/has not occurred on the ground since the original permission was granted. From my observations on existing conditions, it is my opinion that the development can be accommodated on the site without significant adverse impacts on the residential amenities of adjoining properties. I am not persuaded, having regard to the planning history relating to the site that the removal of Sites 6-10 is warranted as required by Condition No 1b and Condition No 2.

Issues have also been raised regarding the impacts of the development on the Blackwater area and on views from the Killaloe road. I accept that ground levels rise

in a northerly direction and that the potential does exist for the development to be visible at a higher elevation. However, I would point out to the Board that the area is already impacted by the existing permitted development on the site and by ribbon development along the local road network. I note that there are no protected views or scenic routes in the locality and that views towards the site are intermittent, being blocked by vegetation and the existing built form.

7.3. **Wastewater treatment**

Foul effluent from the site is treated in a wastewater treatment plant and percolation area, which is located to the east of the site. The plant is located outside the boundaries of the appeal site on lands in the ownership of the applicant. The treatment plant was authorised under the parent permission (07/381) for the development of 16 no houses. Two additional houses were subsequently permitted under 90/280.

I note from correspondence attached to the history files that at the time of the parent application it was anticipated that the area would be connected to the Limerick main drainage scheme. On the basis that the development would be connected to the municipal sewer, the installation of a shared temporary treatment plant was considered acceptable in the short term. I note that a discharge licence has been granted for the treatment plant.

It was a requirement of the parent permission (Condition No 7 (f)) that the applicant would retain the ownership and responsibility of the treatment plant until such time as it is decommissioned and the estate is connected to the public sewer. There are no immediate plans to provide a public sewer in the village and accordingly the existing treatment plant will remain necessary to treat foul effluent arising from the development for the foreseeable future.

Condition No 20 (a) requires the payment of a Bond to the planning authority to ensure the future maintenance of the wastewater treatment system. It is contended by the applicant that this is unnecessary. In response to issues raised by the planning authority regarding the future management of the system, the applicant states that an Owners Management Company (OMG) has been established and all home purchasers will be obliged to become members. All common areas have been

transferred to the management company in accordance with the provisions of the Multi-Unit Development Act, 2011 (legislation enacted to address problems relating to the ownership and management of the common areas of both existing and new multi-unit developments). The Estate Deed of Transfer submitted by the applicant sets out the obligations of the management company including a requirement to pay an annual service charge which will be used to maintain the common areas and utilities. The planning authority accepts this arrangement Condition No 20(b).

Handing over and control of the treatment system to a Management Company, administered by the occupiers was not considered a suitable arrangement by Clare Co Council when it processed the original application. A report from the Environment Section noted that a treatment plant of this size would require regular maintenance and desludging and the presence of a caretaker on a regular basis. I accept that shared proprietary treatment systems are intended to facilitate drainage from schemes under a single management and control regime and are not a sustainable solution in the long term, for houses that are to be sold into separate ownership.

However, the system has been authorised and is serving existing dwellings on the site. Transferring the management of the system to future occupiers in the manner proposed would rely on a process that is separate to the planning system, which cannot be guaranteed in enforcement. It is my opinion that the most effective way to manage and monitor the effective operation of the treatment system is that it be retained in the ownership of the applicant until such time as the development is completed and taken in charge by the local authority. Should the Board be minded to grant permission for the development, I recommend that a condition to this effect be attached.

There is element of contradiction in the provisions of Condition No 20, which at (a) requires the payment of a bond as security towards the future maintenance of the treatment system and at (b) requires that the system be managed by the Owner's Management Company. I note that the original permission (07/381) required the payment of a bond of €80,000 towards the satisfactory completion of the development (Condition No 2). There is correspondence on Clare Co Council's website (07/381) which stated that the Bond submitted was a former Anglo Irish Bank security (now IBRC in liquidation) and that a claim has been made by Clare Co

Council on the bond, the outcome of which is awaited. The status of the bond or the security it affords to Clare Co Council remains unclear.

Having regard to the public health, water pollution issues that could arise from a malfunctioning of the system, I do not consider that the imposition of a condition requiring the payment of a specific bond towards the effective maintenance of the treatment system going forward is unjustified. I accept that it would be unreasonable to expect that the planning authority should incur costs arising from any future malfunctioning of the system. I accept that the wording of the planning authority is open ended with no certainty afforded to the applicant regarding the time frame that the bond will remain in force. Should the Board be minded to grant permission for the development, I consider that a standard type condition should be attached requiring that the bond remain in place until the estate is completed to the satisfaction of the planning authority. It would appear the Board is not constrained on this matter and is entitled to impose such a condition as the treatment system is located on lands in the ownership and control of the developer (section 34(4) of the Act).

7.4. **Appropriate Assessment**

The proposed development is located c 2km upstream of the Lower River Shannon SAC. It is serviced by a wastewater treatment plant which is being operated in accordance with the parameters set out in a discharge licence. Subject to effective maintenance and management of the system, it is capable of operating without any adverse impacts on the environment.

Having regard to the nature and scale of the development and the separation distance from the Natura 2000 sites, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effect on Lower River Shannon SAC, or any other European Site, in view of the sites conservation objectives and that, therefore, a Stage Appropriate Assessment and the submission of a Natura Impact Statement is not required.

8.0 **Conclusion**

- 8.1. The development is located within the defined settlement of the village and on lands zoned for residential purposes. It reflects the planning history relating to the site, with only minor alterations to the boundaries and layout previously permitted. The floor

areas, floor level and ridge heights have been reduced which minimises potential impacts on adjacent residential property. Whilst the development is at a remove from the village, it provides a clustered development with communal open space and an alternative to the unsustainable ribbon development that has developed in the vicinity.

9.0 Recommendation

9.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the development for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the location of the site within the boundaries of the Ardnacrusha settlement plan, the zoning of the site for residential purposes and the planning history relating to the site, it is considered that subject to the following conditions, the proposed development would not seriously impact on the visual or residential amenities of the area, or of property in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 8th day of December 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interests of clarity.

2. The management and maintenance of the proposed development following completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to and agreed in writing with the planning authority prior to commencement of development. #

Reason: To provide for the satisfactory future maintenance of this development in the interests of residential amenity.

3. Details of the materials, colours and textures of all the external finishes to be proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Front doors shall be in solid wood only.

Reason: In the interest of visual amenity.

4. Prior to commencement of development, details of house garden walls to include height and finish shall be submitted for written agreement with the planning authority. All walls shall be suitably capped.

Reason: In the interests of visual amenity.

5. The site shall be landscaped in accordance with a landscaping plan to be submitted to and agreed in writing with the planning authority prior to commencement of the development. The plan shall include details of the species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species.

Cupressocyparis x leylandii shall not be used on any part of the site. The plan shall include a timescale for implementation.

Reason: In the interests of residential and visual amenity.

6. Water supply and drainage arrangements including the attenuation and disposal of surface water shall be in accordance with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development and to prevent

flooding.

7. The wastewater treatment system serving the development shall be retained in the ownership and control of the developer until such time as it is taken in charge by the local authority. If a public sewer becomes available in the area, the treatment system shall be decommissioned and connected into a main drainage scheme.

Reason: To ensure effective future maintenance and management of the treatment system and to prevent water pollution.

8. The internal road network serving the proposed development including parking areas, footpaths, kerbs etc shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interests of amenity and of traffic and pedestrian safety.

9. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

10. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to and agreed in writing with the planning authority prior to commencement of the development. Thereafter, all estate and street signs and house numbers shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the names of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed names.

Reason: In the interest of urban legibility.

11. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed

development.

Reason: In the interests of visual and residential amenity.

12. Site development and building works shall be carried out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

13. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

14. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed

between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

15. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision satisfactory completion and maintenance until taken in charge by the local authority of services required in connection with the proposed development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion and maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement shall be referred to an Bord Pleanála for agreement.

Reason: To ensure the satisfactory completion of the development.

15. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to the value of €100,000 (one hundred thousand euro) to secure the future maintenance of the wastewater treatment system until such time as it is decommissioned or taken in charge by the local authority, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion and maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement shall be referred to an Bord Pleanála for agreement.

Reason: To ensure the satisfactory development.

16. Prior to the commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000 as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

Reason: To comply with the provisions of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

Breda Gannon
Senior Planning Inspector

28th, May 2017