



An
Bord
Pleanála

Inspector's Report ABP-301709-18

Development	To construct dwellinghouse, garage, treatment system, create new entrance to public road and ancillary site works
Location	Muckinish West , Ballyvaughan , Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	17375
Applicant	Killian Mahon
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	Transport Infrastructure Ireland
Date of Site Inspection	31 July 2018
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located in the townland of Muckinish West, Ballyvaughan, Co Clare.
- 1.1.2. The site fronts onto the N67 National Secondary route, at a point where the maximum speed limit applies. The access to the site is via an existing field access.
- 1.1.3. The site is located north of Muckinish Hill, about 2½km north east of Ballyvaughan, 12km west of Kinvara; and about 9km from the Galway border.
- 1.1.4. The site is given as 0.45ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the construction of a dwellinghouse 259 sq m, height to ridge 6.5m; a garage 45 sq m; a wastewater treatment system; the creation of a new entrance to public road and ancillary site works.
- 2.1.2. The water supply will be from the public mains.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant planning permission subject to 11 conditions, including condition no. 4 which requires the achievement of sightlines.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports
- 3.2.2. There are two Planning Reports on the file, the first includes:
 - CDP 3.11 New houses in the countryside.
 - Site is within a heritage landscape.
 - Planning history

16/244 outline permission for a dwelling to Killian Mahon - refused for three reasons:

access onto the N67,
endanger public safety by reason of a traffic hazard,
heritage landscape in which it is highly visible from a designated scenic
route.

- Pre-planning is referred to.
- Site is within a heritage landscape and along a scenic route, however the site is also located along the N67 and requires direct access to same. The principle of a dwelling on site is acceptable subject to compliance with objective 3.11 and 8.4 of the CDP.
- Details demonstrating compliance with 3.11 (rural housing policy) are listed.
- Re. 8.4 (direct access onto National Roads) section 8.2.3.3 sets out the exceptional circumstances which apply. The concerns of the NRA and Roads Department are noted, however, the policy allows for exceptional circumstances. The applicant has included the area south west of the site, within the site edged red, to ensure that the sight distances can be maintained.
- It has not been explicitly stated that applicant has no alternative sites available with access off a regional or local road.
- The design is suitable for the site which sits on a scenic route in a heritage landscape.
- An onsite treatment system is proposed with a raised percolation area and the submitted tests are acceptable.
- Report concludes that further information is required.
- A screening determination for appropriate assessment concludes that AA is not required.

3.2.3. Recommending further information on three items:

- 1 clarify if there are any alternative sites available with access off a regional or local road. Submit details that demonstrate that the applicant is actively engaged in farming the land.

- 2 submit a revised site layout plan 1:500 which clearly indicates the full extent of achievable sight distances indicating all features: boundaries, fences, pillars etc, within the splay. Identify if any land is in your control and detail how this area can be maintained free of obstruction with relevant letters of consent.
- Submit a contiguous elevation, clarify finished floor level, and revise design.

3.2.4. The request issued.

3.2.5. Other Technical Reports

Roads Design – the entrance /exit for the proposed dwelling is on to the N67 which is a national secondary road and has a speed limit of 100kph, in accordance with the Geometric Design of Junctions DN-GEO-03060, there should be sight distances available of at least 215m. The applicant has demonstrated horizontal sight distances of 200m being available provided the boundaries of neighbouring properties are set back, even if this 215m requirement was relaxed to 200m there would be serious concerns about one of the boundaries, as it is an existing dwelling entrance. The moving back or relocation of this boundary would have to comply with the same standards.

The applicant has also demonstrated vertical sight distances of 200m being available, there would be concerns about this for the same reason, it cuts through neighbouring dwelling's entrance. The forward visibility distance for vehicles travelling along the N67 should also be 215m.

3.3. **Response to the further information request includes:**

3.3.1. It is now proposed to access the site using existing access from public road. Revised layout scale 1:500 showing proposed entrance and revised layout showing visibility splays of 215m.

Enclosed is a section showing the vertical visibility at access. Sight distance can be achieved at the western side by lowering boundary walls to maximum 0.9m within the site and on family land outside the site. Land on western side not in family control is on lower ground and will not effect visibility at entrance. Land on the eastern side not in control of family: with the consent of land owner the required sight distance can be achieved. Landowner letter provided.

3.4. Further Reports

3.4.1. Further Planning Report.

The second Planning Report following the receipt of additional information finds the response to item 1 acceptable. Re item 2 a condition to be attached that the achievement of adequate sight lines is achieved prior to the commencement of the development.

Re item 3 the contiguous sightlines are noted and the finished floor level in the context of the adjacent properties is deemed acceptable. It is noted that the height of the house is not altered and the original design with the velux windows is preferable to that now suggested.

Recommending permission.

3.4.2. Other Technical Reports

Roads Design – the applicant (drawing un-numbered) has demonstrated that 215m sightlines can be achieved provided significant alterations are made to the neighbouring land boundaries with the N67. A letter from the landowner is provided.

The land to the west will also require alterations. There is a house entrance that belongs to the applicant's aunt that will require alterations. The applicant has not provided proof that his aunt has agreed to alter her entrance. Any alterations to the entrance will also have to comply with Geometric Design of Junctions DN-GEO-03060.

3.5. Prescribed Bodies

An Taisce – compliance with County Development Plan including design, landscape designations and habitats and Water Framework Directives. Design should be in keeping with the landscape. This is a large dwelling, not suitable.

Percolation area may have an impact on groundwater.

Impact on road safety.

TII - TII considers that the development would be at variance with official policy in relation to national roads as outlined in the Spatial Planning and National Roads

Guidelines for Planning Authorities (DoECLG, 2012) as the proposed development by itself or by the precedent it would establish, would adversely affect the operation and safety of the national road network for the following reasons:

Official policy in relation to national roads and development along such roads is set out in the DoECLG, Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012). The proposal, if approved, would create an adverse impact on the national road where the maximum speed limit applies and would, in the Authority's opinion, be at variance with the foregoing national policy in relation to control of frontage development on national roads.

Official policy in relation to development involving access to national roads and development along such roads-is set out in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012). Sec 2.5 of the guidelines states that the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. This proposal would result in the intensification of an existing direct access to the national roads contrary to official policy.

The development located on a national road where the maximum speed limit applies would endanger public safety by reason of a traffic hazard and obstruction of road users due to the movement of extra traffic generated.

4.0 Planning History

16/244 application for outline permission for a house to Killian Mahon.

Refused for three reasons:

1 the creation of a new access onto the N67. An exception where consideration will be given to development for farmers and their sons or daughters who are actively engaged in farming the land...The applicant has failed to satisfy..

2 the development would endanger public safety by reason of a traffic hazard because of the proposed provision of an access on to a heavily trafficked National Route at a point where the maximum speed limit applies and where visibility is restricted by reason of the horizontal and vertical alignment on the road. The

proposed development would therefore result in a threat to public safety by way of a traffic hazard.

3 Within a Heritage Landscape and highly visible from a designated scenic route. It is considered that it would form a prominent feature on the landscape and would detract from the visual amenities of the area and from the views and prospects obtained from the N67 scenic route, protected per CDP 16.6 of the CDP 2011 – 2017.

On the opposite side of the road.

PL03.207845 appeal against the decision under reg. ref. P04/580 by Clare County Council to refuse permission for the construction of a single storey dwellinghouse, garage and septic tank including refurbishment of an existing derelict building for use as stables along with associated site works and services at Muckinish Townland, Ballyvaughan, County Clare for three reasons: 1 the applicants do not qualify for exemptions set out in the Development Plan for accesses onto a National Secondary Road; 2. the proposed access would give rise to a traffic hazard; and 3. it is contrary to policy to protect visually vulnerable areas.

The Board refused permission for two reasons:

1 It is considered that the proposed development would endanger public safety by reason of traffic hazard because the site is located along a heavily trafficked section of a National Secondary Road (N67) at a point where the general speed limit applies and the traffic turning movements generated by the proposed development would interfere with the safety and free flow of traffic on the public road.

2 The site is located in the Coastal Area of Visually Vulnerable Landscape along a designated Scenic Route (N67) where it is the policy of the planning authority to require it to be shown that proposed developments will not impinge in any significant way upon the character, integrity and uniformity of the landscape when viewed from such locations and surrounding areas and particular attention must be given to the preservation of the character and distinctiveness of these areas when viewed to and from scenic routes. This policy is considered reasonable and consistent with Government guidance on sustainable rural housing. It is considered that the proposed development would be visually obtrusive at this location, would seriously injure the amenities of the area, would conflict with the policy of the

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

5.0 Policy Context

5.1. Development Plan

5.2. **Clare County Development Plan (CDP) 2017–2023**, is the operative plan. Relevant provisions include:

Aim - to safeguard the strategic transport function of the motorway and national road network and associated junctions in order to cater for the safe and efficient movement of inter-urban and inter-regional traffic;

Objective CDP8.2 Development Plan Objective: Motorways and National Roads

It is an objective of Clare County Council: a) to safeguard the motorway and national roads, and associated motorway and national road junctions, in line with national policy

8.2.3.3 Access onto National Roads.

In retaining the safety, efficiency and carrying capacity of national primary and secondary roads within the County, development proposals involving access onto national roads will be assessed by the Council having regard to 'Spatial Planning and National Roads – Guidelines for Planning Authorities (2012)'. For lands adjoining National Roads to which Speed Limits of Greater than 60km/h apply, the policy of the Planning Authority will be to avoid the creation of any additional access points from new developments or the generation of increased traffic from existing accesses to national roads to which speed limits of greater than 60km/h apply in accordance with 'Spatial Planning and National Roads – Guidelines for Planning Authorities (2012)', subject to the exceptional circumstances as set out below. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

Lightly-trafficked Sections of National Secondary Routes

A less restrictive approach will be applied to lightly-trafficked sections of national secondary roads where a balance needs to be struck between the important transport function of such roads and the social and economic development of these areas. In consultation with TII and based on the criteria set out in Section 2.6 of 'Spatial Planning and National Roads – Guidelines for Planning Authorities (2012)', the following sections of National Secondary Road have been identified as areas where this less restrictive approach will apply:

- N67 Ballyvaughan to Lisdoonvarna;
- N67 short section between the junction with R483 and the junction with R484;
- N67 Doonbeg to Kilkee;
- N67 Kilrush to Killimer.

In these areas the Council will give consideration to developments requiring direct access onto national secondary roads for farmers and their sons and daughters who are actively engaged in farming the land, wishing to build a dwelling house for their own permanent residence on family land.

Existing Accesses onto National Secondary Roads

A less restrictive approach will be applied to existing accesses onto national secondary roads where a balance needs to be struck between the important transport function of such roads and the social and economic development of these areas. The Council will give consideration to developments utilising existing accesses onto national secondary roads for farmers and their sons and daughters who are actively engaged in farming the land, wishing to build a dwelling house for their own permanent residence on family land. It must be clearly demonstrated that there is a genuine need for the dwelling proposed and that there are no other alternative sites available with access off a regional or local road. The development shall fully comply with the objectives set out in Chapter 3 of this Plan- Urban and Rural Settlement Strategy and must also demonstrate that use of an existing entrance to serve the proposed development will not result in the creation of a traffic hazard.

Landscape

County Clare contains a number of valuable views and prospects which offer a very attractive cross-sectional view and overall impression of differing landscapes as one traverses the County. These views and prospects, many of which are located along identified scenic routes, are interwoven with the settled, working and heritage landscapes outlined above. The Council recognises that in some areas the land adjoining these scenic routes has relatively limited capacity (both environmentally and in terms of scenic amenity) to accommodate individual houses in significant numbers. In such areas, the Council will aim to protect sensitive areas from injurious development, while providing for development and change that will benefit the rural community. The Wild Atlantic Way follows the west coast of County Clare, from Killimer on the Shannon Estuary to New Quay in North Clare. A series of Discovery Points and Signature Discovery Points have been identified encompassing the most scenic and high-amenity areas along the route. In order to maximise the potential of the Wild Atlantic Way, important views and prospects from the route will be preserved.

The Council will work with Fáilte Ireland to ensure the sustainable development of viewing points along the route.

5.3. The Spatial Planning and National Roads Guidelines for Planning Authorities (DoECLG, 2012)

- 5.3.1. Section 2.5 of the Guidelines set out the required development plan policy on access to national roads. On lands joining national roads, to which the speed limit of greater than 60 kmph applies, the Planning Authority will avoid the creation of additional access points from new development and the generation of increased traffic from existing accesses to a national road. This provision applies to all categories of development including individual houses in rural areas regardless of the housing circumstances of the applicant.
- 5.3.2. Section 2.6 sets out the exceptional circumstances, either in relation to developments of national and regional strategic importance or in relation to lightly-trafficked sections of National Secondary Routes, where a less restrictive approach

to be applied can be set out in the plan, having consulted and taken on board the advice of the NRA as part of the process of reviewing or varying the development plan.

5.4. Sustainable Rural Housing Guidelines

5.4.1. The guidelines provide that people who are part of the rural community should be facilitated in their housing needs.

5.4.2. Section 3.3.4 of the Guidelines relates to transport. It states that the objectives and policies of the development plan should make it clear that direct access for future development should not be permitted to national roads outside the speed limits for towns and villages.

5.5. **Shellfish Pollution Reduction Programme, Characterisation Report Number 8, Ballyvaughan Poulnaclogh Bay Shellfish Area, County Clare**, as required by Article 5 of the Shellfish Water Directive 2006/113/EC and Section 6 of the Quality of Shellfish Waters Regulations, 2006 (S.I. No. 268 of 2006), published by the Department of Housing, Planning, Community and Local Government.

5.5.1. Ballyvaughan Poulnaclogh is a classified production area for shellfish, protected under the Shellfish Waters Directive – 2006/113/EC.

5.5.2. The subject site is in an area indicated as of extreme risk potential, in relation to the risk of pathogens from onsite wastewater treatment system (OSWTS) reaching groundwaters and extreme risk potential, in relation to phosphorus from OSWTS discharges reaching groundwaters. The risk potential is very high, in relation to surface waters under each heading.

5.6. National Planning Framework

5.6.1. The overarching policy and planning framework for the social, economic and cultural development of our country and detailed capital investment plan for the period 2018 to 2027.

- 5.6.2. It includes as a national strategic outcome (no. 2) under enhanced regional accessibility, maintaining the strategic capacity and safety of the national roads network.

5.7. **Natural Heritage Designations**

The nearest Natura sites are Moneen Mountain SAC (000054) c 300m distance to the south, south-east and south-west and the Inner Galway Bay SPA (004031) and Galway Bay Complex SAC (000268) both located c 500m distance to the north, north-east and north-west.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The third party appeal against the decision to grant permission has been made by Transport Infrastructure Ireland (TII).

The grounds includes:

- The proposed development relies on a direct access to the N67 at a location where a 100kph speed limit applies and in the opinion of TII is at variance with the provisions of official policy.
- The N67 national secondary road, is an important route in the west region with its function varying from an access route for goods and services, serving more peripheral communities, to that of an important tourist route supporting the local economy. The CDP identifies this stretch of road as being part of the Wild Atlantic Way.
- TII considers that the development would be at variance with official policy to preserve safety, the level of service and carrying capacity of national roads and to protect the public investment in such roads as outlined in the Spatial Planning and National Roads Guidelines for Planning Authorities (DoECLG, 2012) and would establish an undesirable precedent for further similar development.
- The grant of permission has the potential to compromise the safety and efficiency of the national road network and is at variance with the provisions of official policy.

National Policy

- The Spatial Planning and National Roads Guidelines for Planning Authorities (DoECLG, 2012) state in relation to lands adjoining national roads to which speed limits greater than 60kph apply, that the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant, Sec 2.5.
- TII considers that the provision of a new additional house accessing the N67, national secondary road, at the location concerned, regardless of the housing circumstances of the applicant, will inevitably bring about additional vehicular movements resulting in intensification of access onto and off the N67. This will arise from the day to day occupation, patterns of activity associated with same, and trips generated by other services, utilities, visitors, etc as well as the applicant. The proposal is considered to be at variance with the provisions of official policy.
- The DoECLG, Spatial Planning and National Roads Guidelines outline that the creation of new accesses to and the intensification of existing access to national roads give rise to the generation of additional turning movements that introduce additional safety risks to road users. The Road Safety Strategy 2013-2020, sets down a target of reducing the number of accesses onto national roads by 5% by 2020 to reduce the risk of serious injury and death on our national roads. TII considers that given the nature and character of the proposal the decision conflicts with this objective.

Local Development Plan Policy

- TII considers that the decision is inconsistent with the Clare CDP 2017 – 2023, in particular objective 8.4(a) to safeguard the motorway and national roads, and associated motorway and national road junctions, in line with national policy.
- TII acknowledges the need to accommodate and sustain rural communities and acknowledges that Section 2.6 of the DoECLG, Spatial Planning and National Roads Guidelines provide a mechanism whereby a less restrictive approach may be applied to the control of development accessing lightly trafficked sections of national secondary routes.

- In this regard TII successfully collaborated with the Council during the preparation of the Development Plan to agree a less restrictive approach to development accessing lightly trafficked sections of national secondary roads in ‘exceptional circumstances’ at the following locations:

- N67 Ballyvaughan to Lisdoonvarna,
- N67 short section between the junction with the R483 and the junction with the R484
- N67 Doonbeg to Kilkee,
- N67 Kilrush to Killimer.

The agreed provisions are included in Section 8.2.3.3 of the Development Plan.

- The subject application is located on a section of N67 between Ballyvaughan and Kinvarra in Co Galway and Clare County Council have not agreed any provisions for ‘exceptional circumstances’ for this section of national road for inclusion in the County Development Plan.

- The Board will note from a review of the adopted Development Plan that the Council have included a further provision relating to the use of existing accesses onto national secondary roads and provide that a less restrictive approach will be applied to existing accesses onto national secondary roads. It appears that the Council have assessed the subject application against this particular provision of the Plan.

- TII submitted observations to the Council during the course of consideration of the Development Plan and recommended against the adoption of the provisions relating to the use of existing accesses onto national secondary roads as such a provision was considered contrary to the provisions of official policy. Such a proposal also raises significant road safety concerns on highly trafficked, high speed national roads. TII’s records indicate that the Chief Executive Report recommended against adopting such provisions, however the Members incorporated the above into the adopted Plan. They enclose a copy of their observations on the preparation of the Development Plan.

- TII is of the opinion that no exceptional reason has been put forward by the applicant or the Council which would justify a departure from standard policy and road safety considerations in this instance.

Road Safety Considerations

- National roads account for less than 6% of the total length of public roads throughout the country, their significance in serving out economic and social transport needs is reflected in the fact that they carry almost 45% of all road traffic in Ireland and over 50% of those travelling by public transport. There is a critical need to protect, maintain and ensure the safety of this finite and critical network resource.
- The RSA's Provisional Review of Fatal Collisions, Jan 2018, highlights that as of 31st December 2017, there were 143 fatal collisions, which resulted in 158 fatalities on Irish roads. This represents 18% fewer collisions and 15% fewer deaths (-28) compared to provisional Garda data for the full year of 2016.
- The majority of these driver and motorcyclist fatalities occurred on roads with a speed limit of 80km/h roads or 100km/h which would include the national road network. Restricting direct access and intensification of use of direct access to the high speed national road network can contribute to a reduction in such collisions and fatalities.
- Official policy identifies that the creation of new accesses to and intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduces additional safety risks to road users. Therefore, from a road safety perspective, authorities must guard against a proliferation of roadside developments accessing national roads to which speed limits greater than 50-60kph apply, as part of the overall effort to reduce road fatalities and injuries.
- Controlling the extent of direct accesses to national roads at high speed locations, and turning movements associated with such accesses, is a critical element in meeting road safety objectives in accordance with the provisions of official policy and achieving the target of reducing the number of accesses onto national roads by 5% by 2020, in the RSA's Strategy.

Planning History and Precedence

- The Board will note the planning history of the subject site and the permission refused by Clare County Council for a similar development under planning register reference 16/244 for the applicant on this site, albeit with an alternative access proposal, citing access to the heavily trafficked national road at a point where the maximum speed limit applies and road safety considerations in the reasons for refusal.
- TII is of the opinion that the use of the existing agricultural field gate access does not offset the road safety concerns resulting from the provision of a new house directly accessing the national road at the location concerned. It is considered that the proposed development in conjunction with other development accessing the N67 at this location in the vicinity of the subject site, by itself and by the precedent that a grant of permission would create, would endanger public safety by reason of traffic hazard due to the additional traffic, including turning movements that would be generated onto the national route N67 at a point where a speed limit of 100kph applies and would interfere with the free-flow of traffic on the road. It is noted that there are a proliferation of existing residential sites directly accessing the N67 which are in proximity of the subject site, identified as omitted from the landholding, on the maps provided by the applicant.

Protecting Public Investment

- The Board will be aware of the priority to ensure adequate maintenance of the national road network in order to protect the value of previous investment. TII seeks to ensure that official national objectives are not undermined and that the anticipated benefits of the investment made in the national road network are not jeopardised. The Board will be aware of the National Strategic Outcome 2 of the National Planning Framework which includes the objective to maintain the strategic capacity and safety of the national roads network.
- It is also an investment priority of the NDP 2018-2027, to ensure that the extensive transport networks which have been greatly enhanced over the last two decades, are maintained to a high level to ensure quality levels of service, accessibility and connectivity to transport users.
- The granting of planning permission conflicts with the objective to safeguard the strategic function of the national road network and to safeguard the investment made

in the transport network to ensure quality levels of service, accessibility and connectivity to transport users.

- TII considers that the development as permitted would set an undesirable precedent for other similar development impacting on the strategic national road network.

Attached to the grounds are copies of correspondence from TII to Clare County Council in relation to the Draft Clare County Development Plan 2017-2023.

6.2. Applicant Response

6.2.1. The first party has responded to the grounds of appeal which includes:

- First party already lives in the area so any additional vehicular movements on or off proposed site will result in a reduction of the exact same number of movements elsewhere on this section of the N67.
- TII have no evidence to justify their statement that this is a lightly traffic agricultural field access. In addition to the large roadside property, this entrance also services an adjoining 40ac winterage which facilitates frequent animal, vehicular and machinery movements.
- TII give only token acknowledgement to the need to support rural communities. This local community needs support, given serious population decline. The school numbers have suffered over 50% decline and the local GAA club can scarcely field a team.
- TII acknowledge the County Development Plan provision relating to the use of a less restrictive approach to the use of existing accesses but consider that no exceptional circumstances have been put forward. The first party has supplied the following information:
 - Need for housing has been demonstrated.
 - First party has been running the family farm for a number of years. He is leasing it, is the herd owner, and the family solicitor is in the process of transferring the farm to him.

- He has satisfied the planning authority that there is no suitable alternative site. He has a chronic progressive debilitating disease (MS) and needs to have family support nearby. This arrangement could be mutually beneficial in later years for his parents. He has been advised to avoid stress.
- Re planning history – the previous application proposed opening a new entrance. He didn't produce evidence of his housing need, that there wasn't a more suitable site on the land, or of his medical condition.
- Re proliferation of houses in the area, there are 8 sites directly accessing the N67 within a few hundred metres of the site. There was a village here in past times. One could argue that another one will make little difference. There are tens of thousands of houses directly on the Wild Atlantic Way. Most were there before the route existed. Those who have always lived on the route shouldn't be placed at a disadvantage.
- Re landholding – he has supplied maps of the land being transferred to him. These maps are up to date. The only houses that were ever on this farm were his grandparents (now his aunts) and his parents. If TII are implying that he could live with his parent's, he has 7 siblings, none with a house in this area.
- Re the investment in public transport network, he has been conditioned to pay €6,785 as an infrastructural condition.
- Re road safety, this is a concern for the third party. TII have ignored the safety risks associated with having a 100kph limit on what is in effect a narrow rural road with numerous corners and dangerous bends; and the 100kph limit on nearby Corkscrew Hill. The local community has continually raised the speed limit issue and cannot understand why TII spends time and resources on marginal issues while totally ignoring what is an issue of major public concern.
- Traffic safety has been dealt with by the planning authority and conditions attached.
- The planning permission was granted in accordance with the provisions of the CDP CH 8 pages 118-120.

- The Development Plan allows for a less restrictive approach to accesses onto national secondary roads for farmers wishing to build a house on family land, who demonstrate genuine housing need and with no suitable alternative site.
- TII are attempting to frustrate the democratic will of the elected members of Clare Co Council. They are adopting a crude fundamentalist approach, attempting to micro manage the smallest issue using bureaucracy and the enormous resources at their disposal, to deprive the third party of what he considers to be his rights. Their approach is in contrast to the more nuanced approach of the planning authority.

6.3. Planning Authority Response

6.3.1. The Planning Authority (PA) has responded to the grounds of appeal, including:

- Citing Section 8.2.3 of the CDP.
- Details of the process of transferring the farm to applicant, have been submitted.
- Applicant is farming the land.
- Applicant has a serious medical condition and a need to live close to the farm and family support.
- The PA has engaged with the applicant to find a more suitable site on the landholding, however, the remainder of the landholding is on the seaward side of the N67 where ground conditions, the N67, and visuals would be an issue.
- Having regard to S 8.2.3.1 of the CDP this can be viewed with a less restrictive approach, based on the use of the existing entrance, and will not result in the creation of a traffic hazard.

6.4. Board Correspondence

6.4.1. The Board wrote to: Fáilte Ireland and An Chomhairle Ealaíon, inviting observations on this appeal. No observations have been received.

7.0 **Assessment**

7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, environmental impact assessment, spatial planning and national roads policy, road safety, shellfish protection, and visual amenity, and the following assessment is dealt with under those headings.

7.2. **Appropriate Assessment**

7.3. The Board, as the competent authority, has obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects the project may have, either on its own or in combination with other plans and projects, on Natura 2000 sites, before making a decision on the proposed development.

7.4. **Screening**

7.5. The first exercise to be carried out by the Board is screening, in order to determine if the proposed development, individually or in combination with other plans or projects, is likely to have a significant effect on a European site or sites. If it cannot be excluded, on the basis of objective information that the proposed development will have a significant effect on a Natura site, either individually or in combination with other plans or projects in view of the sites' conservation objectives, it must be subject to appropriate assessment.

7.5.1. No Screening Report was provided with the application. The planning authority have made a screening determination that Appropriate Assessment is not required.

7.5.2. There are three Natura sites with potential to be impacted by the proposed development: Moneen Mountain SAC (000054) c 300m distance to the south, south-east and south-west and the Inner Galway Bay SPA (004031) and Galway Bay Complex SAC (000268) both located c 500m distance to the north, north-east and north-west.

7.5.3. The conservation objectives for Moneen Mountain SAC (000054) are to maintain or restore the favourable conservation status of habitats and species of community interest.

7.5.4. The features of interest are:

Turloughs [3180]*

Alpine and Boreal heaths [4060]

Juniperus communis formations on heaths or calcareous grasslands [5130]

Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]

Petrifying springs with tufa formation (Cratoneurion) [7220]

Limestone pavements [8240]*

Euphydryas aurinia (Marsh Fritillary) [1065]

Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]

* denotes a priority habitat.

7.5.5. Site specific conservation objectives have been defined for Galway Bay SPA, defining the favourable conservation condition by lists of attributes and targets which could be summarised as: maintaining or restoring the favourable conservation status of habitats and species of community interest.

7.5.6. The features of Interest are

Great Northern Diver (*Gavia immer*) [A003]

Cormorant (*Phalacrocorax carbo*) [A017]

Grey Heron (*Ardea cinerea*) [A028]

Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]

Wigeon (*Anas penelope*) [A050]

Teal (*Anas crecca*) [A052]

Shoveler (*Anas clypeata*) [A056]

Red-breasted Merganser (*Mergus serrator*) [A069]

Ringed Plover (*Charadrius hiaticula*) [A137]

Golden Plover (*Pluvialis apricaria*) [A140]

Lapwing (*Vanellus vanellus*) [A142]

Dunlin (*Calidris alpina*) [A149]

Bar-tailed Godwit (*Limosa lapponica*) [A157]

Curlew (*Numenius arquata*) [A160]

Redshank (*Tringa totanus*) [A162]
Turnstone (*Arenaria interpres*) [A169]
Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
Common Gull (*Larus canus*) [A182]
Sandwich Tern (*Sterna sandvicensis*) [A191]
Common Tern (*Sterna hirundo*) [A193]
Wetland and Waterbirds [A999]

7.5.7. Site specific conservation objectives have been defined for Galway Bay Complex SAC, defining the favourable conservation condition by lists of attributes and targets which could be summarised as: maintaining or restoring the favourable conservation status of habitats and species of community interest.

7.5.8. The features of Interest are

Mudflats and sandflats not covered by seawater at low tide [1140]
Coastal lagoons [1150]*
Large shallow inlets and bays [1160]
Reefs [1170]
Perennial vegetation of stony banks [1220]
Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]
Salicornia and other annuals colonising mud and sand [1310]
Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]
Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
Turloughs [3180]*
Juniperus communis formations on heaths or calcareous grasslands [5130]
Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210]
Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae* [7210]
Alkaline fens [7230]
Limestone pavements [8240]

Lutra lutra (Otter) [1355]

Phoca vitulina (Harbour Seal) [1365]

* indicates a priority habitat under the Habitats Directive

7.5.9. The proposed development is the construction of a dwellinghouse and garage served by a wastewater treatment system, the creation of a new entrance to the public road and ancillary site works. The polishing filter is to be located partially over ground to ensure a minimum of unsaturated soil over bedrock.

7.5.10. Karst limestone close to or at the surface of the ground is a feature of this area. The exposed limestone within this field, to the rear of the site, is associated with the nearby Moneen Mountain SAC. There is also exposed limestone on the opposite side of the public road. On-site wastewater treatment has the potential for adverse impact on groundwater. In my opinion, having regard to the proximity of the site to the Natura sites, which include water dependent species and habitats, the Board cannot conclude, from the information available, that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on these European sites and this is a reason to refuse permission.

7.6. Environmental Impact Assessment

7.6.1. The application was lodged on the 18th May 2017 and therefore the provisions of Directive 2014/52/EU on the effects of certain public and private projects on the environment (EIA Directive) apply. The proposed development is the erection of a single dwelling and therefore comes within class 10(b) of part 2 of schedule 5 in relation to development requiring environmental impact assessment; and is sub-threshold. Notwithstanding the small scale of the proposed development, the need for environmental impact assessment cannot be excluded at preliminary examination and a screening determination is required. In order for the Board to carry out a screening determination the legislation requires information to be provided by the developer for that purpose (Annex IIA of the Directive). In my opinion there are reasons for refusal in this case, including policy reasons, which are not directly associated with impact on the environment and if the Board is minded to refuse

permission I do not consider it appropriate to request information for the purposes of a screening determination.

7.7. Spatial Planning and National Roads Policy

- 7.7.1. The issue of spatial planning and national roads policy forms the substance of the third party appeal against the decision to grant permission, made by Transport Infrastructure Ireland (TII).

They state that the proposed development relies on a direct access to the N67 at a location where a 100kph speed limit applies, and in the opinion of TII is at variance with the provisions of official policy. The N67 national secondary road is an important route in the west region with its function varying from an access route for goods and services serving more peripheral communities to that of an important tourist route supporting the local economy. The CDP identifies this stretch of road as being part of the Wild Atlantic Way. TII consider that the development would be at variance with official policy to preserve safety, the level of service and carrying capacity of national roads and to protect the public investment in such roads as outlined in the Spatial Planning and National Roads Guidelines for Planning Authorities (DoECLG, 2012), and would establish an undesirable precedent for further similar development. In their view the grant of permission has the potential to compromise the safety and efficiency of the national road network and is at variance with the provisions of official policy. In this regard they cite national policy.

- 7.7.2. The Development Plan Policy and the development plan review process is also cited. They successfully collaborated with the Council to agree a less restrictive approach to development accessing lightly trafficked sections of national secondary roads in 'exceptional circumstances' at a number of locations. They consider that the decision is inconsistent with the Clare CDP 2017 – 2023, in particular objective 8.4(a) to safeguard the motorway and national roads, and associated motorway and national road junctions, in line with national policy. They refer to their submissions to Clare county Council in relation to the draft plan wherein they advised that exceptions in relation to existing accesses onto National Secondary Roads is at variance with official policy.

7.7.3. A significant policy difference is evident between the County Development Plan (8.2 of volume 1) and the Spatial Planning and National Roads Guidelines, in relation to 'exceptional circumstances' where consideration may be given to development accessing a national road. In addition to the categories which, by virtue of their national or regional strategic importance have been deemed, in consultation with TII, to be an exception to the general prohibition to development accessing these roads; or where, in consultation with TII, the road has been deemed to be a lightly-trafficked section of National Secondary Route where a less restrictive approach is to be applied, the Clare County Development Plan includes a category of exceptional circumstance under the heading 'existing access':

Existing Accesses onto National Secondary Roads

A less restrictive approach will be applied to existing accesses onto national secondary roads where a balance needs to be struck between the important transport function of such roads and the social and economic development of these areas. The Council will give consideration to developments utilising existing accesses onto national secondary roads for farmers and their sons and daughters who are actively engaged in farming the land, wishing to build a dwelling house for their own permanent residence on family land. It must be clearly demonstrated that there is a genuine need for the dwelling proposed and that there are no other alternative sites available with access off a regional or local road. The development shall fully comply with the objectives set out in Chapter 3 of this Plan- Urban and Rural Settlement Strategy and must also demonstrate that use of an existing entrance to serve the proposed development will not result in the creation of a traffic hazard.

7.7.4. The Spatial Planning and National Roads Guidelines for Planning Authorities (DoECLG, 2012) were issued under Section 28 of the Planning and Development Act, 2000 and are therefore guidelines to which Planning Authorities and An Bord Pleanála are required to have regard.

7.7.5. Section 2.5 of the Guidelines set out the required development plan policy on access to national roads. On lands joining national roads, to which the speed limit of greater than 60 kph applies, the Planning Authority will avoid the creation of additional access points from new development and the generation of increased traffic from existing accesses to a national road. This provision applies to all categories of

development including individual houses in rural areas regardless of the housing circumstances of the applicant.

- 7.7.6. Section 2.6 sets out exceptional circumstances, either in relation to developments of national and regional strategic importance or in relation to lightly-trafficked sections of National Secondary Routes, where a less restrictive approach to be applied can be set out in the plan, having consulted and taken on board the advice of the NRA as part of the process of reviewing or varying the development plan.
- 7.7.7. The category of exemption to the general prohibition on development accessing National Roads set out in the Clare County Development Plan under the heading 'Existing Accesses onto National Secondary Roads' is not provided for in the guidelines. The guidelines must take precedence.
- 7.7.8. Conflict with national policy to control development accessing national roads is a reason to refuse permission.

7.8. Road Safety

- 7.8.1. The grounds of appeal states that controlling the extent of direct accesses to national roads at high speed locations, and turning movements associated with such accesses, is a critical element in meeting road safety objectives.
- 7.8.2. As pointed out by the third party, this stretch of road is identified in the Clare County Development Plan as being part of the Wild Atlantic Way, as well as being an important route in the west region as an access route for goods and services serving more peripheral communities, is an important tourist route supporting the local economy.
- 7.8.3. The RSA website refers to Garda - Summer Enforcement in 2017; stating that the summer months are higher risk. The summer months are typically high risk periods due to a number of factors: for example, there are many people travelling around Ireland, including visitors to Ireland, who are in unfamiliar surroundings; the schools will be off and more children will be out playing on the roads; there will be more agricultural vehicles, cyclists and motorcycles sharing the roads with other road users; all of these factors, and more, increase the risk for all road users during the summer months. This road is likely to significantly busier in the summer months

including people travelling around Ireland and visitors to Ireland, unfamiliar with the road/Irish roads.

- 7.8.4. Sightlines are deficient at the site entrance. The applicant has submitted plans suggesting how appropriate sight lines could be achieved. I am not satisfied that the indicated sightlines could be achieved. In the drawing submitted the vertical sight line is indicated by a line which, in places, is c 4m above road level. As can be seen from the drawing and from pictures attached to this report, taken on the date of inspection, the main problem along this stretch of road is the vertical alignment. To the west of the entrance there is a dip in the road that is sufficient to hide vehicles coming from this direction, and to impede the view of the access from drivers. I fail to see how adequate sight distances can be provided in the manner proposed. On the date of inspection, high speeds were observed on this road, which is a narrow road without hard shoulders.
- 7.8.5. I note the proposal to improve horizontal sightlines, which appears to involve reducing the stone roadside boundary and potentially ground level, along the road. Having regard to the extent of work which would be involved the level of detail provided is unsatisfactory. It appears likely that the visual impact of these works would be considerable. In this regard on the date of inspection, elsewhere along this route, protest signs were noted, protesting proposals for road improvements which would involve the removal of stone walls, a notable feature of the area.
- 7.8.6. I consider that the increase in vehicular use of this access to the N67 constitutes a traffic hazard and that this is a reason for refusal.
- 7.8.7. It is worth noting that the special exemption in the Development Plan previously referred to, for development utilising an existing entrance, is conditional on the proposed development not resulting in a traffic hazard.

7.9. Shellfish Protection

- 7.9.1. Shellfish Protection did not arise as an issue during the consideration of the application and has not been raised in the grounds of appeal, therefore it is a new issue.
- 7.9.2. The subject site is within the Ballyvaughan Poul-na-clough shellfish protection area. The document Shellfish Pollution Reduction Programme, Characterisation Report

Number 8, Ballyvaughan Poulnaclogh Bay Shellfish Area, County Clare identifies the area within which the subject site is located as having extreme risk potential, to the risk of pathogens and phosphorus from onsite wastewater treatment system (OSWTS) reaching groundwaters. It is an area with very high risk potential in relation to pathogens and phosphorus from OSWTS reaching surface waters. In my opinion the risk to Ballyvaughan Poulnaclogh shellfish protection area arising from the use of an onsite wastewater treatment system is a reason to refuse permission. In light of the fact that this is a new issue, which would require affording the first party an opportunity to make a response, the Board may consider omitting this reason, having regard to other refusal reasons.

7.10. Visual Amenity

- 7.10.1. The proposed development is located on a designated scenic route, which is part of the tourism product, the Wild Atlantic Way. It is located within a designated heritage landscape where it would lie between the indented coastal fringe and an area of iconic Burren Landscape of rounded hills of exposed karst limestone part of Moneen Mountain. The site lies at the interface of landscape character areas designated in the CDP as Coastal Farmlands and Islands (landscape area number 2) and Limestone Uplands (landscape area number 17). The very high quality of the landscape is part of the reason for the designation of the adjoining road as a scenic route and part of the reason for the development of the Wild Atlantic Way.
- 7.10.2. The proposed development would obscure views from the road of the exposed rounded hill of karst limestone and would intervene between these uplands and the nearby scenic coastline. It would also involve significant and unspecified works to road boundaries. The proposed development would be extremely injurious to the visual amenities of the area, which is a reason to refuse permission.

7.11. Other

- 7.11.1. The issues of precedence and the need to protect the public investment in national roads are also made by the third party in the appeal.

8.0 Recommendation

- 8.1. In light of the foregoing assessment I recommend that planning permission for the proposed development be refused based on the reasons and considerations set out below.

9.0 Reasons and Considerations

1 On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site Nos. 004031, 000268, 000054, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

2 The proposed development would endanger public safety by reason of traffic hazard because the site is located alongside a narrow and poorly aligned section of the National Primary Road N67 at a point where a speed limit of 100kph applies and the additional traffic turning movements to which the proposed development would give rise would interfere with the safety and free flow of traffic on the road.

3 The proposed development, by itself or by the precedent which the grant of permission for it would set for other relevant development, would adversely affect the use of the national road by traffic and be contrary to national policy to protect the capacity of national routes.

4 The site is located along a designated scenic route, which is part of the Wild Atlantic Way touring route, in a designated heritage landscape, where it lies between an indented coastal fringe and iconic Burren Landscape and the erection of a dwelling in this exposed location would be extremely injurious to the visual amenities of the area.

Planning Inspector

25 September 2018

Appendices

- Appendix 1 Map and Photographs
- Appendix 2 Copy extracts from Clare County Development Plan 2017 – 2023
- Appendix 3 Copy extracts from Spatial Planning and National Roads Guidelines for Planning Authorities
- Appendix 4 Copy extracts from National Planning Framework
- Appendix 5 Site Synopsis for Moneen Mountain SAC (site code 00054)
- Appendix 6 Site Synopsis for Galway Bay Complex SAC (site code 000268)
- Appendix 7 Site Synopsis for Inner Galway Bay SPA (site code 000054)
- Appendix 8 Shellfish Pollution Reduction Programme, Characterisation Report Ballyvaughan Poulnaclogh Bay Shellfish Area, DHPCLG