



An
Bord
Pleanála

Inspector's Report

ABP-308125-20

Development	Construction of a house with attached garage.
Location	Clarisford, Killaloe , Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	20118
Applicant(s)	Colin Varley
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Colin Varley
Observer(s)	None
Date of Site Inspection	29 th December 2020
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.21ha is located within the settlement of Killaloe, to the south of the town centre between St Anne's School across the road to the west and the canal and River Shannon along the rear boundary to the east. The site forms part of the garden of an existing detached dwelling in an area that was formerly used as a tennis court. It was observed on day of site inspection that the existing house is being demolished. The appeal site is overgrown with a hedgerow defining the roadside boundary. There is an existing single storey dwelling house that fronts directly onto the public road together with the Lakeshore Marina residential development located immediately to the north of the appeal site. To the south the area is characterised by low density linear detached dwellings on individual sites.
- 1.2. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. An application for planning permission was submitted to Clare County Council on the **20th February 2020** seeking permission (a) to construct a new dwelling house (230.3sqm) with attached garage (53.5sqm), (b) provision of a new site entrance, (c) installation of an advanced wastewater treatment system and (d) all other associated wite works. I note from the application form that the applicant is the owner of the site and that the proposed dwelling is "for letting".
- 2.2. The application was accompanied by the following:
- Site Assessment Report
 - Application Form for Exemption Certificate under Part V
- 2.3. **Further information** was submitted on the **3rd July 2020** comprising the following:
- Appropriate Assessment Screening Report & Natura Impact Assessment
 - Further details and amendment proposals in relation to wastewater treatment and percolation trenches on the site together with a letter from Irish Water stating that *a wastewater connection cannot be facilitated at this time as the Ballina*

Wastewater Treatment Plant is currently at capacity and that the proposal for onsite wastewater treatment is appropriate.

- Details in relation to proposed boundary treatments
- Revised site layout plan and a contiguous elevation drawing
- Revised public notices referring to the submission of the NIS

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. Clare County Council issued notification of decision to refuse permission for a single reason relating to capacity constraints in the public sewerage system as follows:

The subject site is located on existing zoned lands within the settlement boundary of Killaloe. Notwithstanding the current capacity constraints within the existing public sewerage system, it is considered that the proposed development of a house to be served by means of on-site wastewater treatment would set an undesirable precedent for development of individual treatment systems within the settlement boundary of Killaloe, and taken in conjunction with the level of existing development in the vicinity would therefore result in a risk of pollution and would be prejudicial to public health. Furthermore, it is considered that development of the site would be premature by reference to the existing deficiency in the provision of sewerage facilities in Killaloe and the period within which this constraint may reasonably be expected to cease. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- The Case Planner in their **first report** sought further information in relation to (1) the submission of a Screening for AA and if necessary a NIS, (2) Irish Water Pre-Connection Enquiry and revised design for the proposed soil polishing filter on site, (3) contiguous elevation drawings and (4) proposed boundary treatment /

landscaping along the northern and southern boundary. **Further information** was requested on the **3rd April 2020**.

- The Case Planner in their **second report** and having considered the further information recommended that permission be granted subject to 11 no generally standard conditions including a requirement that the proposed wastewater treatment system and percolation area / polishing filter comply with the Code of Practise for Wastewater Treatment and Disposal Systems serving Single Houses (EPA 2009).
- There is a **further report** on file from the A/Sen Executive Planner outlining concern in relation to the proposal to install an onsite wastewater treatment system on zoned lands within the development boundary of Killaloe and the report of Irish Water with respect to capacity issues in the existing wastewater treatment plant. Recommended that permission be refused for a single reason relating to the development being premature by reference to the existing deficiency in the provision of sewerage facilities in Killaloe and the period within which this constraint may reasonably be expected to cease.
- The notification of decision to **refuse permission** issued by Clare County Council reflects this refusal recommendation.

3.2.2. Other Technical Reports

- **Environment Section** – Requested further information in relation to the provision of a revised design of soil polishing filter whereby the invert percolation trenches are at ground level.

3.3. Prescribed Bodies

3.3.1. **Development Application Unit, Department of Culture, Heritage and the Gaeltacht** – Screening for Appropriate Assessment required.

3.3.2. **Irish Water** – No stated objection

3.4. Third Party Observations

3.4.1. None

4.0 Planning History

4.1. There is no evidence of any previous appeal on this site.

4.2. There was a previous application of which the appeal site formed a part that may be summarised as follows:

- **Reg Ref P08-1778** – Planning permission was granted subject to 10 no conditions to Colin Varley in 2009 for the demolition of an existing dwelling (236sqm) and the construction of a large dwelling house (900sqm), garage, entrance, and all associated works. The development also included a mechanical aeration plant and soil polishing filter. The stated area of the site was 0.66 ha and the red line boundary included the appeal site. It is also noted that the house was to be a permanent place of residence for the applicant.

4.3. There was a recent application on lands adjoining the appeal site to the south summarised as follows. These lands formed part of Reg Ref P08-1778 above.

- **Reg Ref P20-119** – Planning permission was granted subject to 11 no conditions to Colin Varley to (a) demolish existing dwelling house, detached garage and detached rear garden room, (b) construct a new dwelling house (489.5sqm) and new detached rear garden room (26sqm), (c) installation of an advanced wastewater treatment system, and (d) all other associated site works all within site boundaries. This is a reduced site area of 0.43ha than that previously permitted above. It is also noted that the house is to be a permanent place of residence for the applicant.

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative plan for this area is the **Clare County Development Plan 2017 – 2023 Killaloe Municipal District**.

5.1.2. The site is located within an area zoned Z2 **“Existing Residential”** where the objective is *to conserve and enhance the quality and the 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 will also provide for small-scale home-based employment uses where the primary residential use would be maintained.

5.2. Natural Heritage Designations

5.2.1. The site is not located within a designated Natura 2000 site. It is noted that the Lower River Shannon SAC (Site Code 002165) is 30m to the east of the site.

5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The first party appeal has been prepared and submitted by the applicant and may be summarised as follows:

- The NIR confirmed at para 4.5.3.2 that the proposed new wastewater treatment system, complete with soil polishing filter will comply with the current EPA (2009) Code of Practise for Wastewater Treatment and Disposal for Single House. The report predicted no impacts to the surface or ground water quality in that regard.
- It is not accepted that the proposed WWTS will set an undesirable precedent. Submitted that there is already precedent approved developments of individual treatment systems on individual sites, for single dwellings within the town boundary.
- Requested that the decision to refuse is overturned on the grounds that the reason provided is contradictory to the advice of both Irish Water and the professional opinions provided within the planning application.

- It is understood that the sewerage facilities serving Killaloe are to be upgraded within the next 4 years and a connection to the mains can be facilitated at that stage. In the absence of the decision being overturned it is requested that permission be granted subject to a condition that the proposed on-site treatment system would be decommissioned once a connection to the municipal sewer becomes available. Such an approach is preferable to what is an effective embargo on small scale development where adequate temporary wastewater solutions are proposed.

6.1.2. The appeal was accompanied by a copy of the further formation comprising a letter from Irish Water, Site Suitability Report and revised soil polishing filter on site.

6.2. **Planning Authority Response**

6.2.1. Clare County Council in their response to the first party appeal submitted the following as summarised:

- The proposal was assessed in conjunction also with the adjoining application to the south where permission was granted under Reg Ref 20-119 which was effectively for a replacement dwelling
- The planning authority in granting permission for 20-119 had regard to the existing residential use established on site and the fact that there was an existing, albeit old septic tank system on site. Regard was also had to the planning history of the site and the permission as granted under Reg Ref 08/1778
- It is not considered that the provision of additional on-site systems would be in the interest of the orderly development of the area and until the deficiencies in the public sewer are addressed, the proposal is considered to be premature.

6.3. **Observations**

6.3.1. None

6.4. **Further Responses**

6.4.1. None

7.0 **Assessment**

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Wastewater Treatment
- Traffic Impact
- Appropriate Assessment
- Other Issues

7.2. **Principle**

7.2.1. The appeal site is wholly contained within an area zoned “Existing Residential” where the objective is to *allow for small-scale infill development which is appropriate to the character and pattern of development in the immediate area*. Accordingly, I am satisfied that the principle of a new house at this location is acceptable.

7.2.2. The proposed layout, scale and design has been well considered and has had regard to its residential context. I am satisfied that to permit this scheme would not detract from the visual amenities or character of the area. Further I am satisfied that the development will not detract from the residential amenities of adjoining properties.

7.3. **Wastewater Treatment**

7.3.1. Clare County Council refused permission on the grounds the proposed on-site wastewater treatment would set an undesirable precedent for the development of individual treatment systems within the settlement boundary of Killaloe. It is documented that there are deficiencies in the capacity of the sewer in Killaloe and therefore the existing public sewerage system does not have sufficient capacity to facilitate a connection at the current time.

7.3.2. I note the applicant’s proposal to install a wastewater treatment system as a short-term measure until capacity becomes available. I further note the Site Suitability Report together with the revised design for the proposed soil polishing filter as

requested by Clare County Council. The report from Irish Water confirming that the proposed onsite wastewater treatment system is appropriate in these circumstances is also noted.

- 7.3.3. The site is located on existing zoned lands within the settlement boundary of Killaloe and notwithstanding the proposed installation of an onsite wastewater treatment system I agree with the Planning Authority that the development of the site would be premature by reference to the existing deficiency in the provision of sewerage facilities in Killaloe and the period within which this constraint may reasonably be expected to cease. It is further considered that the proposed development of a house to be served by means of on-site wastewater treatment would set an undesirable precedent for development of individual treatment systems within the settlement boundary of Killaloe and would not be in the interest of the orderly and sustainable development of the area. Refusal is recommended.

7.4. Traffic Impact

- 7.4.1. In terms of traffic impact, it is proposed to create a new entrance from the adjoining road (cul de sac) to serve the development. As observed on day of site inspection the road site boundary comprises a tall, dense evergreen hedge that is tight to the road edge thus restricting sightlines. It is recommended that should the Board be minded to grant permission that a condition be attached removing this hedge and setting the road side boundary back from the road in order to achieve adequate sight lines. Any such condition should also require that no trees or hedgerow can be taken away during the bird nesting season unless a license is obtained from the Department in line with the mitigation measures set out in the NIS.
- 7.4.2. This recommendation taken together with the location of the scheme I am satisfied that that the vehicular movements generated by the proposed development would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area.

7.5. Appropriate Assessment

7.5.1. The application area does not extend into any European site and there are no proposals for works to the existing jetty or slipway. The site is c22m from the Lower River Shannon SAC.

7.5.2. Stage 1 Screening for Appropriate Assessment

7.5.3. The application included an Appropriate Assessment Screening & Natura Impact Report to evaluate the potential impacts(s) of the proposed development on European Sites located within 15km radius. While 15km is not a statutory requirement I am satisfied that it is a reasonable parameter and that the sites identified in Stage 1 of the AA are acceptable. The appeal site is not located within a designated Natura 2000 site. However, the Lower River Shannon SAC is c22m to the east of the appeal site. This site together with other sites considered relevant to this appeal site are set out below:

Code	Site Name	Distance	Screening Conclusion
002165	Lower River Shannon SAC	22m East	Screened in due to the close proximity of the site to the south waste boundary of the appeal site
002312	Slieve Bernagh Bog SAC	3.6km North West	Screened out. No hydrological impact and distance is sufficient for no impacts due to works
001013	Glenomra Wood SAC	10.1km South West	Screened out. No hydrological impact and distance is sufficient for no impacts due to works
001197	Keeper Hill SCA	11.7km South East	Screened out. No hydrological impact and distance is sufficient for no impacts due to works

002258	Silvermines Mountains West SAC	9km South East - East	Screened out. No hydrological impact and distance is sufficient for no impacts due to works
000939	Silvermines Mountains SAC	14.1km South East	Screened out. No hydrological impact and distance is sufficient for no impacts due to works
004058	Lough Derg (Shannon) SPA	1.9km North, North West, North East	Screened out. No hydrological impact and distance is sufficient for no impacts due to works
004165	Slievefelim to Silvermines Mountains SPA	8.8km South East	Screened out. No hydrological impact and distance is sufficient for no impacts due to works
004168	Slieve Aughty Mountains SPA	1.4km North, North West, North East	Screened out. No hydrological impact and distance is sufficient for no impacts due to works

7.5.4. As documented above, with the exception of Lower River Shannon SAC there are no hydrological connections with the other 8 no Natura 2000 sites listed above and are therefore screened out from further consideration. The next closest (Lough Derg SPA) is located upstream of the site and will not be affected hydrologically due to ground and surface water flow.

7.5.5. The Lower River Shannon SAC is a very large site that stretches along the Shannon Valley from Killaloe in Co Clare to Loop Head / Kerry Head, a distance of some 120km. The conservation objective for the site is to maintain favourable conservation status of the Annex I habitats and the Annex II species for which the Lower River Shannon SAC

has been selected. Features of interest and the likelihood of occurrence for the Lower River Shannon SAC are set out as follows:

Qualifying Interest	Potential to occur within 10m of the site along or within the River Shannon	Mitigation Required
Sandbanks which are slightly covered by sea water all the time	Screened out, outside area of interest	No
Estuaries	Screened out, outside area of interest	No
Mudflats and sandflats not covered by seawater at low tide	Screened out, outside area of interest	No
Coastal lagoons	Screened out, outside area of interest	No
Large shallow inlets and bays	Screened out, outside area of interest	No
Reefs	Screened out, outside area of interest	No
Perennial vegetation of stony banks	Screened out, outside area of interest	No
Vegetated sea cliffs at the Atlantic and Baltic Coasts	Screened out, outside area of interest	No
Salicornia and other annuals colonising mud and sand	Screened out, outside area of interest	No
Atlantic salt meadows	Screened out, outside area of interest	No

Mediterranean salt meadows	Screened out, outside area of interest	No
Water courses of plain to montane levels with the Ranunculin fluitantis and Callitricho-Batrachion vegetation	Screened in (water pollution, invasive species)	Yes
Molina meadows on calcareous, peaty or clayey-silt-laden soils	Screened out, outside area of interest	No
Alluvial forests with Alnus glutinosa and Fraxinus excelsior	Woodland stands may occur in the general vicinity	Yes
Margaritifera Margaritifera	Screened out, outside area of interest	No
Sea Lamprey	Screened in (water pollution)	Yes
Brook Lamprey	Screened in (water pollution)	Yes
River Lamprey	Screened in (water pollution)	Yes
Salmon	Screened in (water pollution)	Yes
Common Bottlenose Dolphin	Screened out, outside area of interest	No
Otter	Screened in (water pollution) and disturbance	Yes

7.5.6. The potential for impact on the features of interest and conservation objectives of the Lower River Shannon SAC are considered below:

- There will be no direct habitat loss within the Lower River Shannon SAC. Impacts arising from habitat loss / alteration are screened out.
- During construction there is potential for temporary noise disturbance to Otter. Disturbance / displacement impacts are screened in.

- Habitat fragmentation of qualifying habitats will not arise and is therefore screened out.
- It is not expected that the proposed works will cause any reduction in the baseline population of any qualifying species and is therefore screened out.
- There is potential risk to water quality during the construction phase of the proposed works as silt and harmful substances become entrained in surface water run-off and enter the drainage channels to Lough Derg via surface water run-off. Deteriorating water quality resulting from contamination events could have negative impacts on the qualifying interests. Likewise, groundwater may be impacted during the operational phase if the WWTS is not to EPA specification. The contamination of water quality is screened in.
- There is potential for invasive species seedlings and seeds being introduced via the construction machinery in the absence of mitigation measures. The introduction / spread of invasive species is screened in.

7.5.7. The screening report concluded that the Lower River Shannon SAC, due to its proximity to the site, could potentially be impacted by a number of factors during construction and operation of the proposed works. Further consideration is required. A Natural Impact Statement was therefore required in order to assess the potential impacts.

7.5.8. Stage 2 Appropriate Assessment

7.5.9. The Screening process above has examined the potential for the proposed development to cause adverse effects on Natura 2000 European Sites and qualifying features of interest. A number of qualifying interests have been identified which require to be brought forward for further consideration due to potential for adverse effects as a result of the proposed development in the absence of appropriate mitigation measures.

7.5.10. The likely significant effects on the designated sites from the proposed works are as follows:

- Introduction and facilitated spread of invasive species e.g via construction materials or machinery
- Pollution of Lough Derg (Lower River Shannon SAC) during the construction and operational phase

- Disturbance to Annex II species of Lower River Shannon SAC during the construction phase i.e. Otter

7.5.11. As a result of these likely significant effects a series of mitigation measures are proposed inter alia as follows:

- No trees or hedgerow can be taken away (if required for sight lines) during the bird nesting season unless a license is obtained from the Department.
- Future planting should use native species and varieties
- The intended construction methodology shall contain measure for avoiding the introduction and spread of non-native invasive species and will follow best practise guidance documents
- Water pollution prevention measures are to be implemented during construction and the specification of WWTS used is to EPA guidelines with annual maintenance checks carried out
- Pre-works, a silt fence and / or a trench with earthen bund should be erected approx. 10m in from the waters edge to collect all run off. This silt fence should be maintained and only taken down when works are completed and drainage to soakways are installed.
- No further groundworks should take place within 10m of the boundaries adjacent to Lough Derg
- Inland Fisheries Ireland Guidelines (2016) will be followed by the contractor. Release of suspended solids will be kept to a minimum. Measures will be put in place to ensure that suspended solids in any runoff from the construction area, machinery access routes or any other land-based source does not exceed 25mg/l. Further environmental protection measures are listed in Section 4.5.3.1 of the NIA.

7.5.12. With regard to otters it is considered that any residing in the vicinity of the site may be habituated to village noise associated with Killaloe as there are several houses in a ribbon development either side of the site. In addition, the proposed construction phase will take place during normal daytime hours and as the otter is a crepuscular (species that are primarily active at dawn and dusk) it should be unaffected in this respect. Noise disturbance to features of interest of the Lower River Shannon SAC is mitigated with best practise daytime noise limits and normal day time working hours. Detailed noise controls are set out in Section 4.5.4 of the NIS.

- 7.5.13. During the operational phase the installation of a proposed new waste water treatment system, complete with soil polishing filter will comply with the current EPA (2009) Code of Practise for Waste Water Treatment and Disposal Systems for Single Houses and be serviced annually. Drinking water will be via a new connection to the public mains. Clean water run-off e.g rain water will be directed to a new soakpit. There are no predicted impacts to surface or ground water quality during the operational phase.
- 7.5.14. With regard to in-combination effects of plans and projects given the small scale of the works and given that the dwelling would be alongside another dwelling in a ribbon development, on a site of low-moderate biodiversity value habitat containing common species (with potential to be enhanced), then provided mitigation measures are in place, no cumulative impacts are predicted.
- 7.5.15. I am satisfied that an examination of the potential impacts has been analysed and evaluated using the best scientific knowledge. Significant effects on Natura 2000 sites were identified. Where potential adverse effects were identified, key design features are prescribed to remove risks to the integrity of the European sites. I am satisfied based on the information available that if the key design features are undertaken, maintained and monitored as detailed in the NIS, adverse effects on the integrity of Natura 2000 sites will be avoided.
- 7.5.16. Accordingly, I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Lower River Shannon SAC or any other European site, in view of the site's Conservation Objectives.

7.6. **Other Issues**

- 7.6.1. **Development Contribution** – I refer to the Clare County Council Development Contribution Scheme 2017-2023. Section D - Reductions & Exemptions is not applicable in this case. It is recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

7.6.2. **Subdivision** - I note from the application form that the applicant is the owner of the site and that the proposed dwelling is “for letting”. However, as pointed out by the Case Planner the internal layout may be conducive to use as two separate units. I agree with the Case Planner that any such sub-division must be the subject of a further application. I am satisfied that should the Board be minded to grant permission that this matter may be dealt with by way of condition.

7.6.3. **Riverbank Lighting** – I note from the report of the Development Application Unit, Department of Culture, Heritage and the Gaeltacht that the Council should ensure that the hedgerow, riverbank and river are not illuminated by the development ensuring the commuting local mammal and bird species around the site. This recommendation is in line with the mitigation measures set out in the NIS. While there are no works proposed proximate to the riverbank I agree with the precautionary approach and recommended that should the Board be minded to grant permission that a condition to this effect be attached.

8.0 Recommendation

8.1.1. I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be **REFUSED** for the following reasons and considerations.

9.0 Reasons and Considerations

- 1) The site is located on existing zoned lands within the settlement boundary of Killaloe and where the Ballina wastewater treatment plant is currently at capacity. It is considered that development of the site would be premature by reference to the existing deficiency in the provision of sewerage facilities in Killaloe and the period within which this constraint may reasonably be expected to cease. It is further considered that the proposed development of a house to be served by means of on-site wastewater treatment would set an undesirable precedent for development of individual treatment systems within the settlement boundary of Killaloe, and taken in conjunction with the level of existing development in the vicinity would therefore result in a risk of pollution and would be prejudicial to public

health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Mary Crowley

Senior Planning Inspector

26th January 2021