



An
Bord
Pleanála

Inspector's Report

ABP-308829-20

Development	Permission to construct a dwelling house and garage.
Location	Moarhaun, Kilnamona, Co Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	20429
Applicant(s)	Cillian Clancy
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Antony Travers
Observer(s)	An Taisce
Date of Site Inspection	2 nd March 2021
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.332 ha is located in a rural area to the north west of Ennis and c1.7km north west of Fountain Cross and fronts on to a narrow local road which for the most part carries local traffic only. The site is an elevated greenfield site that forms part of the north eastern corner of a larger agricultural field. Views are available towards the site from the south with views from the road to the north confined to screened passing views. The northern and eastern boundaries of the site comprise of mature field / road boundaries and the western and southern boundaries are undefined. Recorded monument CL033-019 “Ringfort” is located to the south east of the site on adjacent lands. The general area is characterised by rural linear development, agricultural land and associated buildings.
- 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. Planning permission was submitted on the **30th June 2020** for the construction of a storey and a half dwelling house(267.1sqm) and garage (42.55sqm), with effluent treatment system and new entrance from the public road with all associated site works. Infrastructure services are as follows:
- Water Supply – Existing Inagh Kilmaley GWS
 - Wastewater Treatment – New packaged WWTS.
 - Surface Water disposal – Soakpit
- 2.2. The application was accompanied by a cover letter setting out the applicants “local need” and a Site Characterisation Report.
- 2.3. **Further information** was submitted on **9th October 2020** and summarised as follows:
- **Visual Amenities** – New design submitted incorporating traditional features and revised orientation to minimise impact. To accommodate the orientation of the dwelling the size and type of percolation area was changed to a low pressure

system. Revised Site Characterisation Report with proposal to install a polishing filter submitted.

- **Traffic Safety** – Revised layout extending the site 14m to the south west to allow for the proposed entrance position to be moved to the position of the existing agricultural entrance. Letter of consent from the landowner attached.
- **Archaeological Heritage** – Revised layout shows the location of the proposed soak-pit serving the garage . A stock proof fence to be constructed along the south east and south west boundaries of the site, with native species hedge planted on a 1 meter high earthen mound inside the boundary.
- **Water Supply** – Letter from Inagh / Kilmaley GWS attached

2.4. Revised public notices were submitted on **16th October 2020**.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Clare County Council issued notification of decision to grant permission subject to 11 no conditions summarised as follows:

1)	Compliance with plans and particulars submitted on 30 th June 2020 and further information received on 9 th October 2020
2)	Dwelling shall be first occupied as the place of permanent residence by the applicant for a minimum of 7 years
3)	Development Contribution
4)	Finished floor levels of the house and garage shall be as specified in the site layout plan submitted 9 th October 2020
5)	External finish
6)	Surface water
7)	Public service cables shall be placed underground
8)	Road entrance and boundary
9)	Wastewater Treatment System and polishing filter

10)	Garage shall not be used for human habitation or commercial activity
11)	Landscaping in accordance with site layout plan submitted 9 th October 2020

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** in their first report stated that the mapping database indicates that the lands from which the site would be annexed are the subject of a sterilisation agreement associated with planning permission P02-791 and that this was time limited to 5 years. Having considered the proposed scheme it was recommended that further information be sought in relation to visual amenities, traffic safety, archaeological heritage and water supply. Further information was requested on **14th August 2020**. Revised public notices were sought on the **13th October 2020**.
- The **Case Planner** having considered the further information recommended that planning permission be granted subject to conditions. The notification of decision to grant permission issued by Clare County Council reflects this recommendation.

3.2.2. Other Technical Reports

3.2.3. The **Area Engineer** having considered the application stated that *the position of proposed entrance as indicated on the drawings does not allow for adequate sight lines to west given the vertical geometry of the road and that consideration should be given to relocating the proposed entrance, possibly towards the existing agricultural entrance approximately 30m to the west.*

3.2.4. The **Road Design Office** having considered the further information submitted the following comments:

- 1) *The access for the proposed development is off the L-4144. This road has a speed limit of 80km/h therefore the standards found in DN-GEO-03060 "Geometric Design of Junctions (priority junctions, direct accesses, roundabouts, grade separated and compact grade separated junctions) applies. Sightlines and sight stopping distances of 160m from a setback of 2.4m and an object and eye height of 1.05m are required to comply with the above-mentioned standards. Stated that this was not achieved as noted on their site visit on 27th October 2020.*

2) *The proposed development shall not interfere with any roadside drainage or cause any surface water flow out onto the public road, either during construction or thereafter.*

3.3. **Prescribed Bodies**

3.3.1. None

3.4. **Third Party Observations**

3.4.1. There is one observation recorded on the planning file from Anthony Travers (appellant in this case). The issues raised relate to traffic safety, proximity to national listed monument / ring fort, compliance with classification of a “local rural person”, impact on lesser horseshoe bat, irregularities in the planning application form and visual impact.

3.4.2. Following the submission of further information Anthony Travers submitted further observations relating to traffic safety, entrance junction design, horizontal and vertical sightlines, proximity to national monument, effect on local nature, incorrect / misleading information submitted in the application form, non-compliance with Building Regulations, visual impact and site location.

4.0 **Planning History**

4.1.1. There is no evidence of any previous planning application or appeal on this site.

5.0 **Policy Context**

5.1. **National Planning Framework – Project Ireland 2040 (DoHP&LG 2018)**

5.1.1. The **National Planning Framework – Project Ireland 2040 (NPF)** is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities,

towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.

5.1.2. In planning for the development of the countryside, the NPF acknowledges that there is a need to differentiate between demand for housing in areas under urban influence and elsewhere, as per the following objective:

5.1.3. **National Objective 19:** Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Sustainable Rural Housing Development Guidelines 2005

5.2.1. The Guidelines confirm development plans should identify the location and extent of rural area types as identified in the NSS (now superseded by the NPF). These include: (i) **rural areas under strong urban influence** (close to large cities and towns, rapidly rising population, pressure for housing and infrastructure); (ii) **stronger rural areas** (stable population levels within a well-developed town and village structure and in the wider rural area; strong agricultural economic base and relatively low level of individual housing development activity); (iii) **structurally weaker rural areas** (persistent and significant population decline and weaker economic structure); and, (iv) areas with clustered settlement patterns (generally associated with counties of the western seaboard).

5.2.2. Development Plans must tailor policies that respond to the different housing requirements of urban and rural communities and the varying characteristics of rural areas.

5.3. Development Plan

5.3.1. The operative plan for the area is the **Clare County Development Plan 2017 – 2023** (as varied). The site is located in a rural area that is designated as experiencing “**Strong Urban Pressure**” and it is therefore within the “**Areas of Special Control**” as per the Development Plan (Strong Urban Pressure; Map 3B: Areas of Special Control refers). It is the policy of the planning authority under **Objective 3.11** to permit single house development for permanent occupation by persons from the locality and/or working full or part time in rural areas, or who have exceptional health or family circumstances as follows:

5.3.2. **CDP3.11 Development Plan Objective: New Single Houses in the Countryside within the ‘Areas of Special Control’**. *It is an objective of the Development Plan:*

- a) *In the parts of the countryside within the ‘Areas of Special Control’ i.e.:*
 - *Areas under Strong Urban Pressure (See chapter 17);*
 - *Heritage Landscapes (See Chapter 13);*
 - *Sites accessed from Scenic Routes (See Chapter 13 and Appendix 5).*
- b) *To permit a new single house for the permanent occupation of an applicant who falls within one of the Categories A or B or C below and meets the necessary criteria.*

To ensure compliance with all relevant legislation as outlined in Objective CDP2.1 and have regard to the County Clare House Design Guide, in particular with respect to siting and boundary treatment.

Note: *Where the proposed site is accessed from a National route or certain Regional routes, the proposal must in addition to compliance with this objective, also be subject to compliance with objectives CDP8.4 and 8.5 as set out in Chapter 8.*

Category A – Local Rural Person Criteria

The following 3 criteria arise in assessing applicants under this category:

- 1) *The applicant must come within the definition of a ‘Local Rural Person’*
and
- 2) *The proposed site must be situated within their ‘Local Rural Area’*
and

3) *3The applicant must have a 'Local Rural Housing Need'*

Definitions

A 'Local Rural Person' (applicant) is a person who was born within the local rural area, or who is living or has lived permanently in the local rural area for a substantial period of their life at any stage(s) prior to making the planning application. It therefore includes returning emigrants seeking a permanent home in their local rural area who meet this definition. It also includes persons who were born or lived in a rural area for substantial periods of their lives but that area is now within a settlement boundary/zoned land.

A 'Local Rural Person' can also include a person who has links to the rural area by virtue of being an established rural landowner. This is defined as a person and/or their son or daughter, or sibling, who has owned a landholding in a rural area prior to 1999 and who wishes to build on that land. It also provides for beneficiaries under the Succession Act.

The 'Local Rural Area', for the purpose of this objective, is defined as the rural area generally within a 10km radius of where the applicant was born, living or has lived (for a substantial period of their life as per 'local rural person'). Where the proposed site is of a greater distance but the applicant can demonstrate ties with the area of the proposed site e.g. family, landownership or being within the same parish as the applicant is from, then these cases will each be considered on their individual merits.

Note: *The rural area includes the countryside, designated clusters and small villages but excludes those settlements listed within the County Settlement Hierarchy which are urban settlements i.e. Ennis, Shannon, Service Towns, Small Towns and Large Villages.*

An applicant who satisfies a 'Local Rural Housing Need' is defined as a person who does not or has not ever owned a house in the surrounding rural area (except in exceptional circumstances) and has the need for a dwelling for their own permanent occupation.

OR

Category B – Persons Working Full Time or Part-time in Rural Areas Criteria

Such persons shall be defined as persons who by the nature of their work have a functional need to reside permanently in the rural area close to their place of work. Such circumstances will normally encompass persons involved in full-time farming, horticulture, forestry or marine-related activities as well as others who can demonstrate a genuine need, because of their occupation, to live in the rural area. Similar part-time occupations can also be considered where it can be demonstrated that it is the predominant occupation. In each case the applicant must not already own or have owned a house in the surrounding rural area except in exceptional circumstances.

Or

In order to ensure compatibility with Articles 43 and 56 of the EC Treaty which guarantee respectively the Freedom of Establishment (of business) and the Free Movement of Capital, bone fide applicants who are not considered eligible under the preceding categories may be considered as qualifying to build a permanent home in the rural areas, subject to being able to satisfy the planning authority of their commitment to operate a full time business from their proposed home in a rural area, as part of their planning application, in order for example, to discourage commuting to towns or cities. Applicants must be able to submit evidence that

- *Their business will contribute to and enhance the rural community in which they seek to live*

and

- *That they can satisfy the Planning Authority that the nature of their employment or business is compatible with those specified in the local needs criteria for rural areas i.e. that they are serving a predominantly local rural business need*

OR

Category C – Exceptional Health and/or Family Circumstances Criteria:

Having regard to the Department of the Environment, Heritage and Local Government's Sustainable Rural Housing Guidelines (2005), special consideration shall be given in limited cases of exceptional health circumstances

– supported by relevant documentation from a registered medical practitioner proving that a person requires to live in a particular environment or close to family support, or requires a close family member to live in close proximity to that person. In cases where an applicant requires to reside near elderly parents (who have been living in the local rural area for a substantial period of their life) so as to provide security, support and care, or where elderly parent(s) need to reside near an immediate family member (who have been living in the local rural area for a substantial period of their life), favourable consideration will also be given.

In addition, where elderly local farmers have no children, consideration may also be given to the housing needs of one favoured relative (in anticipation of taking over the landholding). The applicant will have established affiliations or connections with the landholding and his/ her living in the area would be a service and support to the landowner.

5.3.3. The site is also located within the “**Western Corridor Working Landscape**”. Objectives and policies relevant to this case are as follows

CDP 13.3 The Western Corridor - Ennis to Limerick Working Landscape - It is an objective of the Development Plan:

- a) To permit development in these areas that will sustain economic activity, and enhance social well-being and quality of life - subject to conformity with all other relevant provisions of the Plan and the availability and protection of resources;
- b) That selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design, are directed towards minimising visual impact;
- c) That particular regard should be given to avoiding intrusions on scenic routes and on ridges or shorelines.

Developments in these areas will be required to demonstrate:

- i) That the site has been selected to avoid visually prominent locations;
- ii) That site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, public amenities and roads;
- iii) That design for buildings and structures reduce visual impact through careful choice of form, finishes and colours and that any site works seek to reduce visual impact of the development.

5.4. **Natural Heritage Designations**

5.4.1. The site is not located within a designated Natura 2000 site. It is noted that the Toonagh Estate SAC is located c1.7km from the site.

5.5. **EIA Screening**

5.5.1. 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 third-party appeal has been prepared and submitted by Antony Travers, Chartered Engineer and Local Resident and may be summarised as follows:

- **Development Plan** - The proposed development contravenes the principles and philosophies contained in CDP 8.27(C), CDP 13.3, CDP 14.1, CDP 14.2(a), CDP 14.2(b), CDP 14.2(c), CDP 14.3(a), CDP 14.11(a), CDP 14.11(b), CDP 14.17(c), CDP 14.17(d) and CDP 14.17(e) of the current County Development Plan.
- **Road Safety / Traffic Hazard** – The proposed development does not meet the criteria set out in the Clare County Development Plan 2017 - 2023 and its associated references including, those of the NRA. The proposed development presents significant additional hazards to road users in the area by increasing the risk level of an already dangerous section of roadway. The assessment demonstrates that the physical characteristics of the public roadway in the vicinity of the site of the proposed development are such that it is impossible to provide safe access from the public roadway into the site and conversely from the site onto the public roadway. The imposition of Condition No 6(b) is not appropriate as it is not clear or obvious from the information submitted as part of the planning application process that compliance with the requirements of the conditions are

actually possible. Reference is made to previous similar decisions by the Board PL07.236518, PL05E.243781, ABP.303683 and ABP.307337.

- **Proximity to National Monument** – The proposed development has the potential of harming the current condition of the adjacent existing listed monument ringfort and its related historic events. The planning application submitted did not contain the requisite archaeological impact assessment and by its absence the proposed development constitutes a risk and a hazard to the local archaeological heritage were it to proceed.
- **Biodiversity** – Reference is made to the Toonagh Estate Special Area of Conservation (002247) within which the Lesser Horseshoe Bat normally forages. Submitted that an Environmental Impact Study is required. The Lesser Horseshoe Bat experiences an average movement between summer and winter roosts of circa 5km – 10km. The appellant has observed the native Lesser Horseshoe Bat on a regular basis in the vicinity of the proposed development. Reference is made to the Development Plan where it states that *there are a large number of Lesser Horseshoe Bat (Rhinolophus hipposideros) and other bat sites throughout County Clare. All bat species and their breeding and resting places (roosts) are legally protected in Ireland under the Wildlife Acts 1976-2000. It is particularly critical that wildlife corridors, tree lines and hedgerows within the area of Lesser Horseshoe Bat roosts are retained to allow for the free movement of these bats and other species within and through the surrounding area.* Reference is made to Condition No 11(b) and it is submitted that the only way to protect the biodiversity and natural heritage in the vicinity of the proposed development and to comply with the principles and philosophies of the current County Development Plan is by not having to rely on such an ineffectual condition and to refuse the granting of planning permission.
- **Wastewater Treatment** – The further information included the provision of a sump pump. Condition No 9(c), by not requiring lifelong maintenance by the manufacturer does not safeguard or mitigate against potential future failure of the treatment system and therefore imposes an additional risk of pollution that does not currently exist. This is of particular significance and concern considering the fact that the proposed development is located in the high vulnerability zone and the high vulnerability protection zone pertaining to the Drumcliffe Spring as shown on

the Groundwater Source Protection study prepared by the Geological Survey of Ireland.

- **Visual Impact** – The proposed site is at significantly higher elevation by comparison to the other dwellings elsewhere in the vicinity which are predominantly located on a local road. The scheme does not meet the criteria set out in the Clare County Council Development Plan 2017 – 2023 and its associated references with respect to site location, visual impact on the landscape and scenic routes, size and bulk of the domestic dwelling and garage. Reference is made to ABP 303683.
- **Rural Housing Policy** – With respect to the classification of a “Local Rural Person” in the current Development Plan it is noted that in this case the applicant is not a son/ daughter / sibling but a grand-nephew to the landowner (Timmy Clancy) to which this planning application refers. Further submitted that there are alternative sites in possession of the landowner located on the nearby local road L41441 that enjoy more favourable safe horizontal and vertical stopping distances / sight lines and would reduce the visual impact on the landscape, provide a greater opportunity for compliance with road safety requirements and obviate the unnecessary removal of hedgerows, trees and other vegetation.
- **Building Regulations** – Randomly checked aspects of the proposed development do not appear to comply with certain Building Regulations. It is a stated requirement of Clare County Council (ref County Development Plan and Planning Permission application form) that proposed developments comply with all aspects to the Building Regulations.

6.2. Applicant Response

6.2.1. The first party response to the appeal has been prepared and submitted by Andrew Hersey Planning on behalf of the applicant and may be summarised as follows:

- **Traffic Safety** – A lot of the information referred to by the appellant does not apply. Urged to have greater regard to the report from the more experienced Area Engineer who has assessed the proposed development from a practical viewpoint. The proposed development will not result in any traffic safety implications. Indeed, as a consequence of setting back the hedgerow as proposed and having regard to

the splay associated with the said entrance the works will improve traffic safety along this road.

- **Recorded Monument** – There are no proposals to interfere with this monument and it will be preserved in situ. There was no obligation on the applicant to prepare an Archaeological Impact Assessment as development was outside of the 30m threshold from the monument. The applicant is willing to amend the site boundary so that there will be no further ground disturbance within 30m of the ringfort. They are also willing to relocate the site boundary so that it would be outside of the 30m archaeological zone.
- **Toonagh SAC** – Concerns re impact on the Lesser Horseshoe Bat are noted. The Case Planner refers to this SAC and has screened the proposed development for AA. The report states that they *do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects, on a European Site.*
- **WWTP** – The proposed site is located within an area with a Medium Groundwater Vulnerability rating over a Regionally Important Karst Aquifer. The soils in this area are free draining and deep (greater than 3m). T tests carried out on site were positive and the site was deemed suitable for a number of treatment systems. In terms of the maintenance agreement it is submitted that in all cases for single houses with individual treatment systems these details are usually required by Clare County Council by way of compliance.
- **Planning Regulations** - In terms of non-compliance with building regulations it is submitted that the an application for building compliance will be submitted prior to construction and any issues which arise as a consequence will be dealt with at that stage.
- **Visual Impact** – The site is not located within an area designated as “Heritage Landscape” nor is the proposed development site located within any visual range of a road designated as a “Scenic Route” in the Development Plan. The site was selected from a number of potential sites in the landscape. The appeal site along with the chosen design was considered so as to minimise the impact of the proposed development in the landscape.
- **Rural Housing Policy** – The applicant has lived with his parents in the family home at Ballymongaun, Kilnamona (1km from the appeal site) since he was one years

old and therefore is a Local Rural Person within 10km of the site as defined in the Development Plan. The applicant's fiancé is also a local rural person as defined in the Development Plan. The applicant also complies with NPF Objective 19.

6.3. Planning Authority Response

6.3.1. Having regard to the rural nature of the site, the intended use of the proposed dwelling and garage the relevant Section 28 Ministerial Guidelines, the policies of the current County Development Plan and the pattern of development in the area, it is considered that, subject to conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity. Requested that An Bord Pleanála upholds the decision of Clare County Council to grant condition planning permission to the applicant in this instance.

6.4. Observations

6.4.1. There is one observation recorded on the appeal file from An Taisce. The issues raised may be summarised as follows:

- Given the very close proximity of the recorded monument to the proposed dwelling as well as the lack of archaeological impact assessment and test on the site it is submitted that the site location suitability has not been justified.
- The site is less than 2km from the Toonagh Estate SAC (Site Code: 002247) which has been designated as such for the conservation of the Lesser Horseshoe Bat. Given that the site is within 3km of a known roost and notwithstanding the proposed replanting of the hedgerow, a bat survey is required.

6.5. Further Responses

6.5.1. None.

7.0 Assessment

7.1. The assessment is based on the plans and particulars submitted to Clare County Council on 30th June 2020 as amended by further plans and particulars submitted on 9th October 2020. Concerns raised with regard to the quality of drawings submitted

are noted. Taken together with my site inspection I am satisfied that there is adequate information on the appeal file to consider the proposal.

7.2. 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:

- Rural Housing Policy
- Traffic Safety
- Proximity to National Monument
- Biodiversity
- Wastewater Treatment
- Visual Impact
- Planning Regulations
- Appropriate Assessment
- Development Contribution

7.3. **Rural Housing Policy**

7.3.1. The site is located within an “Area of Special Control” (Strong Urban Pressure) for which it is the policy of the Planning Authority under Objective 3.11 (New Single Houses in the Countryside within the ‘Areas of Special Control’) to permit single house development for permanent occupation by persons from the locality and/or working full or part time in rural areas, or who have exceptional health or family circumstances.

7.3.2. I refer to Section 5.3 Development Plan Policy above where Objective 3.11 is set out in full. Having regard to the information available the applicant would appear to merit consideration under Category A – Local Rural Person, Category B – Persons Working Full Time or Part Time in Rural Areas and possibly even Category C – Exceptional Health and / or Family Circumstances as follows. I refer to the information submitted with the application and the appeal response.

7.3.3. ***Category A – Local Rural Person***

- It is stated that the applicant has lived with his parents in the family home at Ballymongaun, Kilnamona (1km from the appeal site) since he was one years old (1993) and that he does not own a house, nor has he ever owned a house in this rural area. The letter from Kilnamona National Primary School, AIT, an Bank Statement confirm this position. Further stated that the applicant's fiancé is also a local rural person as defined in the Development Plan and that they are a social care worker with Barnardo's Family Support in Limerick (c25km from where they live). However no further supporting information pertaining to the applicant's fiancé has been provided. Concluded that the applicant wants to build permanent place of residence before getting married.

7.3.4. Category B – Persons Working Full Time or Part Time in Rural Areas

- The applicant is a psychiatric nurse with the Clare Mental Health Service (c7km from where they live) and works the farm from which the site is taken (grand uncles farm).

7.3.5. Category C – Exceptional Health and / or Family Circumstances

- I note that the applicant is a grandnephew of the landowner (letter of consent attached) and that due to the landowners failing health he assists in the operation of this farm. It is also stated that the applicant will inherit this farm and that he will also be the main carer initially for his granduncle and then for his parents when the time arises.

7.3.6. The foregoing, taken together with the Planning Authority's satisfaction that the applicant's circumstances satisfy eligibility criteria at this location is considered reasonable and I support the conclusions that compliance with the Clare County Council Rural Housing Policy has been demonstrated. It is recommended that should the Board be minded to grant permission that a occupancy condition be attached.

7.4. Traffic Safety

7.4.1. The appellant raises concern that the development presents a significant hazard to road users and that it is not possible to provide safe access form the public roadway onto the site and conversely onto the public roadway. Detailed information and technical analysis (based on established codes of practise and roadway geometric

engineering principles) have been presented in the appeal all of which have been noted.

- 7.4.2. In response to a request for further information that applicant submitted a revised layout extending the site 14m to the south west so as to allow for the proposed entrance position to be moved to the position of the existing agricultural entrance. The revised entrance location allows 90m of visibility from 2.4m set back. Longitudinal section attached. To achieve these revised sightlines 12.1m section of boundary is to be relocated 1m to the rear of the visibility line that includes 3 semi-mature trees.
- 7.4.3. The access for the proposed development is off the L-4144. This road has a speed limit of 80km/h therefore the standards found in DN-GEO-03060 "Geometric Design of Junctions (priority junctions, direct accesses, roundabouts, grade separated, and compact grade separated junctions) applies. Sightlines and sight stopping distances of 160m from a setback of 2.4m and an object and eye height of 1.05m are required to comply with the above-mentioned standards. This has not been achieved in the revised proposals.
- 7.4.4. However ,as pointed out by the applicant and observed on day of site inspection the road adjoining the appeal site is a typical narrow rural local road that does not appear to carry significant volumes of traffic and where the operating speed is much less than 80kph. Overall, I agree with the Case Planner, having regard to the rural nature of the road, the traffic volumes and speeds of vehicles traversing same together with the requirement to limit hedgerow removal that adequate visibility would be available from the site access point (as amended) in this instance.
- 7.4.5. Together with my site inspection I am satisfied that subject to the implementation of the measures outlined in the application (as amended) 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. Proximity to National Monument

- 7.6. The proposed site is located to the north and west of a designated Ringfort (Recorded Monument C1-033-019) and which is protected under the Clare County Development Plan 2017-2023 (CDP 15.8) and by the National Monuments (Amendment) Act 2004.

Concern is raised in the appeal that the proposed development has the potential to harm this monument and that an archaeological assessment is required.

7.7. The ringfort is located out with the both the red line boundary of the appeal site and also the blue line boundary of the overall landholding. I refer to the revised site layout plan submitted by way of further information relocating the proposed soakpit serving the garage so that same is not within a 30 metre zone of archaeological potential of the adjacent recorded monument. I further note that the house (as amended) is set back 39.9m from the outermost edge of a Monument (Ringfort CL033-019) with the garage set back 30m.

7.8. In my view the layout of the proposed development (as amended) is such that it appears to obviate any potential significant impact on the expected archaeology on site. However, it is possible that subsurface archaeological remains could be encountered during the construction phases that involve ground disturbance. To this end I am satisfied that subject to a suitably worded condition whereby the applicant is required to employ a suitably qualified archaeologist in advance of development and that any material found is notified to the Department and that recording of any such material found shall be facilitated there is no objection to the proposed scheme.

7.9. **Biodiversity**

7.9.1. Concern is raised that the proposed development presents a a potential risk to the safe and continued existence of the Lesser Horseshoe Bat in this area in the guise of a satellite roost or otherwise.

7.9.2. The Toonagh Estate SAC (Site Code 002247) is located c 1.9km to the north east of the appeal site. The qualifying interest is the Lesser Horseshoe Bat. A map is provided with the NPWS Conservation Objectives Report showing the 2.5km foraging range serving the SAC. The applicant has superimposed this over an aerial photograph of the appeal site and environs demonstrating that the appeal site is removed from these foraging grounds.

7.9.3. There is no direct impact to the Toonagh Estate SAC or loss of habitat. Taken together with the nature, size and scale of the proposed scheme (as amended) I do not consider that there is any unreasonable impacts arising form the proposed development.

7.10. Wastewater Treatment

- 7.10.1. Concern is raised that in the absence of a lifelong maintenance contract by the manufacturer to safeguard or mitigate against potential future failure of the treatment system imposes an additional risk of pollution that does not currently exist. Further concern is raised with regard to the location of the development in a high vulnerability protection zone pertaining to the Drumcliffe Spring.
- 7.10.2. I refer to the Site Characterisation Report(s) submitted on file. It is proposed to construct a new WWTP and percolation area on site. No further details of the proposed unit have been submitted. I note that the percolation area is located in excess of 10 metres of any watercourse or stream as per the requirements of the EPA Guidelines (2010).
- 7.10.3. Having regard to the conclusions and recommendations set out in the Site Characterisation Report(s) I am satisfied that the details of the wastewater treatment disposal system together with the arrangements in relation to the ongoing maintenance of the system can be submitted and agreed in writing with the Planning Authority by way of condition prior to commencement of work on site. It is further required that the proposal complies with the requirements of the Planning Authority and the EPA guidelines where by the effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted with the planning application and in accordance with the requirements of "Wastewater Treatment Manual: Treatment Systems for Single Houses, (p.e. less than or equal to 10)", published by the EPA in 2010 as supplemented by "Code of Practice Clarification" (20th February, 2012).

7.11. Visual Impact

- 7.11.1. Concern is raised that the site is significantly higher in elevation compared to other dwellings in the area and that the development would be incongruous with the surrounding area from the visual perspective.
- 7.11.2. While this is an elevated site it is not located within an area designated as "Heritage Landscape" nor is the proposed development site located within any visual range of a road designated as a "Scenic Route" in the Development Plan. As observed on day of site inspection the site levels drop significantly towards the rear of the site to the

south thereby affording uninterrupted views to the south. It was observed on day of site inspection that housing in the general area is characterised by large, detached dwellings reflecting a mix of design types and finishes.

7.11.3. The proposed design (as amended) is a low profile, dormer pitched roof dwelling finished in stone and plaster with slate roof. I consider that the proposed development (as amended) would have a minimal negative effect on the landscape as it is evident that the scheme is designed to minimise its impact by reason of scale and design thus reducing the overall visual impact.

7.11.4. Overall I am satisfied that the proposed design (as amended) has been well considered and has been suitably sited, designed and scaled to avoid appearing visually obtrusive or overbearing to neighbouring properties. Accordingly, the design response (as amended) is acceptable at this rural location. Accordingly, there is no objection to the proposed development in terms of visual impact.

7.12. **Building Regulations**

7.12.1. Matters pertaining to compliance with the Building Regulations is not a matter for An Bord Pleanála and is therefore not material to the consideration of this appeal.

7.13. **Appropriate Assessment**

7.13.1. Having regard to the nature and scale of the proposed development and its distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.14. **Other Issues**

7.14.1. **Development Contribution** – I refer to the Clare County Council Development Contribution Scheme 2017-2023. 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 Development Contribution

8.0 Recommendation

- 8.1. Having considered the contents of the application, the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **GRANTED** subject to conditions and that retention permission be refused for the sperate dwelling unit for the reasons and consideration set out below

9.0 Reasons and Considerations

- 9.1.1. Having regard to the site's location and the policy and objective provisions in the Clare County Development Plan 2017 – 2023 together with the nature, scale and design of the development (as amended) it is considered that, subject to compliance with the conditions set out below, the proposed development (as amended) including the development of a new wastewater treatment plant would not seriously injure the residential or visual amenities of the area or of property in the vicinity or of Recorded Monument CL033-019 and would be acceptable in terms of public health and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 30th June 2020 as amended by further plans and particulars submitted on 9th October 2020 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 in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity</p>
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2.	<p>a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.</p> <p>b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.</p> <p>This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p>Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted in the interest of the proper planning and sustainable development of the area</p>
3.	<p>The detached garage shall be used solely for purposes ancillary to the residential use of the dwelling and shall not be used for commercial purposes or human habitation, sublet, sold separately, otherwise transferred or conveyed, except in combination with the dwelling.</p> <p>Reason: In the interest of clarity, the amenities of the area and the proper planning and sustainable development of the area.</p>
4.	<p>Prior to commencement of the development, the developer shall submit to, and agree in writing with, the planning authority details of all the materials, textures and colours for the external facades including fenestration.</p> <p>Reason: In the interest of visual and residential amenity.</p>

5.	<p>All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, to include use of indigenous species and hedgerow planting along the site boundaries details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any plants which die, are removed or become seriously damaged or diseased, following the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In the interest of visual and rural amenity.</p>
7.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and</p> <p>(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.</p> <p>The assessment shall address the following issues:</p> <p>(i) the nature and location of archaeological material on the site, and</p> <p>(ii) the impact of the proposed development on such archaeological material.</p> <p>A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further</p>

	<p>archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
8.	<p>Prior to commencement of work on site the details of the effluent treatment and disposal system shall be submitted to the Planning Authority for written agreement. The proposed system shall be in accordance with the recommendations of the Site Characterisation Report(s) and shall be located, constructed and maintained in accordance with the requirements of “Wastewater Treatment Manual: Treatment Systems for Single Houses, (p.e. less than or equal to 10)”, published by the EPA in 2010 as supplemented by “Code of Practice Clarification” (20th February 2012). Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of clarity and public health.</p>
9.	<p>Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
10.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. No surface water shall be allowed to discharge onto the public road or adjoining properties.</p>

	Reason: In the interest of orderly development and public health
11.	<p>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.</p> <p>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.</p>

Mary Crowley

Senior Planning Inspector

4th May 2021