



An  
Bord  
Pleanála

## Inspector's Report ABP-308904-20

<b>Development</b>	Construct a dwelling, garage, wastewater treatment system, new entrance and ancillary ground works.
<b>Location</b>	Ballybreen, Kilfenora, Co. Clare.
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	20679
<b>Applicant(s)</b>	Anthony King
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Anthony King
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	2 <sup>nd</sup> March 2021
<b>Inspector</b>	Mary Crowley

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## **1.0 Site Location and Description**

- 1.1. The appeal site with a stated area of 0.7ha is located on the R481, on the western outskirts of Kilfenora Village. The site is, currently in agricultural use and is located below the level of the road (R481), falling gently in a northerly direction. The site is bounded to the roadside and west by low hedgerow, to the north by a low stone wall and hedgerow and to the east by a post and rail fence. The general area is characterised by rural linear development, agricultural land and associated buildings. 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. Permission is sought to construct a two-storey 4 bed dwelling (240 sqm), garage, on-site wastewater treatment system, a new entrance and ancillary ground works.
- Water Supply – Public Water Supply
  - Wastewater Treatment – Septic Tank
  - Surface Water Management – Soakpits
- 2.2. The application was accompanied by the following:
- Letter of consent from the applicants brother (land owner) to make a planning application
  - Extract from Kilfenora WWTP Upgrade – Groundwater Risk Assessment

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Clare County Council issued notification of decision to refuse permission for 2 no reasons relating to (1) prematurity by reference to deficiency in public sewer facilities and (2) inadequate information in respect of treatment and disposal of wastewater as follows:

- 1) *The proposed development is considered premature by reference to the existing deficiency in the provision of public piped sewer facilities serving Kilfenora and the period in which the constraint involved may reasonably be expected to cease.*
- 2) *The Planning Authority is not satisfied on the basis of the information received with the planning application, that the details in respect of the suitability of the site for the treatment and disposal of wastewater are in accordance with the EPA Code of Practise “Wastewater Treatment and Disposal Systems Serving Single Houses” (2009). In the absence of such information that Planning Authority considers that the proposed development would be prejudicial to public health and would 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** having considered the proposal recommendation that permission be refused for 2 no reasons. The notification of decision to refuse permission issued by Clare County Council reflects this recommendation.

### 3.2.2. Other Technical Reports

- **West Clare Municipal District** – Adequate sight lines available at the proposed entrance. No further observations.
- **Environment** – Noted that permission granted to Irish Water for the construction of a WWTP at this site. Concern is raised that the appropriateness of the proposed septic tank and percolation area at this site cannot not be determined. Detailed points raised relate to the requirement for trial hole examination and percolation tests as required under the EPA Code of Practise 2009.

## 3.3. Prescribed Bodies

- **Irish Water (IW)** – Clare County Council (Reg Ref 19/31) granted planning permission to Irish Water for development relating to the upgrade of the Kilfenora Wastewater Treatment Plan. This permission was upheld to An Bord Pleanála (PL03.305756) on 06/03/2020. The development comprises a new wastewater

treatment plant at a site at Kilcarragh and an associated percolation area at Ballybreen as per site location drawing attached. The subject application (Reg Ref 20/679) is located on the site of the Irish Water permitted percolation area. Stated that the permitted development is the most technically feasible and financially viable solution and that the current proposal would stymie Irish Water from realising this extant permission. Irish Water is not in favour of any grant which would impact this delivery.

### 3.4. Third Party Observations

#### 3.4.1. None

## 4.0 Planning History

#### 4.1.1. No planning history has been made available with the appeal file. The following history is noted from the Case Planners report:

- **Reg Ref P18/1073 – Incomplete** application by **Irish Water** for the construction of a new 330 PE wastewater treatment plant and demolition of the existing treatment works in the townland of Kilcarragh with construction of percolation area, including a treated effluent pumping station in the townland of Ballybreen. A Natura Impact Statement was prepared in respect of this planning application.
- **ABP 305756 (Reg Ref P19/31)** – Clare County Council **granted permission** to Irish Water for the construction of a new 330 PE wastewater treatment plant and demolition of the existing treatment works in the townland of Kilcarragh with construction of percolation area, including a treated effluent pumping station in the townland of Ballybreen. A Natura Impact Statement was prepared in respect of this planning application. Following a **third party appeal** An Bord Pleanála **granted permission subject to 8 no conditions**. A copy of the site location and layout pertaining to the percolation area at Ballybreen are attached.

#### 4.1.2. It is further noted that there was a recent CPO on this site that may be summarised as follows:

- **ABP 308052** – Irish Water Compulsory Purchase (Kilfenora Wastewater Treatment Plant Upgrade (<10,000Pe)) Order, 2020. The case and Inspector's report is currently with the Board. No decision has issued to date.

## 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. **National Policy Objective 19** refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e., the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations. In rural areas elsewhere, it refers to the need to 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 *Rural Housing Guidelines* seek to provide for the housing needs of people who are part of the rural community in all rural areas and makes a distinction between 'Urban Generated' and 'Rural Generated' housing need. Chapter 4 of the guidelines relates to rural housing and planning applications and states that in areas under significant urban influence, applicants should outline how their proposals are consistent with the rural settlement policy in the development plan. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply, including 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.
- 5.2.2. The Guidelines further require that new houses in rural areas be sited and designed in a manner so as to integrate well with their physical surroundings and generally be compatible with water protection, roads, traffic and public safety as well as protecting the conservation of sensitive areas.

### 5.3. Development Plan

- 5.3.1. The operative plan for this area is the **Clare County Development Plan 2017 – 2023**. Kilfenora is described as a “Large Village” in the County Settlement Hierarchy (Map 3A refers). The appeal site is located outside an “Area of Special Control” and therefore, **Objective CDP3.12 New Single Houses in the Countryside outside the ‘Areas of Special Control’** applies as follows:

*It is an objective of the Development Plan within the parts of the countryside outside of the ‘Areas of Special Control’ i.e.:*

- *Outside of the Areas under Strong Urban Pressure;*
- *Outside of Heritage Landscapes;*
- *Not accessed from a Scenic Route.*

*To permit an application for a single house by persons who seek a dwelling as their principal private residence and will, therefore, contribute to the social and economic wellbeing of the area.*

*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 objectives CDP8.4 and CDP8.5 as set out in Chapter 8. All development proposals must be in compliance with the requirements of the Habitats Directive.*

- 5.3.2. The appeal site is within a Settled Landscape where **Objective CDP13.2: Settled Landscapes** is applicable as follows:

*It is an objective of the Development Plan to permit development in areas designated as ‘settled landscapes’ that sustain and enhance quality of life and residential amenity and promote economic activity subject to:*

- *Conformity with all other relevant provisions of the Plan and the availability and protection of resources;*
- *Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;*
- *Regard being given to avoiding intrusions on scenic routes and on ridges or shorelines.*



*Developments in these areas will be required to demonstrate:*

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

#### **5.4. Natural Heritage Designations**

5.4.1. The site is not located within a designated Natura 2000 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 first party appeal against the decision to refuse permission has been prepared and submitted by Michael J Duffy Engineer and may be summarised as follows:

- There is, or never has been, any proposal to extend the municipal sewer to the subject location. In fact there is no proposal to serve houses in the agglomeration within 350m of the treatment plant never mind the subject site which is 950m from the plant. This is an irrational reason for refusal.
- The Planning Authority previously permitted a proposal which proposed to discharge 240/m<sup>2</sup>/d on the same site. The Planning Authority has no grounds to refuse on the basis that a discharge as proposed of 201/m<sup>2</sup>/d is not sustainable

given its previous assessment of this site. If the Planning Authority had any concerns it was completely open to seek further information.

- A submission by Irish Water should not be considered at all in light of Section 34(13) of the Planning and Development Act 2000 (as amended) which states:

*(13) A person shall not be entitled solely by reason of a permission under this section to carry out any development*

- Reference is made to a consent by Michael King, the appellants brother, to the application of Irish Water Reg Ref 19/31. Irish Water failed to seek the consent of the appellant who has property rights on this land.
- Irish Water refers to a CPO process. At the date of compiling this appeal the CPO process consists of nothing more than the referred to newspaper notice which is by now moot.
- Respectfully requested that the Board overturn the decision and grant permission.

## **6.2. Planning Authority Response**

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

- From a sustainability point of view it would be preferable that new developments within Kilfenora connect to the new sewerage treatment plant, where feasible.
- It is noted that the applicant has proposed an on-site treatment plant, however a development specific characterisation report was not submitted. Additional shortcomings were also outlined whereby the appropriateness of the proposed septic tank and percolation area at this site could not be determined.
- Irish Water has commenced the CPO process in relation to the subject site, and same is currently under assessment by An Bord Pleanála and it is clear they fully intend to acquire this site by CPO and having regard to the existing situation with regards to WWT in Kilfenora, it is understood that the upgrading of the Kilfenora WWTP is a priority for Irish Water.
- It is considered that the policies and objectives as set out in the Clare County Development Plan 2017 – 2023, as varied, seek to support Irish Water in its

delivery of such essential infrastructure for this location and as such same must be considered a priority in this instance.

- It is noted that there is nothing prohibiting the applicant from seeking planning permission for development proposed on these lands. However, it is significant the Irish Water has selected this site as in order to accommodate a fundamental component of the upgraded plant.
- The Planning Authority respectfully request the Board to uphold the Councils decision.

### **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
- Kilfenora WWT
- On Site Wastewater Treatment
- Visual Impact
- Traffic Impact
- Appropriate Assessment
- Other Issues

### **7.2. Principle**

7.2.1. The applicant is seeking permission for a two-storey 4 bed dwelling (240 sqm), garage, on-site wastewater treatment system, a new entrance and ancillary ground works. As

previously documented the site is located outside an area of special control, along a road which is not a designated strategic regional route (Map 3B refers). Objective CDP3.12 New Single Houses in the Countryside outside the 'Areas of Special Control' applies where it is an objective to *permit an application for a single house by persons who seek a dwelling as their principal private residence and will, therefore, contribute to the social and economic wellbeing of the area.*

- 7.2.2. It is noted from the application form that the site is part of the family farm, that the applicant lived in Ballybreen from 1970 to 1985 when they moved to Canada. It is stated that the applicant is "returning home from Canada". The Case Planner was satisfied that the applicant demonstrated compliance with Objective CDP3.12. The Planning Authority's satisfaction that the applicant's circumstances satisfy eligibility criteria is considered reasonable and I support the conclusions that compliance has been demonstrated.

### **7.3. Kilfenora WWT**

- 7.3.1. The Local Authority in their first reason for refusal stated that the proposed development was premature by reference to the existing deficiency in the provision of public piped sewered facilities serving Kilfenora.
- 7.3.2. The appellant submits that there is, or never has been, any proposal to extend the municipal sewer to the subject location. It is unclear from the information available with the appeal file and notwithstanding the location of the proposed municipal percolation area adjoining this site, that there is any intention to extend the public sewer to the appeal site or facilitate a connection to same. Overall I am not satisfied that it has been adequately demonstrated that a connection to the new municipal WWTS is a feasible option in this case.
- 7.3.3. Having regard to the substantial issues raised below with regard wastewater treatment on site I am reluctant to pursue this particular issue without substantive confirmation of same from relevant technical parties. Accordingly, it recommended that this reason for refusal be set aside.

#### **7.4. On Site Wastewater Treatment**

- 7.4.1. The Local Authority in their second reason for refusal stated that in the absence of details in respect of the suitability of the site for the treatment and disposal of wastewater the proposed development would be prejudicial to public health.
- 7.4.2. As documented above, the Board granted permission on appeal to Irish Water for the construction of a new 330 PE wastewater treatment plant and demolition of the existing treatment works in the townland of Kilcarragh with construction of percolation area, including a treated effluent pumping station in the townland of Ballybreen. The appeal site now before the Board is located on the site of the Irish Water permitted percolation area. It is further noted that there was a recent CPO pertaining to this development including the appeal site. The case and Inspector's report is currently with the Board. No decision has issued to date.
- 7.4.3. No details in respect of the suitability of the appeal site for the treatment and disposal of wastewater are in accordance with the EPA Code of Practise "Wastewater Treatment and Disposal Systems Serving Single Houses" (2009) was submitted with the current application for an on-site domestic wastewater treatment system. Rather, the applicant has provided some extracted pages from the site assessment report undertaken for the Irish Water development.
- 7.4.4. Clare County Council Environment Section notes that this previous report carried out percolation tests and a trial hole examination at the southern end of the site while the proposed domestic WWTS including percolation area proposed to serve the current scheme is located further within the site. It is further stated that the soil mapping appears to indicate differences in soil type within the site and differences in depths across the site appearing to become shallower.
- 7.4.5. Having regard to the information on file I support the conclusions of the Environment Section that a site assessment of the proposed location of the percolation area comprising a trial hole examination and percolation tests as required under the Code of Practise 2009 is not only necessary but required in order to assess the current domestic scheme.
- 7.4.6. I further agree with the detailed points raised in the Environment Section and later in the appeal response form Clare County Council report as follows:

- The layout drawing shows a proposed septic tank system and percolation area where percolation trenches are drawn to 20m in length. As per Code of Practise 2009 the max length of a percolation pipe is 18m.
- The layout drawing shows less than 2.5m separation between centre-to-centre percolation trenches, this is again non-compliant with the EPA Code of Practise 2009.
- There is no indication if there is the required depth of suitable unsaturated subsoil over bedrock and water table at this location and no indication as to the proposed invert level of the percolation trenches.

7.4.7. Having regard to the foregoing I agree with Clare County Council that the appropriateness of the proposed domestic septic tank and percolation area at this site cannot not be determined. Refusal is recommended.

## **7.5. Visual Impact**

- 7.5.1. With regard to the design and visual impact of the proposed house I refer to Objective CDP13.2: Settled Landscapes where it states that developments in these areas will be required to demonstrate that the site inter alia has been selected to avoid visually prominent locations; and that the design reduces visual impact through careful choice of forms, finishes and colours.
- 7.5.2. I refer to the site photos. This is an exposed rural site that affords uninterrupted views to the west, north and east and taken together with its location below the level of the adjoining public road to the south is clearly visible from passing traffic. It is my view that any development at this location requires careful consideration and treatment in order to avoid creating a visually intrusive development that would detract from this sensitive and exposed rural landscape.
- 7.5.3. Having regard to the volume, scale, height and elevational treatment of the proposed two storey dwelling I am concerned that the proposal has little if any regard to its sensitive and exposed rural context and that the scheme has been imposed on the site rather than taking its cues from its environment in order to form a sympathetic unobtrusive development of appropriate scale and finish. Refusal is recommended.

- 7.5.4. Taken together with the substantial concerns raised above with regard to effluent disposal it is not intended to pursue the matter of visual impact. However, it is recommended that any future development at this location would have particular regard to the sites exposed rural location and would reflect same in a suitably sensitive design response.

## **7.6. Traffic Impact**

- 7.6.1. In terms of traffic impact, it is proposed to create a new entrance onto the adjoining Regional Road, a busy road on the outskirts of Kilfenora. Taken together with the site layout plan that indicates sightlines in excess of 162m (CDP requires 160m) 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.

## **7.7. Appropriate Assessment**

- 7.7.1. 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.

## **7.8. Other Issues**

- 7.8.1. **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.

## **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 Board is not satisfied on the basis of the information received with the planning application, that the details in respect of the suitability of the site for the treatment and disposal of wastewater are in accordance with the EPA Code of Practice “Wastewater Treatment and Disposal Systems Serving Single Houses” (2009). In the absence of such information that Board considers that the proposed development would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.
- 2) The site of the proposed development is located within a 'Settled Landscape' as set out in the current Development Plan, where Objective CDP13.2: Settled Landscapes applies and where emphasis is placed on the importance of designing with the landscape and of siting of development to minimise visual intrusion and where developments will be required to demonstrate that the design reduces visual impact through careful choice of forms, finishes and colours. This objective is considered reasonable. Having regard to the topography and exposed sensitive rural nature of the site, the positioning of the proposed development, together with its volume, scale, height and elevational treatment, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment and would set an undesirable precedent for other such prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

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**Mary Crowley**

**Senior Planning Inspector**

**18<sup>th</sup> March 2021**