



An
Bord
Pleanála

Inspector's Report ABP-309727-21.

Development	Retain mobile home for habitable purposes, entrance from road and associated site works.
Location	Rehy East, Cross, Carrigaholt, Co. Clare.
Planning Authority	Clare County Council.
Planning Authority Reg. Ref.	20/991.
Applicant(s)	Grainne Kavanagh.
Type of Application	Retention permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Third Party
Appellant(s)	Grainne Kavanagh.
Observer(s)	None.
Date of Site Inspection	15/05/2021.
Inspector	A. Considine.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
4.0 Planning History.....	7
5.0 Policy and Context.....	8
5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018.....	8
5.2. Sustainable Rural Housing Development Guidelines 2005.....	9
5.3. Development Plan.....	10
5.4. Natural Heritage Designations	13
5.5. EIA Screening	13
6.0 The Appeal	13
6.1. Grounds of Appeal	13
6.2. Planning Authority Response	16
6.3. Observations	16
7.0 Assessment.....	16
7.1. Compliance with National Guidelines & Standards, the County	
Development Plan & General Development Standards:	17
7.2. Visual Impacts.....	19
7.3. Water Services & Site Suitability Issues.....	20
7.4. Other Issues.....	22
8.0 Recommendation.....	26
9.0 Reasons and Considerations.....	27

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Rehy East, approximately 3km by road, to the south east of the village of Cross, and approximately 3.5km to the south west of Carrigaholt on the Loop Head peninsula of Co. Clare. The site is located on the seaward side of the local road along the shoreline of Rinevella Bay and has an extensive roadside boundary.
- 1.2. The site has a stated area of 0.43 hectares and there is a mobile home set up on the site. The site has been altered to accommodate the mobile home, including the provision of an entrance to the site and a large area of hard standing on which the mobile home sits. The submitted planning application suggests that the mobile home is served with water from the neighbours connection to the group water scheme in the area and the site also connects to the neighbours existing septic tank system.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for the development which consists of the retention of mobile home for habitable purposes, entrance from road and associated site works.
- 2.2. The application included plans, particulars and completed planning application form.
- 2.3. The submitted planning application form advises that the mobile home, the subject of this retention application, is to be occupied as a permanent place of residence for the applicant who owns the land since October 2018 and plans to retire to the site. It is noted that the land was transferred from her mother but that the family have been holidaying in the area since 1990. The neighbouring property is in the applicants' sisters' ownership and the applicant, who resides in Dublin, is currently living in rented accommodation in Dublin, having sold her home in Dublin in 2018.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for the following reasons relating to the following:

1. The subject site is located in the countryside, within the 'Areas of Special Control', which is 'Heritage Landscape' where housing is restricted to permanent homes for 'local rural persons'. The applicant does not comply with the stated criteria of Objective CDP 3.11, and would be contrary to the Clare County Development Plan and Sustainable Rural Housing Guidelines.
2. The nature and form of the development for retention would constitute a form of development that is not consistent with the established character of the area and would not represent a satisfactory form of development within a coastal Heritage Landscape. The development would seriously injure the visual and residential amenities of the area and constitute a haphazard development of the site.
3. Proposals for wastewater are unacceptable and would conflict with Policy Objective 8.27 of the CDP and with the provisions of the EPAs CoP and would represent an unacceptable risk of pollution to the environment due to potential impacts on groundwater and surface water, and would therefore, be prejudicial to public health.
4. The PA is not satisfied that the development for retention would not be likely to have a significant effect on the Lower River Shannon SAC in view of the conservation objectives for the site and as such, is precluded from granting permission.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party and prescribed body submissions, planning history and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report. The report also notes the enforcement history of the site, and adjacent property.

The Planning Report concludes that the proposed development does not comply with the settlement location policy of Clare County Council. It is noted that the applicant has never resided in area surrounding the site at any stage having moved

from Limerick to London and then Dublin, where she currently resides. The applicants family, having purchased the land in the 1980s/1990s, disposed of 4 sites on the opposite side of the road, with 3 houses constructed and a house was constructed to the west of the subject site following a grant of permission in 1997. The applicant is not considered to comply with the Local Rural Person criteria in Policy Objective CDP3-11.

In addition, the applicant is not considered to comply in terms of the Local Rural Area requirements as she was not born in the local rural area, nor has she ever lived in the local rural area. She therefore does not comply with the stated criteria. The stated mobile home is intended to be the permanent place of residence for the applicant, and she has never owned a house in the rural area. It is noted that the applicants' husband was the applicant who secured planning permission for the house approximately 90m to the west of the site.

The planning report also considers that the proposed development does not represent a satisfactory standard of residential development at this location and would be contrary to Policy Objective CDP 13.5. The site lies within Flood Zone A and a full site-specific flood risk assessment would be required to be carried out. The report notes the comments of the Area Engineer and addresses the concerns in relation to public health matters. Issues in relation to AA are also dealt with.

The Report concludes that proposed development is not acceptable, and the Planning Officer recommends that permission be refused for the proposed development, for reasons as summarised above in section 3.1 of this report. This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. Other Technical Reports

West Clare Municipal District Engineer: Further information required in relation to a number of roads issues including the availability of adequate sight distances, works to roadside boundaries as well as surface water issues.

Environment Section: The report recommends that permission be refused for the proposed development for the following reason:

'The existing mobile home is currently connected to a neighbouring septic tank. This is unacceptable under the current Code of Practice 2009 which states:

'To protect the environment and, in particular, water quality, houses in un-sewered areas must be on suitable sites and must have an appropriate wastewater treatment system that is correctly installed and maintained.'

The applicant has not demonstrated that the current wastewater treatment system serving the mobile home is appropriate.

3.2.3. Prescribed Bodies

DoTCAGS&M: The Development Applications Unit submitted a report in relation to the proposed development noting that the subject site partially lies in the Lower River Shannon cSAC (Site Code: 002165). As such, the development must be assessed in light of the conservation objectives of the European Site. The report also notes the qualifying interests for the SAC which occur in or near the site *inter alia*:

1. Large shallow inlets and bays
2. Bottle-nosed dolphin
3. Otter.

3.2.4. Third Party Submissions

There is 1 no. third party objection/submission noted on the planning authority file.

The issues raised are summarised as follows:

- The applicant has shown disregard for the beach, people, and environment and is now seeking to retain permission for their haphazard overdevelopment right on the cliff of Rhinevella Beach.
- The site lies within a heritage landscape in an area of natural conservation and beauty.

- No regard has been given to raw sewage or waste management and there is only one direction for it to go – into the bay where there is a mussel farm, fishing and swimming.
- The concerns are as follows:
 - No suitable location of a septic tank and percolation area.
 - No letters of consent were provided for water or septic tank connections.
 - Concerns raised in relation to the sewage and water hook-ups.
 - Planning notices not on site on the 19/12/2020.
 - There are too many structures in one small area, contrary to CDP.
 - The mobile home was installed during the August bank holiday weekend, during the night.
 - There are business and tourism initiatives underway that rely on clean beaches and waters.
 - It is particularly upsetting that this was done while local residents can't get planning permission when sought through the proper channels.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref: 90/947: Permission granted to Mr. Art Kavanagh to construct a bungalow and septic tank.

Adjoining site to West:

PA ref: 97/1453: Permission granted to Mr. Gerard McInerney to construct a bungalow and septic tank.

Across the road to North - land in the ownership of Mr. Art Kavanagh at time of applications:

PA ref: P95/69: OPP Granted for house and septic tank to Mr. Kevin Anthony Chesser

PA ref: P96/1128: Permission Granted for temporary location of mobile home and approval for site development works and septic tank and percolation area. to Mr. Kevin Anthony Chesser

PA ref: P97/1126: Permission Granted for house and septic tank to Mr. Kevin Anthony Chesser (OPP granted as per ref: P95/69)

PA ref: P95/1261: Permission Granted for house and septic tank to George & Deridre Lubeck

PA ref: P97/1252: Permission Granted for house and septic tank to Mr. Derek McKey

Enforcement History:

UD20-084: Warning letter issued to Grainne Kavanagh on 12th October 2020 for 'the unauthorised placement of a mobile home and the use of same for habitable purposes, unauthorised entrance and associated site works'.

Site 30m to West:

UD20-098: Warning letter issued to Luke Kavanagh for 'the unauthorised placement of a mobile home and the use of same for habitable purposes, unauthorised entrance and associated site works'.

Site 50m to West:

UD20-099: Warning letter issued to Morgan Kavanagh for 'the unauthorised placement of a mobile home and the use of same for habitable purposes, unauthorised entrance and associated site works'.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

- 5.1.1. The National Planning Framework – Project Ireland 2040 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. National Policy Objective 20 seeks to protect the need for single housing in the countryside through the local authority's overall Housing Need Demand Assessment (HNDA) tool and CDP Core Strategy Processes.
- 5.1.3. National Policy Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. The NPF notes that the location of housing in Ireland has a dispersed and fragmented character which has led to people living away from jobs and often being at a sizable remove from important services. Such development has made it costly and often unfeasible for the State to align and invest in infrastructure delivery and has hampered effective responses to climate change amongst other factors.

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, setting out criteria for managing rural housing. Chapter 3 of the guidelines relates to rural housing section 3.2 identifies rural area types. The subject site is located within a Rural Area Type classified as being a 'predominantly dispersed settlement area' which the characteristics of such areas generally being associated with the western seaboard of coastal counties from Donegal to Clare and some parts of Kerry. This area is also noted for having comparably fewer villages or smaller town settlements compared to other rural areas, with clusters of houses being more common.

- 5.2.2. The Guidelines clearly state that development pressure arising from urban areas should generally take place within the built-up areas or in areas identified for new development through the development plan process. Section 3.2.3 of the Guidelines deal with Rural Generated Housing and sets out a number of categories of circumstances where the PA could conclude that a proposal meets a rural generated housing need, including 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.
- 5.2.3. 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 Clare County Development Plan 2017 – 2023, is the relevant policy document relating to the subject site.
- 5.3.2. Section 3.2.5 of the Plan deals with Single Housing in the Countryside, and within a heritage landscape which is identified as an Area of Special Control. As such, Development Plan Objective CDP3.11 – New Single Houses in the Countryside within the 'Areas of Special Control' is relevant and states as follows:

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).

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.

- b 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.

Category A – Local Rural Person (which includes 3 criteria)

Category B – Persons working full time or part-time in rural areas.

Category C – Exceptional Health and / or family circumstances.

5.3.3. With regard to the Heritage Landscape, Chapter 13 of the CDP is relevant and in particular, Section 13.3.2 which addresses three Living Landscape Types, including type iii Heritage Landscapes - areas where natural and cultural heritage are given priority and where development is not precluded but happens more slowly and carefully. Section 13.3.2.3 identifies Heritage landscapes as those areas within the County where sensitive environmental resources – scenic, ecological and historic, are located. Such landscapes are envisioned as the most valued parts of County Clare and their principle role is to sustain natural and cultural heritage. The Plan notes that developments in these areas are likely to be subject to significantly more scrutiny in terms of how and where they take place.

5.3.4. Objective CDP13.5 states as follows:

It is an objective of the Development Plan:

To require that all proposed developments in Heritage Landscapes demonstrate that every effort has been made to reduce visual impact. This must be demonstrated for all aspects of the proposal – from site selection through to details of siting and design. All other relevant provisions of the Development Plan must be complied with.

All proposed developments in these areas will be required to demonstrate:

- That sites have been selected to avoid visually prominent locations;
- That site layouts avail of existing topography and vegetation to minimise visibility from scenic routes, walking trails, public amenities and roads;

- That design for buildings and structures minimise height and visual contrast through careful choice of forms, finishes and colour and that any site works seek to reduce the visual impact of the development.

5.3.5. In addition to the above, the Plan states that the majority of the areas within Heritage Landscapes contain sites, species, habitats and natural resources that are protected under the provisions of the Habitats Directive and / or the Birds Directive. The Plan expects that applicants familiarise themselves with the requirements of these Directives. In addition, such landscapes are sensitive to visual impacts and water pollution.

5.3.6. The site lies within the identified Seascape Character Area 9 – Sought Loop Head & Shannon Mouth and CDP13.6 A requires all proposed developments to demonstrate that every effort has been made to reduce the visual impact of the development. this must be demonstrated by assessing the proposal in relation to:

- Views from land to sea
- Views from sea to land
- Views along the coastline

5.3.7. Section 13.6 of the Plan deals with applications for single houses in the countryside.

5.3.8. Other relevant objectives and sections of the plan include:

- CDP14.2 – which deals with European Sites
- CDO14.3 – requirements for AA
- Appendix 1 – Development Management Guidelines
 - A1.3 – Residential Development
 - A1.3.1 – Rural Residential Development which deals with matters relating to siting and design, road frontage, plot size and wastewater treatment systems.

5.4. **Natural Heritage Designations**

The site is partially located within the Natura 2000 site, the Lower River Shannon SAC (Site Code: 002165) which affects the southern area of the site.

The submitted site map suggests that the site is primarily under grass, which is not the case on the ground. The site lies immediately adjacent to the beach at Rinevella Bay, and the hard-core area installed to accommodate the mobile home the subject of this retention application extends towards the small cliff and beach area. The applicant did not provide any Appropriate Assessment Screening Report in support of the development. I propose to consider AA matters further below in my assessment.

5.5. **EIA Screening**

Having regard to nature and scale of the development, there is no real likelihood of significant effects on the environment arising from the proposed development in terms of EIA. The need for environmental 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**

This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The issues raised are summarised as follows:

Reasons 1:

- The land has been in the applicants' family since the late 1980s and therefore the appellant contends that in addition to satisfying the requirements of Categories A or B or C of Clause CDP 3.11, the appellant also clearly satisfies the 'Local Rural Person' criteria.
- The appellant has never owned a house in the area and has a need for a dwelling for their permanent occupation.

- The fact that the appellant came into legal possession of the land in 2018 by way of inheritance is not relevant to the history of the land and the PA has erroneously denied the appellant the entitlement to the Local Rural Person criteria.
- While it is agreed that the appellants husband sought and received planning permission for a house, it is not true to say that he or the appellant ever constructed or lived in the dwelling granted under P95/1243. The appellant therefore has a local rural housing need.
- An article is submitted suggesting that the 'locals only' planning rule is not aligned with the EU Court of Justice ruling.
- It is noted that the cover letter submitted with the application was not uploaded to the online portal which would have shared useful information with the public. A copy of the letter is included with the appeal and explains the appellants connections with the area.
- It would appear that Clare Co. Co has not taken account of the relevant recommendations of the NSS in its decision as it relates to the clustered settlement pattern of rural development in structurally weak areas of the country.

Reason 2:

- The second reason for refusal suggests that a mobile home is not a satisfactory form of development within a coastal heritage landscape. It is submitted that there are thousands of mobile homes throughout Ireland in coastal and inland locations, including Co. Clare.
- The mobile home is very attractive, well sited and very well presented.
- The site has been selected to avoid visually prominent locations and every effort has been made to reduce visual impact.
- The site is located on a designated heritage trail and has been sited so as not to intrude in the unobstructed views of neighbouring dwellings across the road.

- The mobile is a typically standard constructure and save from burying it in the site, it will have a visual impact. No consideration was given to potential screening as mitigation for the impact.

Reason 3:

- The connection is to the adjacent third-party septic tank which is owned by the appellants sister and has been in place since 1990. The septic tank was designed in accordance with NSAI Standard SR6 1975, which was the relevant standard when constructed.
- The septic tank therefore does not constitute new development, is functioning efficiently and has been well maintained over the past 30 years.
- The septic tank can comfortably accommodate 8 people and the acceptability of the system was demonstrated to the satisfaction of the PA in previous planning application.

Reason 4:

- An examination of the SAC maps show that it is outside the boundaries of the site.
- In the decision, there is no evidence of analysis of the purported effect on the SAC and it appears that the decision has been made on a future conditional basis without any supporting documentation.
- Quoting CDP 14.2 European Sites and DCP 14.3 Requirement for AA as a basis for refusal would appear to be misleading as if these items were truly considered applicable in this instance, NIS and habitat assessments would have been sought by way of RFI during the planning process.
- No development has taken place within or near the SAC.

Conclusion:

- It is submitted that under the EIA assessment in the Planning Report, the conclusion was that there is no real likelihood of significant effects on the environment arising from the proposed development.
- This conclusion / decision was not recorded in the Planning decision which would appear to contravene the obligation of the Clause 3.6 competent

consent authority and reinforces the view of the appellant that the decision is fundamentally flawed, and that retention permission should have been granted.

- There was no attempt at engagement with the appellant during the planning period.

There are enclosures with the appeal, and it is asked that the Board grant permission for the retention of the mobile home.

6.2. **Planning Authority Response**

None.

The Planning Authority submitted a response to the first party appeal requesting that the Board uphold their decision and advising no further observations.

6.3. **Observations**

None.

7.0 **Assessment**

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Compliance with National Guidelines & Standards, the Development Plan & General Development Standards
2. Visual Impacts
3. Water Services & Site Suitability Issues
4. Other Issues
5. Appropriate Assessment

7.1. Compliance with National Guidelines & Standards, the County Development Plan & General Development Standards:

7.1.1. The subject site is located within an identified Heritage Landscape which is identified as a part of the countryside within an Area of Special Control and where the Clare County Development Plan policy CDP3.11 is applicable. In order to grant planning permission for a new residential unit for permanent occupation at this location, the applicant must fall within one of the 3 categories identified as follows:

- Category A – Local Rural Person (which includes 3 criteria)
 - The applicant must come within the definition of a ‘Local Rural Person’
 - The proposed site must be situated within their ‘Local Rural Area’,
and
 - The applicant must have a ‘Local Rural Housing Need’.
- Category B – Persons working full time or part-time in rural areas.
- Category C – Exceptional Health and / or family circumstances.

An applicant must qualify as one of the categories and the site must be within their local rural area and they must have a local rural housing need.

7.1.2. The applicant submits that they comply with Category A as a local rural person on the basis that the site the subject of the development comprises part of her fathers’ landholding which he owned prior to 1999, and the applicant came into legal possession of the site in 2018. A ‘Local Rural Person’ is described in the CDP as

‘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 live at any stage(s) prior to making the planning application’.

‘A local rural person can also include a person who has links to the rural area by virtue of being an established rural landowner’.

7.1.3. The applicant has submitted details of her former residences, all of which have been based in Limerick, London and Dublin. The property the subject of the current application appears to have been a second home location. The applicant, therefore, does not comply as a Local Rural Person with regard to being born in the local rural

area or having lived permanently in the area for any period of time. The second element to establishing the applicant as a Local Rural Person relates to her family ownership of a landholding in the area prior to 1999. In this regard, I accept that the applicants father purchased the property, together with the adjacent land to the west and some land to the north before this date.

- 7.1.4. In the context of the Sustainable Rural Housing Guidelines however, I would note that there no reference anywhere to ownership of a 'landholding' as a criteria to facilitate local rural persons. Rather, the guidelines refer to farms and facilitating non-farming children / siblings to build a permanent home. The applicants father sold sites for development and there is no evidence of any farming being undertaken by the family.
- 7.1.5. While I acknowledge that the applicants' family have been coming to this area for many years, I do not consider that she complies as a Local Rural Person in the context of the national guidelines or indeed, the Clare County Development Plan policies as they relate to rural housing.
- 7.1.6. In terms of the Local Rural Area, the site must be located within 10km of where the applicants was born is living or has lived for a substantial period of time. The applicant was not born in the local area and has never permanently resided for any period of time in the local area. The applicant does not comply with this requirement.
- 7.1.7. With regard to the Local Rural Housing Need, the Board will note that the applicant intends to live permanently in the mobile home and has never owned a residential property in the area. The appeal submission notes that while the applicants husband got planning permission to build a house on the site to the west, he never built or lived in the house. The Board will note that there are two separate Planning Reference numbers indicated in the appeal P95/1453 and P951243 but the only reference available on the CCC Website is 97/1453 relating to this planning permission. In any case, I do not consider that this argument supports the appellant in their efforts to establish a local rural housing need.
- 7.1.8. Having regard to all of the information presented of both national and local policies as they relate to sustainable rural housing, and other than the desire to live at this location, the applicant has not provided any details of a need to live in this area, or details of employment which would establish such a housing need as being rurally

generated. I note that the applicant is retired, and her husband works remotely. I consider that the applicant has not demonstrated compliance with CDP3.11 of the Clare County Development Plan or the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government, April 2005.

7.2. Visual Impacts

- 7.2.1. Having regard to the location of the subject site within a Heritage Landscape, and located between road and sea, Objective CDP13.5 of the County Development Plan requires that all proposed developments 'demonstrate that every effort has been made to reduce visual impact. This must be demonstrated for all aspects of the proposal – from site selection through to details of siting and design. All other relevant provisions of the Development Plan must be complied with.'
- 7.2.2. The subject site lies along the Loop Head Heritage Trail, with Rinevella Bay identified as a designation point on the trail and within the identified Seascape Character Area 9 – South Loop Head & Shannon Mouth. In this regard, Policy Objective CDP13.6 A is relevant in that it requires all proposed developments to demonstrate that every effort has been made to reduce the visual impact of the development. this must be demonstrated by assessing the proposal in relation to:
- Views from land to sea
 - Views from sea to land
 - Views along the coastline
- 7.2.3. I note the appellants submission with regard to the mobile home installed, noting that it is not by its nature a permanent structure, and that the coastline of Ireland includes thousands of such structures. The presence, therefore, it is submitted, should be considered a satisfactory form of development within the landscape. It is further submitted that it can be viewed as a very attractive installation and does not deter from the overall vista of the local area. In terms of mitigation, it is submitted that the planning authority did not give consideration to potential screening for the visual impact, noting that the temporary removal of the boundary to facilitate the installation of the mobile home has been left pending the decision of this appeal.

- 7.2.4. In the context of the subject site, I have serious reservations regarding the visual impact of the installation of the mobile home, not only in terms of the mobile home itself, but the works required to facilitate its installation. The applicant has stripped an area of the site of its vegetation cover and provided a hard stand area to accommodate the mobile home. While I note the submitted site layout plan indicates an extensive area of the remaining site is under grass, this is not the case on the ground. The rocky slopes of the site towards the sea mean that the grassed area is substantially smaller than that indicated on the maps and the Board will note that the southern area of the site on the maps extend to the beach. I have included an image of the site from Google Maps which shows the extent of grass and vegetation cover in August 2019 and I note how extensively this area has reduced in the intervening years.
- 7.2.5. I consider that the impact of the removal of vegetation and grass from the site, and its replacement with hardcore, together with the removal of hedgerow to facilitate the entrance to the site and the loss of the naturalised coastal site, the cumulative visual impact is excessive. The development for retention does not represent an appropriate form of development within this Heritage Landscape, is not consistent with the established character of this very sensitive area of the Loop Head peninsula and would be contrary to the requirements of Policy Objective CDP13.6 of the Clare County Development Plan. I would also agree with the Planning Authority that a grant of retention permission in this instance would set a very undesirable precedent for similar type installations on sites along the coast.

7.3. Water Services & Site Suitability Issues

- 7.3.1. In terms of site suitability, the Board will note that the subject site lies immediately adjacent to the cliffs and beach area of Rinevella Bay, which forms part of the Lower River Shannon SAC. Given that the appeal relates to a retention application, it is noted that the works have already been carried out in terms of the connections to water services to accommodate living in the mobile home.
- 7.3.2. The development indicates that the mobile home will connect to the existing potable water supply and existing septic tank which serves the existing adjacent house. While I acknowledge that the applicants' sister owns the existing house, no clearly consent to connect to the services has been submitted with the application or the

appeal. Indeed, I am unclear if the existing water supply is a public supply or a private supply and whether additional consents for this arrangement might be required. I also note that the other two mobile homes on the property (also the subject of enforcement proceedings), as well as the house and detached garage/shed permitted under P90/947 also connect to this existing septic tank which was constructed in 1990.

- 7.3.3. While the applicant submits that the septic tank was constructed in accordance with SR6, the relevant standard at the time, that the system has been well maintained over the years, and can comfortably accommodate 8 people, this element of the proposed development is wholly unacceptable. Notwithstanding the fact that under P90/947, the house which was granted planning permission provided for only two bedrooms and therefore at a maximum, if the septic tank was constructed in accordance with the SR6 Standard, would be able to accommodate 4 persons. That said, I acknowledge the details of the system submitted with the appeal but in the absence of any independent assessment and having regard to the very sensitive location of the site in terms of the SAC, I could not support this situation.
- 7.3.4. I also note the appellants submission that the septic tank should not be considered as a new development and therefore, should not be required to conform to the most up to date Code of Practice. The proposal before the Board is seeking a determination on the appropriateness or otherwise of the provision of an additional residential unit in this area. If the proposal is to connect to an existing system, then that system comprises part of the new development proposal. If an application for extension to the existing house was being considered, for example, this issue would also arise and the WWTP would be required to be assessed in terms of capacity and appropriateness.
- 7.3.5. Circular Letter PSSP 01/10 from the Department of the Environment, Heritage and Local Government requested that the 2009 CoP Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) stated that planning authorities must not, in any circumstances, approve development subject to conditions requiring compliance with the CoP without first satisfying themselves that the provisions within the CoP can be complied with, and on the basis of expert and verifiable evidence including a positive site suitability assessment by an appropriately trained and qualified assessor.

- 7.3.6. The Board will also note the report of Clare County Councils Environment Section as it relates to this element of the proposed development. The proposal to connect to the existing adjacent septic tank system is unacceptable under the current Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses (EPA 2009). I also note the imminent introduction of a new CoP from the EPA in June 2021. In this regard, I consider that the proposed development is unacceptable in terms of wastewater treatment and disposal and would not comply with the requirements of the Policy Objective CDP8.27 in terms of wastewater treatment systems and consider that the development would represent a public health hazard and would represent an unacceptable risk of pollution to ground or surface waters.
- 7.3.7. Coupled with the above concerns, the Board will note that the site lies within a Flood Risk Zone A. No assessment of flood risk was presented in support of the proposed development. In light of the nature of soils, proximity of the sea and beach, as well as the SAC, the potential for impacts arising cannot be discounted either to the water environments or indeed, the occupants of the site if permission is granted.

7.4. Other Issues

7.4.1. Roads Issues

The Board will note the concerns raised by the West Clare Municipal District Engineer with regard to roads requirements. Further information was advised as being required in terms of the entrance to the site and matters relating to surface water management from the site.

Should the Board be minded to grant permission in this instance, I consider that these issues could be addressed by way of a further information request or by appropriate condition.

7.4.2. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.5. Appropriate Assessment

- 7.5.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.
- 7.5.2. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The site is partially located within the Natura 2000 site, the Lower River Shannon SAC (Site Code: 002165) which affects the southern area of the site and the development the subject of this retention application and appeal is not directly connected with or necessary to the management of a European site.
- 7.5.3. The Board will note that no Appropriate Assessment Screening Report was submitted as part of documentation for permission for the proposed development and no NIS was prepared to assess the likely or possible significant effects, if any, arising from the proposed development on any European site.
- 7.5.4. Screening for AA was carried out by the Planning Authority. The subject site was noted as lying partially within the Lower River Shannon SAC (Site Code: 002165) and the proposal is considered to potentially impact on designated marine habitats and species and the water environment by reason of discharges from the septic tank to surface or groundwater, the removal of topsoil or infilling within 500m of watercourses and within 100m of marine habitats, the removal of the roadside ditch, construction works within a floodplain. Ultimately, the PA concluded that the site itself is not suitable to treat wastewater without risk of effluent entering the beach and shoreline in the immediate vicinity. It was not possible to screen out potential significant negative impacts on the environment and therefore, refusal was recommended.
- 7.5.5. The Board will also note the submission of the DoTCAGS&M, where the Development Applications Unit submitted a report in relation to the proposed development noting that the subject site partially lies in the Lower River Shannon cSAC (Site Code: 002165). As such, the development must be assessed in light of

the conservation objectives of the European Site. The report also notes the qualifying interests for the SAC which occur in or near the site *inter alia*:

1. Large shallow inlets and bays
2. Bottle-nosed dolphin
3. Otter.

7.5.6. I also note that the third-party submission to the Planning Authority also raised concerns in terms of the impact of sewage and waste management on the quality of the waters.

7.5.7. I consider that the Lower River Shannon SAC (Site Code: 002165) which affects the southern area of the site, is the only Natura 2000 Site likely to be impacted by the proposed development.

7.5.8. The Conservation Objectives for the Lower River Shannon SAC are as follows:

- To restore the favourable conservation conditions of:
 - [1150] Coastal Lagoons*
 - [1330] Atlantic Salt Meadows
 - [1410] Mediterranean Salt Meadows
 - [91E0] Alluvial Forests*
 - [1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*)
 - [1095] Sea Lamprey (*Petromyzon marinus*)
 - [1106] Atlantic Salmon (*Salmo salar*)
 - [1355] Otter (*Lutra lutra*)
- To maintain the favourable conservation conditions
 - [1110] Sandbanks
 - [1130] Estuaries
 - [1140] Tidal Mudflats and Sandflats
 - [1160] Large Shallow Inlets and Bays
 - [1170] Reefs

- [1220] Perennial Vegetation of Stony Banks
- [1230] Vegetated Sea Cliffs
- [1310] *Salicornia* Mud
- [3260] Floating River Vegetation
- [6410] *Molinia* Meadows
- [1096] Brook Lamprey (*Lampetra planeri*)
- [1099] River Lamprey (*Lampetra fluviatilis*)
- [1349] Bottle-nosed Dolphin (*Tursiops truncatus*)

7.5.9. In terms of the above habitats and species, and having regard to the DAU submission, I would note that while 3 qualifying interests were identified in the Departments report, I note that [1170] Reefs are noted as occurring directly along the shoreline adjacent to, and potentially within the subject site. In addition, [1110] Sandbanks lie off the shore to the south of the bay area. In addition, I note that a Saltmarsh Monitoring Project site for [1330] Atlantic Salt Meadows, lies approximately 1.1km to the east of the subject site within Cloonconeen Lough.

7.5.10. The SAC is of great ecological interest as it contains a high number of habitats and species listed on Annexes I and II of the EU Habitats Directive, including the only known resident population of Bottle-nosed Dolphin in Ireland and all three Irish Lamprey Species. The area immediately adjacent to the subject appeal site is identified as a critical habitat of the dolphin. Otters are also found within the site with the area to the south of the subject appeal site noted as a commuter buffer for the species.

7.5.11. In terms of potential impacts associated with the works carried out at the site, I cannot conclude that there have been no impacts to habitats in terms of loss or modification due to the removal of vegetation and the importation of fill to accommodate the mobile home. As no critical assessment was undertaken in terms of the septic tank system, even if the principle of the proposed connection to same was acceptable, I cannot conclude that the additional loading will not potentially impair water quality in the SAC. In terms of disturbance to species, having regard to the previous paragraphs, it is clear that there is potential for disturbance or

displacement impacts on otters and dolphins, both of which are species of conservation interest within the SAC.

7.5.12. As such, and applying the precautionary principle, significant effects on the Lower River Shannon SAC (Site Code: 002165) cannot be ruled out. On the basis of the information provided with the application and appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Lower River Shannon SAC (Site Code: 002165), in view of the site's Conservation Objectives. I consider that the Board is precluded from granting permission for the retention of the mobile home, and the associated works carried out at the site in these circumstances.

8.0 Recommendation

- 8.1.1. Having regard to the information submitted in support of the appeal and development the subject of retention, together with all other matters and details on the file, I am satisfied that the development does not comply with national or local policy in terms of rural residential development. In addition, I consider that the visual impacts associated with the development would contravene the policy objectives for the heritage landscape area and proposals regarding the servicing of the mobile home and unacceptable.
- 8.1.2. I am further concerned that the potential impact of the works carried out to date have not had any consideration or assessment with regard to potential significant effects on the SAC. As such, and in line with the precautionary principle, I cannot conclude with certainty that no effects arise.
- 8.1.3. I recommend that planning permission be refused for the proposed development for the following stated reasons.

9.0 Reasons and Considerations

1. The site of the proposed development is located within an “Area of Special Control” as set out in the Clare County Development Plan 2017 – 2023, as amended, where it is policy (under policy CDP3.11) to permit housing in the countryside only to applicants who can demonstrate compliance with specified rural housing need criteria. Furthermore, under the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in April 2005, it is the policy to distinguish between urban-generated and rural-generated housing need, and to direct the former into existing towns, villages and other settlements.

On the basis of the documentation submitted with the application and appeal, it is considered that that the applicant does not have a rural-generated housing need for a house at this rural location, as set out in these Guidelines, and does not come within the scope of the rural housing need criteria set out in the Development Plan. In addition, on the basis of the documentation submitted with the application and appeal, it is considered that the applicant’s housing need relates to an urban area (such as Limerick or Dublin in this instance), rather than to this rural location, and that the applicant’s stated housing need could be satisfactorily met within an established town or village/settlement centre. The proposed development would, therefore, be contrary to the Ministerial Guidelines, would contravene materially the provisions of the Development Plan, and would be contrary to the proper planning and sustainable development of the area.

2. The site is located in an area which is designated in the current Clare County Development Plan as a Heritage Landscape within an Area of Special Control and between road and sea within the identified Seascape Character Area 9 – South Loop Head & Shannon Mouth, where all proposed developments are required to demonstrate that every effort has been made to reduce the visual impact of the development, Policy Objectives CDP13.5 and CDP13.6 refer. This designation and policies are considered reasonable.

The development to be retained, including the ground works carried out to accommodate the mobile home on the site, does not represent an appropriate form of development within this Heritage Landscape and is not consistent with the established character of this very sensitive area of the Loop Head peninsula. The development would detract to an undue degree from the rural character and coastal scenic amenities of the area. It is considered, therefore, that the development if retained, would contravene these policies, would set an undesirable precedent for similar type development on sites along the coast and would be contrary to the proper planning and sustainable development of the area.

3. It is considered that the proposal to retain the connection of the mobile home to the existing septic tank system on the adjacent site would not comply with the provisions of the Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses, EPA, 2009, or with the policy objectives of Clare County Development Plan 2017-2023 as they relate to such systems, CDP8.27 refers.

In the absence of any detailed assessment, the Board is not satisfied that the site conditions are suitable for the treatment and disposal of domestic effluent and that the existing system is capable of treating and disposing of waste arising from an additional residential unit. The development, the subject of this retention application and appeal would therefore, represent an unacceptable risk of pollution to the water environment, particularly associated with the adjacent SAC and would be prejudicial to public health.

4. The site of the development the subject of this retention application and appeal lies partly within the Lower River Shannon candidate Special Area of Conservation, Site Code: 002165, a site of European importance. It is also located in a Flood Risk Zone A. The Board is not satisfied, based on the submissions made in connection with the application and appeal, and in the absence of any appropriate assessment screening or flood risk assessment by the applicant, that adequate information has been provided on the impact

of the works carried out on the Annexed habitat and the resulting implications for wildlife and flora.

It is therefore considered that the Board is unable to ascertain, as required by the relevant EU Regulations, that the development the subject of this retention application and appeal, either individually, or in combination with other plans or projects, would not be likely to have a significant effect on Lower River Shannon candidate Special Area of Conservation, Site Code: 002165, in view of the site's Conservation Objectives. It is considered that the Board is precluded from granting permission in these circumstances.

A. Considine

Planning Inspector

16/05/2021