



An  
Bord  
Pleanála

## Inspector's Report ABP-310587-21.

<b>Development</b>	Construction of dwelling house. A NIS is submitted with the application.
<b>Location</b>	Carrownakilly, Ogonnelloe, Co. Clare.
<b>Planning Authority</b>	Clare County Council.
<b>Planning Authority Reg. Ref.</b>	20/760.
<b>Applicant(s)</b>	Iona & John McGuinness.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Iseult O'Flynn.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	14/10/2021.
<b>Inspector</b>	A. Considine.

## **1.0 Site Location and Description**

- 1.1. The appeal site is located in a rural area of east County Clare, approximately 4.2km to the north of Killaloe and 2.8km to the south of Ogonnelloe, in the townland of Carrownakilly. The area is accessed via the R463 regional road which connects Killaloe and Ogonnelloe and over the local road, L-41281. This local road runs in north south direction and has a westerly cul-de-sac spur identified as Carrowbaun. This local road is a cul-de-sac and supports a number of one-off houses and businesses. The road is narrow, with room for just one car, but includes a number of pull-in points to facilitate passing cars. The Annacarriga River flows to the south side of the road boundary. The junction of the two elements of the L-41281 is somewhat restricted and there is an existing house located on the north-western corner of the junction.
- 1.2. The site, the subject of this appeal, lies approximately 400m to the west of the junction and access to the proposed development site will involve the construction of a bridge to cross the Annacarriga River. The site itself, occupies an area of road frontage which extends to approximately 20m, with the bulk of the 0.43ha site, being located to the south of the river, and behind the land adjacent to the roadside. There is a line of mature tree line to the north of the proposed site boundary (south of the riverbank), so visibility of the site from the public road is limited.
- 1.3. The site has a stated area of 0.43 hectares and comprises part of a larger family landholding. The applicants' family farm lies to the south of the subject site, with the existing farmyard accessed from the south.

## **2.0 Proposed Development**

- 2.1. Permission is sought, as per the public notices to construct dwelling house, garage, wastewater treatment system, percolation area, bridge over Annacarriga River to facilitate entrance from the Carrowbaun Road and all associated site works. This application will be accompanied by a Natura Impact Statement, all at Carrownakilly, Ogonnelloe, Co Clare.
- 2.2. The application included a number of supporting documents including as follows;
  - Plans, particulars and completed planning application form

- Cover letter
- Letters of consent from appropriate landowners
- Site Suitability Assessment Report
- Method Statement for Construction of Access Bridge over Annacarriga River
- Aquatic Ecological Assessment of Proposed Bridge
- Flood Risk Assessment
- Japanese Knotweed Assessment & Management Requirements
- Hydrogeological Assessment
- Natura Impact Statement

2.2.1. Following the submission of the response to the further information request, the following details were submitted to the Planning Authority;

- In terms of the bridge construction, revised plans to comply with the requirements of the Inland Fisheries Ireland Guidelines (2016) Guidelines on the protection of Fisheries during Construction Works. In addition, an email from the OPW advising that there is no issue with the Section 50 consent applicant for the access bridge being submitted following a grant of conditional permission.
- In terms of the capacity of the junction to accommodate the additional traffic, and in particular the construction traffic, the submission notes that the applicant runs a home-based baking business which does not attract members of the public or large vehicles.

In terms of construction traffic, the details of the vehicles that will access the site are provided. It is further submitted that the larger vehicles will access the site via the existing farm access, while parking will be provided on site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to grant planning permission for the proposed development subject to 12 conditions.

### **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 submission, planning history and the County Development Plan policies and objectives. The report also includes a section on Appropriate Assessment and notes the submission of the NIS.

- The report notes the location of the site in terms of the Settlement Location Policy and accepts that the applicant has submitted documentation to comply with same. The traffic issues relating to the access, including the proposed new access bridge across the Annacarriga River are noted and the report requires further information be submitted in this regard. It is further noted that the construction of the bridge will be subject to an OPW consent process, which may result in alterations. It is requested that the applicant submit details to confirm that consent has been received from the OPW.
- In terms of the third-party concerns relating to the junction to the east of the site, and noting that the proposed development, once constructed, will result in a limited increase in traffic movements on the local road. It was considered however that two issues of concern arise in terms of the employment of the applicant and the nature of same and the applicants were required to submit a plan for the management of construction traffic, including the nature and extent of anticipated traffic, and proposed access and parking arrangements.
- The report concludes noting that no issues relating to water services and public health arise, subject to testing of water quality in the well prior to the commencement of development. No objections are raised with regard to the

proposed house design or visual or residential amenity impacts. The site is located within Flood Zone A and the Flood Risk Assessment is noted. The assessment concludes that the site is at low risk of fluvial, pluvial or groundwater flooding. It is also submitted that the Annacarriga River has the potential to assimilate surface water run-off from the proposed development without a consequence increase in flood risk elsewhere. The content of the Japanese Knotweed Assessment is accepted. As a precautionary measure, the Planning Officers report recommends that all machinery and materials brought to the site are certified free of Knotweed material, and other invasive alien species of plant.

The initial Planning Officers Report concludes recommending that further information be sought in relation to matters relating to the construction of the proposed access bridge, and roads and traffic matters pertaining to the junction to the east of the site.

Following the submission of the response to the further information request, the final Planning Report concludes that proposed development is acceptable, and the Planning Officer recommends that permission be granted for the proposed development, subject to 12 conditions. This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

### 3.2.2. Other Technical Reports

**Environmental Assessment Officer:** The Environment Section notes the submission of the relevant reports, as well as the detail of the proposed development. The report notes that the site is not located within any designated European Site and therefore the absence of the potential for direct effects. However, given the proximity of the Lough Derg SPA and the presence of a potential hydrological link via the Annacarriga River, there is potential for effects to arise in terms of water quality.

The report advises no objection to the proposal subject to compliance with conditions including the mitigation measures as outlined in the submitted NIS.

With regard to the proposed bridge to be constructed, the Inland Fisheries Ireland Guidelines (2016) Guidelines on the protection

of Fisheries during construction works in and adjacent to waters, recommend that bridge foundations be designed to be positioned 2.5m from the riverbank so as not to impact on the riparian habitat. The proposed bridge abutments are to be set back 1.5m which is insufficient to ensure the integrity of the riparian habitat, and also the salmonid spawning areas which are noted in the Aquatic Ecology Report.

The report concludes noting satisfaction regarding the issue of Japanese Knotweed on site.

### **3.2.3. Prescribed Bodies**

None.

### **3.2.4. Third Party Submissions**

Ms. Iseult O'Flynn made a submission on the application and included a number of attachments which relate to the history of the road and the impacts associated with large vehicles and damage to her property, which lies at the junction of the cul-de-sac road and the R463 - Killaloe to Tuamgraney Road.

The submission notes that the proposed access is not acceptable and that an alternative should be considered. The negative effects of the proposed bridge construction will impinge on the Carrowbaun Road, townlands, properties and current junction at Annacarriga Bridge. It is submitted that a vehicle passes the third-party home on average every two to three minutes during the period of 8am to 6pm and both roads are extremely busy.

The third-party is not satisfied that her home has been suitably considered in the application and that if approved, it will be at the detriment of existing homes and road users. It is also noted that the third-party contributed land to widen the junction, for the benefit and safety of all and junction works were carried out at her expense. It is submitted that the proposed bridge is not adequate or suitable for a number of reasons relating to its proposed construction and impact on the riparian habitat and no consent from the OPW has been provided.

### 3.2.5. Elected Members Representations

The following elected representatives are noted as having made representations on the application:

- Deputy Cathal Crowe.
- Cllr. Joe Cooney

## 4.0 Planning History

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

**PA ref: 19/794:** Permission was sought by the current applicants for permission to construct a dwelling house, garage, waste-water treatment system, percolation area, bridge over the Annacarriga River to facilitate entrance from the Carrowbaun Road and all associated site works. The application was withdrawn following a request for further information and prior to the Planning Authority issuing a decision.

### **Family Landholding:**

**PA ref: 16/31:** Permission granted to Mr. James Harty to construct dwelling house, garage, wastewater treatment system, percolation area, entrance and all associated site works

### **East of site:**

**PA ref: 16/248:** Permission granted by Clare County Council to Anna Prendergast for the construction of a dwelling house, garage, entrance, install a wastewater treatment system and percolation area and all associated site works. The reasons for refusal related to non-compliance with rural housing policy and flood risk.

**PA ref: 17/235:** Permission refused by Clare County Council to Sile Prendergast for the construction of a dwelling house, garage, entrance, install a wastewater treatment system and percolation area and all associated site works. The reasons for refusal related to non-compliance with rural housing policy and flood risk.

## **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, ie. 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 Clare County Development Plan 2017 – 2023, is the relevant policy document relating to the subject site. The site is located in the open countryside, in a rural area where there is no specific zoning afforded to the site. The site is located within an Area identified as being under Strong Urban Pressure as well as being within a Heritage Landscape, collectively referred to as Areas of Special Control in the Plan.
- 5.3.2. Section 3.2.5 of the Plan deals with Single Housing in the Countryside, and within Areas 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 principal 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. Section 13.6 of the Plan deals with applications for single houses in the countryside.

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

- Chapter 14 deals with Biodiversity, Natural Heritage and Green Infrastructure where the following objectives are relevant:
  - CDP14.2 – which deals with European Sites
  - CDO14.3 – requirements for AA
- Chapter 18 deals with Climate Change Adaption, Flood Risk and Low Carbon Strategy where the following objective is relevant:
  - CDP18.6 - Strategic Flood Risk Assessment
- Appendix 1 – Development Management Guidelines where the following is relevant:
  - 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**

- 5.4.1. The site is not located within any designated site. The closest Natura 2000 site is the Lough Derg (Shannon) SPA (Site Code: 004058) which is located approximately 0.8km to the south-west of the site. The Slieve Bernagh Bog SAC (Site Code: 002312) lies approximately 1.6km from the site while the Slieve Aughty Mountains SPA (Site Code 004168) is located approximately 9.2km to the north of the site.
- 5.4.2. The Board will note that the applicant submitted a Natura Impact Statement in support of the proposed development. I will address all matters of AA in Section 8.0 of this report.

#### **5.5. EIA Screening**

- 5.5.1. The Board will note that the subject appeal relates to the construction of a house and associated services, including an access bridge over the Annacarriga River, in a rural area of east Co. Clare.
- 5.5.2. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required. The proposed development is not of a scale or nature which would trigger the need

for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.

5.5.3. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. I also note the requirements of Article 103(1)(a) and (b) of the Planning and Development Regulations 2001, as amended in this regard. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.5.4. Having regard to:

- (a) the nature and scale of the development,
- (b) the rural location of the site, and
- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

5.5.5. It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. 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**

6.1.1. This is a third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. The issues raised reflect those

as submitted to the Planning Authority during its assessment of the proposed development and are summarised as follows:

- The issues of greatest significance are the environmental impacts of a new bridge when access is attainable on the landowners' side of the river.
- The grant of permission is contradictory to the EU directive to preserve our natural resources.
- The increased traffic volumes at the junction at Annacarriga Bridge. It is submitted that this is not just an environmental issue, but also a road safety issue.
- The appellants home sites immediately adjacent to the road and in 2013, ceded land in order to widen the junction for road users. Regardless of the road improvement works, their property is still damaged on a regular basis.
- The junction is the only access to the cul-de-sac for all farm vehicles, construction vehicles, tracking machinery and residential traffic. The pressure on the junction has been the subject of letters to the Council for 15 years.
- The appellants right to, and the preservation of their, home and livelihood has been neglected by the Council who have permitted numerous applications in the past, many of which have had adverse impacts on the appellants home, including damage to the boundary walls and traffic congestion.
- There have been countless traffic incidents at the junction, one of which destroyed a large section of the old bridge, as well as damage to the appellants conservatory.
- A grant of permission will increase the already significant safety issues that existing at the junction.
- Once a river crossing has been established on Carrowbaun, concern is raised regarding the precedent this sets for further development on the cul-de-sac, to the detriment of the appellants' home.

The appeal includes a number of enclosures.

## **6.2. Planning Authority Response**

The Planning Authority submitted a response to the third-party appeal as follows:

- The overall development, and in particular the access bridge, has been the subject of extensive environmental assessments. Based on the assessments and mitigation measures proposed, the PA was satisfied that the development would not adversely affect the integrity of European Sites within the likely zone of impact.
- The permitted bridge is designed in accordance with the Inland Fisheries Ireland standards.
- The traffic issues raised were considered at length. It was determined that once constructed, the development would generate only a small increase in traffic movements on the local road network and at the junction of concern. During the construction phase, it was agreed that heavy vehicles would access the site via the applicant's parent's farm. Deliveries would be limited to periods of suitable weather when ground conditions could permit such access across agricultural fields.
- The temporary access arrangement is not suitable for the provision of a year-round access to the site for the applicants.

It is requested that the Board uphold the Councils decision to grant permission in this instance.

## **6.3. First Party Response to Third-Party Appeal**

The applicants' agent, OBB Consulting Engineers Ltd., submitted a response to the third-party appeal. The response is summarised as follows:

- The overall development, and in particular the access bridge, has been the subject of extensive assessments at significant expense by the applicant to ensure the proposed development will have a minimal impact from an environmental viewpoint.
- The applicant has engaged with the OPW regarding the proposed access bridge.

- The bridge is necessary to accommodate the development as there are no other options for access to the proposed dwelling from the public road, without the necessity to cross 4 fields on the farm.
- A traffic management plan has already been prepared with regard to perceived traffic issues (pertinent points included).
- The applicant will be taking all reasonable measures over and above what would typically be required for the construction of a one-off dwelling in the countryside.
- The appellants reference to a traffic accident in the vicinity of her dwelling is disingenuous as the accident did not occur at the junction but at the bridge to the south-west of the junction.

It is requested that the Board uphold the decision of Clare County Council and grant permission for the proposed development.

#### **6.4. 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. Principle of the development & compliance with the County Development Plan & General Development Standards
2. Visual Impacts
3. Roads & Traffic
4. Site Suitability Issues
5. Flood Risk Assessment

## 6. Other Issues

The Board will note that Appropriate Assessment will be dealt with separately under section 8.0 of this report.

### **7.1. Principle of the development & Compliance with National Guidelines & Standards, the County Development Plan & General Development Standards:**

- 7.1.1. The site is located within an Area identified as being under Strong Urban Pressure as well as being within a Heritage Landscape, collectively referred to as Areas of Special Control in the Clare County Development Plan. There is a presumption against development in such areas save for in instances where it can be demonstrated that an applicant complies with the Planning Authority's policies relating to the rural area. An applicant must qualify as one of the categories and the site must be within their local rural area and must have a local rural housing need.
- 7.1.2. Should the Board be minded to grant planning permission in this instance it should be satisfied that the appellant adequately complies with the requirements of these stated policies, as well as National Policy Objective 19 of the National Planning Framework. Objective 19 of the National Planning Framework seeks to ensure that in rural areas under urban influence, the provision of single housing in the countryside will be based on the core consideration of demonstratable economic or social need to live in a rural area..... having regard to the viability of smaller towns and rural settlements. The Clare County Development Plan also seeks to facilitate the genuine housing requirements of the local rural community with urban generated development directed to the areas zoned in adjoining urban centres, towns and villages. Objective CDP3.11 is applicable in this regard and provides for the limited circumstances within which rural housing within an area of Special Control may be facilitated.
- 7.1.3. The applicant appears to 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 has owned since 1997. The Board will note that the applicant currently rents a house on the family farm / landholding, which extends to 11.65ha, from her family, and it is submitted that this house will not be offered for sale to the applicant as an option for housing. The applicant is self-employed and works from



her home as a baker, specialising in high end cakes. Orders are made online or by post and are delivered by the applicant. The business would not appear to give rise to any visiting members of the public. 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 life 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'.

- 7.1.4. From the information submitted, it would appear that the applicant complies as a Local Rural Person in accordance with the County Development Plan requirements. 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 criterion 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 has given a site to the applicants' brother, where planning permission has been granted to him for the construction of a house. The access to this site is off the private road to the south of the current proposed site, which comprises the access to the current applicants rented home and her family home / farm.
- 7.1.5. While I acknowledge and accept the bone fides of the applicant in this instance, I am satisfied that no specific need to live on the subject site in the rural area arises, and that the housing need might reasonably be met within the settlement boundary of nearby settlements including Ogonnelloe, approximately 2.8km to the north, or Killaloe, approximately 4.2km to the south. In light of the above, I consider that a grant of permission in this instance would militate against the consolidation of these settlement and would set a precedent, contrary to both national and local policy.
- 7.1.6. Having regard to the rural location of the site, it is considered that the proposed development would result in and exacerbate a pattern of haphazard development at this location and outside of a settlement area, and would, by itself and by the precedent it would set for similar such development, militate against the efficient use of services and infrastructure within nearby settlements. Having regard to the level of existing housing development already in existence in this rural location and on the

local cul-de-sac road, it is considered that the proposed development would contribute to the encroachment of random development in the rural area and result in a haphazard and unsustainable form of development in an unserviced area. The proposed development would, therefore, be contrary to the Ministerial Guidelines, to the over-arching national policy and the policy objectives of the County Development Plan as they relate to rural housing, Objective 19 of the National Planning Framework and the guidance provided within 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. The proposed development seeks to construct a two-storey house on the site. There is a wide variety of house types in the immediate area of the site and as such, I have no objections in principle to the proposed design as submitted and consider that the scale and proposed materials are acceptable at this location.
- 7.2.2. The development of the site, however, will require the removal of some roadside boundary, including trees and hedge, and the construction of a bridge across the Annacarriga River. The site is located within a Heritage Landscape, and as such, Chapter 13 of the CDP is relevant. Section 13.3.2 of the Plan 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 principal 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.
- 7.2.3. 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. I will discuss these matters further in Section 8 of this report, under Appropriate Assessment.

7.2.4. Objective CDP13.5 requires that all proposed developments in Heritage Landscapes demonstrate that every effort has been made to reduce visual impact and notes that all other relevant provisions of the Development Plan must be complied with. In terms of site selection, the Board will note that the main access to the applicants' father's landholding, and indeed, their existing house, is located to the south of the subject site. This area of the landholding comprises all existing buildings with the subject site being located away from this cluster. The proposed location of the house will be set behind the riverside tree line and will not result in any significant visual impacts from the surrounding public roads.

7.2.5. While I accept that the proposed access to the site will result in the loss of roadside vegetation, the Board will also note that the boundary to the west will also require to be maintained in order to provide for adequate sight distances. In addition, access to the site requires the construction of a bridge over the Annacarriga River. While I would acknowledge that the visual impacts associated with this bridge might be considered minimal, I would have concerns regarding the precedent a grant of planning permission would set in this area. The visual impacts associated with this access, separate to any road safety issues, in my opinion, would have potential to have a visual impact on this Heritage Landscape.

### **7.3. Roads & Traffic**

7.3.1. The development proposes to construct a new access to the subject site off the existing cul-de-sac road. The Board will note that the third-party appellant has raised concerns in this regard, given the restrictive nature of the junction of the cul-de-sac road, and the location of the appellants property. This issue was raised by the Planning Authority at further information stage with particular regard to the construction phase of the development.

7.3.2. The applicant responded by providing details of the machinery and vehicles which will be used during construction, and it is noted that the larger vehicles will access the site via the existing farm access. This access lies to the south of the site and does not affect the junction where the appellants property is situated.

- 7.3.3. I am inclined to agree with the planning authority, that once constructed, the house, if permitted is unlikely to give rise to any significant additional traffic which would warrant concern. The existing road, while narrow, is relatively adequate in terms of surface finishes and visibility. In this regard, I am satisfied that the development can be considered acceptable, and I would not consider the development to give rise to a significant traffic hazard or obstruction.

#### **7.4. Water Services & Site Suitability Issues**

- 7.4.1. A request by the Planning Authority in relation to the proposed private bored well to service the development resulted in a report by Dr. P. Bartley, Bartley Hydrogeology Limited, T/A Hydro-G being submitted. The comprehensive report concludes that the proposed well can meet the demands of the proposed house and that it is unlikely to be affected by low groundwater levels, with very little risk of a potential for a drop in yields. The report further states that it is not uncommon for wells to be located in proximity to a river and that modern well construction seals off the subsoil and the subsoil bedrock interface to prevent drawing in from the zones which a river might contribute. This prevents contamination. Finally, the report indicates that it is unlikely that the proposed well will affect the existing spring rising 40m away.
- 7.4.2. In terms of water supply, I have no objection.
- 7.4.3. In terms of site suitability, the Board will note that the applicant submitted a Site Characterisation Report for the proposed development. It is intended to install an 'August ir Ko AT6 WWTS' Sewage Treatment Plant to service the proposed dwelling which will discharge to groundwater through a percolation area. It is also noted that the house is to be serviced via a new connection to a proposed well.
- 7.4.4. Having considered the information provided with regard to the proposed development, I am satisfied that the applicant submitted a robust and complete site assessment regarding its suitability in terms of the treatment and disposal of wastewater generated on the site. The site assessment appears to have been carried out by a suitably qualified professional. The report identifies existing houses in the vicinity and notes the presence of a well which serves an existing adjacent house at the south-western corner of the site.

- 7.4.5. The Site Assessment Report notes that the bedrock was not encountered in the trial pit, which was dug to 2.2m bgl, while the water table was recorded at 1.8m bgl. The assessment identifies that the site is located in an area where there is a Groundwater Protection Scheme and categorises the site as being a poor aquifer (PI) with high vulnerability. A Groundwater Protection Repose of R1 is indicated. In terms of soil type, the report notes that the site is located on the border of Ballylanders Series of Brown Earths and Glenomra Series of Gleys and the bedrock type is Slieve Bernagh Formation (SB). \*T tests were carried out on the site at a level of 850mm bgl, yielding an average value of 13.67, and a \*T result of 8. \*P tests were also carried out at the site at a level of 0.4m bgl, yielding an average value of 28.67 and a \*P result of 13.36. The report concludes, recommending a packaged wastewater treatment system and polishing filter with trench at an invert level of -0.85m. The system will discharge to groundwater at a hydraulic loading rate of 50l/m<sup>2</sup>.d and a discharge rate of 0.04m<sup>3</sup>/hr.
- 7.4.6. I am satisfied that the applicant has submitted a robust and complete site suitability assessment regarding the suitability of the proposed site in terms of the treatment and disposal of wastewater generated on the site. I am further satisfied that the site appears capable of accommodating the development in the context of wastewater treatment and disposal. I am therefore satisfied that the development, if permitted, is unlikely to result in a public health hazard or impact on the quality of ground or surface waters in the area. I will discuss matters of flood risk further in section 7.5 below.

## **7.5. Flood Risk Assessment**

- 7.5.1. The Board will note that the applicant submitted a Flood Risk Assessment which was prepared for the site. The report notes that the site lies along the southern bank of the Annacarriga River which flows easterly and discharges to Lough Derg approximately 1.2km east of the site. The site is not located within an area identified on historical maps as 'liable to flood'.
- 7.5.2. Section 3 of the assessment sets out the details of the site geology and topography and notes that the risk of flooding is created by the Annacarriga River overflowing its' southern bank on the northern boundary of the site. The river is an Eroding Upland River (FW1) which rises on the northern slopes of Moylussa Hill and has a limited

catchment, is well buffered and does not respond to heavy rainfall events. The channel morphology shows no evidence a significant variation in flow levels associated flood events.

- 7.5.3. The submitted Aquatic Ecological Assessment of the Proposed Bridge over Annacarriga River report, also submitted with the application, notes the clearly defined wetted channel area of the river, with little seasonal variation in the level of water in the River. It is submitted that the approximate 1m high bank along the southern side of the river will eliminate the pathway from the river to the potential site and therefore, the risk of flooding of the site from the river is deemed low. The report also notes that the existing land levels in the vicinity of the proposed house range from 47.50 to 48.50mAOD while the proposed finished floor level will be 48.00mAOD. The level of the water in the river ranges from 47.89mAOD to 45.55mAOD.
- 7.5.4. Section 5 of the FRA sets out the identification of flood risk, in accordance with the Flood risk Assessment Guidelines in terms of the following potential sources:
- Fluvial
  - Pluvial
  - Groundwater
- 7.5.5. The Flood Maps identify that the subject site is located within Flood Zone A, where the probability of flooding from rivers and the sea is highest. The assessment argues that the OPW National Flood Hazard Map shows that there are no flood events in the vicinity of the site and therefore, given the removal of the pathway in the source-pathway-receptor model, along with the absence of historical flood events in the vicinity of the site, the risk of flooding from fluvial sources is deemed to be low.
- 7.5.6. In terms of pluvial flooding, caused by surface water arising from rainfall, it is submitted that the subject site was surveyed during an extended period of rainfall in the first quarter of 2020 and no flooding was reported at the site. It is further submitted that the P-value at the site was recorded at 13.36 and T-value 8.00. In this regard, it is submitted that the soil and subsoil have the capacity to percolate excessive rainfall down through the soil column. The risk of fluvial flooding is therefore deemed to be low.

- 7.5.7. As the groundwater was recorded at the site at 1.8m bgl, and mottling was not recorded in the soil column during the site investigation, it is submitted that the level of groundwater does not fluctuate excessively from season to season. Risk of flooding from groundwater is therefore deemed to be low.
- 7.5.8. The submitted FRA submits that while the site is located in Flood Zone A, the site has a low risk of fluvial, pluvial or groundwater flooding. The Annacarriga River has the capacity to assimilate the runoff from roofs and hard standings and it is concluded that the development will not directly increase flood risk elsewhere through the displacement of flood waters or alterations to flow paths. Section 7 of the report deals with surface water management and notes that if the entire 10-year Return Period Rainfall for 1 hour, 17.55m<sup>3</sup> is discharged to the river, and assuming that the water in the river is not moving, the level of the water in the river would rise to the level of the bank over a total length of 8.65m at the identified pinch-point, located approximately 33m downstream from the site. It is also noted that the surface water on the proposed bridge will be collected on the public roadside of the bridge and piped to the River. No surface water will therefore, discharge onto the public road.
- 7.5.9. I accept that the development has been designed in order not to increase flood risk. In terms of the justification test criteria of the FRM Guidelines, the Board will note that no such test was carried out by the applicant on the basis that the flood risk of the site is deemed to be low on all fronts. However, in the interest of completeness, I consider the following to be relevant:
1. The subject lands have been zoned or otherwise designated for the particular use or form of development in an operational plan, which has been adopted or varied taking account of these guidelines:  
  
The subject site is an un-zoned, greenfield site, being located in the open countryside area of Co. Clare. As such, I am not satisfied that the subject site might be reasonably considered to be appropriately designated for use proposed for the purposes of the JT.
  2. The development has been subject to an appropriate flood risk assessment that demonstrates:

- (i) The development proposal will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk:
- (ii) The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible;
- (iii) The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management and provisions for emergency services access;  
and
- (iv) The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.

7.5.10. In terms of a consideration of part 2 of the JT Criteria, I would accept that the FRA, has presented adequate information to suggest that the site is unlikely to be impacted by flooding and that the development, if permitted, is unlikely to give rise to flood risk to people, the subject development site, adjacent properties as well as the economy and environment, and that the development will not have a negative impact in this regard. As such, I am satisfied that the development, if permitted, will not exacerbate or add to flooding risk in the area.

## **7.6. Other Issues**

### **7.6.1. Ecology**

The Board will note that the applicant submitted an Aquatic Ecological Assessment of the proposed bridge over the Annacarriga River. The survey of an area extending approximately 50m upstream and 100m downstream of the proposed bridge location was carried out in January of 2020. As part of this survey, habitats are indicated as having been mapped and classified according to the Heritage Council classification (Fossitt, 2000). In addition, the river channel morphology, substrate and flow regime



were mapped and assessed to determine the suitability of the habitat for spawning or as a nursery habitat by salmonids and other species. The Board will note that while photographs are included as part of the AEA, there are no habitat maps.

I note that 5 trees are to be removed in order to accommodate the access and proposed bridge, including a willow on the northern bank of the river and four young to semi-mature sycamore on the southern bank. The prefabricated deck will be hoisted into place from the northern side of the river – from the public road - and a silt barrier will be erected to trap any silt-laden runoff.

Should the Board be minded to grant permission for the development, a condition requiring that the bridge abutments be set a minimum of 2.5m from the riverbanks to avoid any disturbance to the banks or instream habitats should be included. I would accept that the proposed bridge design would avoid interference with the river and movement of fish and other aquatic species. I also note the mitigation measures included in order to avoid any risks of impacts on water quality arising from the construction process.

#### **7.6.2. Japanese Knotweed**

The Board will note that the applicant has submitted a Japanese Knotweed Assessment and Management Requirements for the proposed development. The invasive species was not identified within the proposed development site but a small stand of the invasive alien species, c4m<sup>2</sup> is noted to occur on the edge of the scrub at a distance of approximately 25m downstream of the site of the proposed bridge. This area will not be affected by the proposed development. In addition, a small stand of Knotweed also occurs at the entrance to a private dwelling approximately 170m from the proposed bridge location with a further larger and mature stand located at approximately 250m downstream from the site.

In the context of the proposed development, it is submitted that there is no evidence of Japanese Knotweed on the proposed site and as the nearest stand is located approximately 25m from the proposed bridge location, the small stand, which consists of a small number of stems, is not at risk of disturbance during the construction or operational activities at the site. Management measures required during the construction activities to ensure no transfer of the species will be limited to

ensuring that all machinery and materials brought to the site are certified free of Knotweed material, and other invasive alien species.

I have no objections in this regard.

#### **7.6.3. 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.

### **8.0 Appropriate Assessment**

#### **8.1. Introduction:**

- 8.1.1. The site is not located within any designated site. The closest Natura 2000 site is the Lough Derg (Shannon) SPA (Site Code: 004058) which is located approximately 0.8km to the east of the site. The Slieve Bernagh Bog SAC (Site Code: 002312) lies approximately 1.6km from the site while the Slieve Aughty Mountains SPA (Site Code 004168) is located approximately 9.2km to the north of the site. 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.
- 8.1.2. 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 proposed development is not directly connected with or necessary to the management of a European site. The Board will note that a Natura Impact Statement (NIS) was submitted as part of documentation for permission for the proposed development to assess the likely or possible significant effects, if any, arising from the proposed development on any European site.
- 8.1.3. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant

effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.

8.1.4. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:

- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

## **8.2. Natura Impact Statement**

8.2.1. The application was accompanied by a Natura Impact Statement (NIS, dated September 2020) which scientifically examined the potential impacts of the proposed development on the Lough Derg (Shannon) SPA (Site Code: 004058).

8.2.2. The NIS includes details of the proposed development site, including details of the Annacarriga River and the surrounding environment and it identifies the relevant Natura 2000 site that has the potential to be affected by the proposed development. Possible cumulative impacts with other plans and projects are discussed at section 4.2 of the NIS while mitigation measures are set out at section 4.3. Having reviewed the NIS and the supporting documentation, I am satisfied that it provides adequate information in respect of the baseline conditions, clearly identifies the potential impacts, and uses best scientific information and knowledge. The NIS concludes that it is considered that the proposal will not adversely affect the integrity of any of the European Sites considered in the report including the Lough Derg (Shannon) SPA (Site Code: 004058).

8.2.3. I am satisfied that the information is sufficient to allow for Appropriate Assessment of the proposed development.

### **8.3. Consultations and Observations**

- 8.3.1. The NIS lists all data sources and guidance documents used in the preparation of the report in Section 5. I also note that the third-party appellant has raised environmental concerns associated with the proposed bridge to access the site.
- 8.3.2. The Environment Assessment Officer of Clare County Council submitted a report relating to AA, stating that subject to the conditioning of mitigation measures outlined in the NIS, there is no risk of significant adverse effects on the Lough Derg SPA, or on any other European Site. The Board will note that the report notes the location of the bridge abutments within 1.5m of the riverbank and advises that this is insufficient to ensure the integrity of the riparian habitat and also the salmonid spawning areas which are noted in the Aquatic Ecology report (submitted with the application).

### **8.4. Screening for Appropriate Assessment:**

- 8.4.1. The purpose of AA screening, is to determine whether appropriate assessment is necessary by examining:
- a) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and
  - b) the likely effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives and considering whether these effects will be significant.

The Screening Report noted the 15km of the site likely zone of impact detailed in the DoEHLG Guidelines, but suggests that for projects, the likely zone of impact must be established on a case-by-case basis with reference to a number of variables in terms of:

- The nature, size and location of the project;
- The sensitivities of the ecological receptors; and
- The potential for cumulative effects.

- 8.4.2. Having regard to these variables, the Screening Report submitted as part of the NIS submits that the screening report is confined to considering potential impacts on sites within a 5km zone of influence. In this regard, the following 3 sites are noted:

Site Name	Distance in KMs	Screening Status
Lough Derg (Shannon) SPA (Site Code: 004058)	0.8	In
Slieve Bernagh Bog SAC (Site Code: 002312)	1.6	Out
Lower River Shannon SAC (Site Code: 002165)	5.7	Out

8.4.3. All but the Lough Derg (Shannon) SPA (Site Code: 004058) were screened out due to lack of relevant pathways between the site and the Natura site and distance to the sites. I would concur with this determination in relation to the following Natura 2000 sites:

Site Name	Site Code	Distance to Site	Assessment
<b>Slieve Bernagh Bog SAC</b>	002312	1.6km to west of proposed site	<p>No habitat loss arising from the proposed development.</p> <p>There is no hydrological connection between the subject development site and the SAC and as such, there is no potential for impact in terms of habitat degradation.</p> <p>No species are identified as qualifying interests for the Slieve Bernagh Bog SAC, and as such, there is no potential for disturbance to or fragmentation of species arising due to the development.</p> <p><b>Screened Out</b></p>
<b>Lower River Shannon SAC</b>	002165	5.8km to south of proposed site	<p>No habitat loss arising from the proposed development.</p> <p>The only hydrological connection between the subject development site and the SAC is via the Lough Derg SPA and as such, there is no potential for impact in terms of habitat degradation.</p>

			<p>No species identified as qualifying interests for the Lower River Shannon SAC are present at the site, and as such, there is no potential for disturbance to or fragmentation of species arising due to the development.</p> <p><b>Screened Out</b></p>
<b>Lough Derg (Shannon) SPA</b>	004058	0.8km to east of proposed site	<p>No direct habitat loss arising from the proposed development.</p> <p>As the northern boundary of the subject site comprises the Annacarriga River, which flows into Lough Derg approximately 1.2km to the east, there is potential for water quality impacts arising due to the proposed development, including the proposed access bridge to be constructed over the river.</p> <p>No species identified as qualifying interests for the Lower River Shannon SAC are present at the site, and as such, there is no potential for disturbance to or fragmentation of species arising due to the development.</p> <p><b>Screened In</b></p>

8.4.4. The Screening Report, at Section 3.2, sets out an assessment of potential impacts and notes that the proposed bridge will be a clear span structures with abutments set sufficiently far from the riverbanks to avoid any instream impacts. The Board will note that the initial proposal was to provide for a 1.5m set back for the abutments, contrary to the 2.5m set back recommended in the Inland Fisheries Ireland Guidelines, Guidelines on Protection of Fisheries during construction works in and

adjacent to waters, 2016. The Guidelines recommend a setback of at least 2.5m from the riverbank so as not to impact on the riparian habitat. The applicant amended the proposals to provide for a 2.5m following a request for further information.

- 8.4.5. The report also notes that there is potential for otter movement along the stream. As the riparian vegetation along the stream will be retained intact, no impact on the otter is anticipated.

## 8.5. Conclusion on Stage 1 Screening:

- 8.5.1. It is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on the identified European sites, in view of the sites' conservation Objectives and that a Stage 2 Appropriate Assessment is not required in respect of any of the identified sites, other than the Lough Derg SPA (Site Code: 004058).
- 8.5.2. The AA Screening Report concludes that in the absence of mitigation, significant impacts cannot be ruled out on the Lough Derg SPA (Site Code: 004058) during the construction of the proposed development, with potential for siltation or deterioration in water quality. In light of this, a stage 2 AA was carried out in relation to this site. The potential impacts (direct / indirect and in-combination effects) of the development on the site are examined in light of the sites conservation objectives.

## 8.6. Stage 2 Appropriate Assessment

The Qualifying Interests for the relevant European Sites are set out below.

European Site	Qualifying Interests
<b>Lough Derg (Shannon) SPA (Site Code: 004058)</b>	Cormorant ( <i>Phalacrocorax carbo</i> ) [A017] Tufted Duck ( <i>Aythya fuligula</i> ) [A061] Goldeneye ( <i>Bucephala clangula</i> ) [A067] Common Tern ( <i>Sterna hirundo</i> ) [A193] Wetland and Waterbirds [A999]

### **Lough Derg (Shannon) SPA (Site Code: 004058)**

- 8.6.1. Lough Derg lies within counties Tipperary, Galway and Clare and is the largest of the River Shannon Lakes, being some 40 km long. Its maximum breadth across the Scarriff Bay -Youghal Bay transect is 13 km but for most of its length it is less than 5 km wide. The lake is relatively shallow at the northern end being mostly 6 m in depth but in the middle region it has an axial trench and descends to over 25 m in places. The narrow southern end of the lake has the greatest average depth, with a maximum of 34 m. The greater part of the lake lies on Carboniferous limestone but the narrow southern section is underlain by Silurian strata. Most of the lower part of the lake is enclosed by hills on both sides, the Slieve Aughty Mountains to the west and the Arra Mountains to the east.
- 8.6.2. Lough Derg is of importance for both breeding and wintering birds. The site supports a nationally important breeding colony of Common Tern (55 pairs recorded in 1995). Management of one of the islands used for nesting has increased the area of suitable habitat available and prevented nests being destroyed by fluctuating water levels. Large numbers of Black-headed Gull have traditionally bred on the many islands (2,176 pairs in 1985) but the recent status of this species is not known. The islands in the lake also support a nationally important Cormorant colony - 167 pairs were recorded in 1995; a partial survey of the lake in 2010 recorded 113 pairs. Lough Derg is also a noted breeding site for Great Crested Grebe (47 pairs in 1995) and Tufted Duck (169 pairs in May 1995).
- 8.6.3. Lough Derg (Shannon) SPA is of high ornithological importance as it supports nationally important breeding populations of Cormorant and Common Tern. In winter, it has nationally important populations of Tufted Duck and Goldeneye, as well as a range of other species including Whooper Swan. The presence of Whooper Swan, Greenland White-fronted Goose, Hen Harrier and Common Tern is of particular note as these are listed on Annex I of the E.U. Birds Directive. Parts of Lough Derg (Shannon) SPA are a Wildfowl Sanctuary.
- 8.6.4. Detailed Conservation Objectives for the Lough Derg (Shannon) SPA (Site Code: 004058) have not been prepared by the NPWS and as such, the generic overall conservation objective is to maintain or restore the favourable conservation condition



of the bird species listed as Special Conservation Interest for which the SPA has been designated.

- 8.6.5. To acknowledge the importance of Ireland's wetlands to wintering waterbirds, "Wetland and Waterbirds" may be included as a Special Conservation Interest for some SPAs that have been designated for wintering waterbirds and that contain a wetland site of significant importance to one or more of the species of Special Conservation Interest. Thus, a second objective is included as follows:

- Objective: To maintain or restore the favourable conservation condition of the wetland habitat at Lough Derg (Shannon) SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

## **8.7. Potential Significant Effects**

- 8.7.1. Potential impacts of the proposed development on the European Sites are considered in section 4 of the NIS. The NIS submits that there is direct connectivity between the development site and Lough Derg through the Annacarriga River. Water quality impacts during the construction phase of the development, and in particular the proposed construction of the bridge, therefore, potentially arise. I note that as the proposed development site lies entirely outside of the European sites, there would be no habitat loss or fragmentation as a result of the proposed development.

## **8.8. Mitigation Measures**

- 8.8.1. Best practice in construction management will be adhered with to prevent the contamination of surface or groundwater. In addition, a method statement has been prepared for the bridge construction and is provided in Appendix 1 of the NIS. Section 4.3 of the NIS sets out the additional mitigation measures and best practice measures proposed for the construction, which are deemed required to ensure the protection of water quality. The measures seek to address the risks of silt or pollutants entering the river from works in the vicinity, and include the use of silt barriers and sandbags, traffic and machinery / equipment will not traverse the river and no refuelling or washout of concrete will be permitted within the works area. Proposals for the construction of the bridge are also detailed.

## **8.9. In Combination Effects**

The NIS notes that there are no other developments that have been identified as having a potential cumulative impact in association with the proposed development.

## **8.10. Conclusion**

- 8.10.1. I have read the submitted Natura Impact Statement in its entirety, together with all other reports submitted with the planning application in support of the proposed development, and I am satisfied that it generally assesses the likely significant impacts arising from the proposed development on the integrity of the Lough Derg SPA (Site Code: 004058).
- 8.10.2. Having regard to the information submitted, the nature of the development proposed, together with the details presented in the Natura Impact Statement, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, I consider reasonable to conclude on the basis of the information on the file, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site, the Lough Derg SPA (Site Code: 004058), or any other European site, in view of the site's Conservation Objectives.

## **9.0 Recommendation**

I recommend that planning permission be refused for the proposed development for the following stated reasons.

## **10.0 Reasons and Considerations**

1. The site of the proposed development is located within an "Area Under Strong Urban Influence" as set out in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April 2005, wherein it is policy to distinguish between urban-generated and rural-generated housing need, and within an area identified as being under Strong Urban Pressure and a Heritage Landscape, collectively referred to as Areas of Special Control in the Clare County Development Plan 2017-2023. National Policy Objective 19 of the

National Planning Framework seeks to ensure that in rural areas under urban influence, the provision of single housing in the countryside will be based on the core consideration of demonstratable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements.

Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area and is not satisfied that the housing needs could not be satisfactorily met in a smaller town or rural settlement. Having regard to the rural location of the site, it is considered that the proposed development would result in, and exacerbate a pattern of, haphazard development at this location, outside of a settlement area, and would, by itself and by the precedent it would set for similar such development, militate against the efficient use of services and infrastructure within nearby settlements, and would contribute to the encroachment of random development in the rural area and result in a haphazard and unsustainable form of development in an unserviced area.

The proposed development would, therefore, be contrary to the Ministerial Guidelines, to the over-arching national policy and the policy objectives of the Clare County Development Plan as they relate to rural housing, Objective 19 of the National Planning Framework and the guidance provided within the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government, April 2005, and would be contrary to the proper planning and sustainable development of the area.

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A. Considine  
Planning Inspector  
8<sup>th</sup> November 2021