



An
Bord
Pleanála

Inspector's Report

ABP-313097-22

Development	Construction of a house with a carport, complete with an entrance, sewage treatment system and ancillary works.
Location	Lavally South, Ballynacally, Ennis, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	211395
Applicant(s)	Sandra Murphy
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Albert Murphy
Observer(s)	None
Date of Site Inspection	30 th of December 2022
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area of south County Clare, approximately 13.5km to the south west of Ennis and c.5.5km east of Lissycasey and the N68 national road which connects Kilrush and Ennis.
- 1.2. The site is accessed via a local road off the R473 Regional Road linking Clarecastle and Ennis to Ballynacally and onto Killadysert in the south of the county. This local road is reasonably wide approaching the site with many areas to pull in towards the road verge to facilitate passing cars if required. The horizontal alignment of the road bends northwards c. c.30- 40km west of the site.
- 1.3. The Owenslieve River meanders approximately 150m to the north of the site in a west to east direction. There appears to be a culverted roadside drainage ditch along the front of the site which connects to a small tributary of the Owenslieve River c. 90m west of the site.
- 1.4. There are houses immediately to the east, west (Racket Hall- Protected Structure RPS No. 174) and one under construction opposite the appeal site and there are a significant number of one-off houses along this local road.
- 1.5. The site is located c. 40m north of a recorded archaeological monument- CL050-012 which is classed as a Ringfort. The zone of notification¹ for this extends into the application site.
- 1.6. The appeal site has a stated area of is 0.256 ha. The site rises from its roadside boundary from north to south. There is a low earthen mound along the roadside boundary with a hedgerow behind and trees towards its eastern side. Overhead utility wires traverse the front of the side and there is a wooden rail fence along the western boundary.

2.0 Proposed Development

- 2.1. The application comprises of the following-
 - A 167.4 sq.m house with ridge height of 7.49m

¹ <https://maps.archaeology.ie/HistoricEnvironment/>

- a 33 sq.m attached car port to rear of house
- a vehicular entrance, and
- a secondary sewage treatment system with soil polishing filter

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission on the 23/02/22 subject to 12 conditions generally of a standard nature, including the following:

- Condition 1 standard drawings and particulars submitted with application and other unsolicited information submitted by the Applicant on the 04/02/22
- Condition no. 2 placed a 7-year occupancy restriction on the house.
- Condition no.4 archaeological monitoring relating to ground works for soil polishing filter
- Condition 5 amendments to one window design on western elevation
- Condition 7 schedule of materials and finishes
- Condition 10 surface water
- Condition 11 wastewater treatment and disposal

4.0 Planning Authority Reports

4.1. Planning Reports

The report of the Planning Officer (dated 22/02/22) reflects the decision of the Planning Authority. The following is noted from the report:

- The family home where the Applicant was raised and where she currently resides is located to the east of the site. Based on the information available the Applicant has demonstrated compliance with CDP3.11.
- The proposal would not have an adverse impact on the visual amenities of the area or the context and setting of either ringfort or Racket Hall.

- Having regard to proximity of polishing filter area to a zone of archaeological potential the works should be monitored by an architect and managed by condition.
- The proposal would not result in undesirable overlooking of the adjacent sites.
- Compliance with the EPA Code of Practice has been demonstrated.
- Proposed drainage measures would adequately manage surface water both on and through the site.
- Permission was previously refused at this site by An Bord Pleanála (ABP) on the grounds of traffic safety. The previous access was in the north west corner with the current proposal relocated to the north east corner. Sightlines to the west are reliant on maintenance of the roadside boundary on the other side of the road. A letter of consent is submitted. The Applicant has adequately addressed traffic safety and the previous refusal reason.
- Onsite infilling was deemed to constitute exempted development.
- Development Contribution of €5,549 shall apply
- The need for EIA can be excluded at preliminary examination.
- The proposal would not be likely to have significant effects individually or in combination with other plans or projects on European Sites.

4.2. Other Technical Reports

- West Clare Municipal District (endorsed by Senior Executive Engineer)
 - 02/02/22- Submitted drawings show the application meets the criteria for the acceptable sightlines. Drainage details deemed acceptable. The entrance would not unduly affect the safety of the road at this location.
- Environment Section-
 - 22/02/22- Conditions recommended

4.3. Prescribed Bodies

- Irish Water-

- 2/02/22- No objections
- Irish Aviation Authority
 - 20/01/22- No observations
- An Taisce
 - 04/02/22- The proposal would alter the character and landscape setting or the Protected Structure Racket Hall. The proposal would be contrary to policies of the County Development Plan to preserve the rural character of locations such as Lavally South and to curtail one-off housing in unserviced areas.

4.4. Third Party Observations

- One third party submission was received. The issues raised in this submission are those issues raised in the grounds of appeal and are summarised in section 7.1.
- One Representation was received from Councillor PJ Kelly

5.0 Planning History

This Site-

- 07/2052, ABP- PL.03.226115 Permission Refused for a house etc on the 30/04/2008 of three reasons as follows-
 1. *Having regard to the evidence of a high water table and of poor subsoil percolation characteristics in the soil, and the indication that surface water systems in the area are severely impounded, it is considered that the site is not suitable for disposal of effluent, notwithstanding the proposal to employ a proprietary treatment system. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.*
 2. *It is considered that the proposed development would endanger public safety by reason of a traffic hazard because of the additional traffic*

turning movements into and out of the site which the development would generate on a county road at a point where sightlines are severely restricted due to poor horizontal alignment in a westerly direction.

3. *The site of the proposed development is in a rural area that is indicated within the current County Clare Development Plan as being an area that is under strong pressure for urban generated residential development (Urban Pressure Area). Having regard to the submissions made in connection with the planning application and the appeal, the Board is not satisfied that the Applicant comes within the housing need criteria for a dwelling at this location. The proposed development would, therefore, conflict with the provisions of the “Sustainable Rural Housing Guidelines for Planning Authorities” published by the Department of the Environment, Heritage and Local Government in April 2005 and be contrary to the proper planning and sustainable development of the area.*

Site across the road

- 18199- House, granted 09/05/2018 (under construction)

6.0 Policy Context

6.1. National Planning Framework (NPF)

6.1.1. Objective 19 of the NPF outlines-

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

6.2. Ministerial and Other Guidelines

6.2.1. Sustainable Rural Housing Guidelines for Planning Authorities (2005) (SRHG)

- The appeal site is located in an area identified as under strong urban influence. In these areas the guidelines advise that the housing needs of the local rural community should be facilitated, but that urban generated housing demand should be met on zoned and serviced land within settlements (Appendix 3, Box 1).
- Section 3.2.3 deals with 'Rural Generated Housing' and 'Persons who are an intrinsic part of the rural community'. It states-
“Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include.....people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence.”

6.2.2. EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2021)

6.2.3. Architectural Heritage Protection Guidelines. Section 13.8 deals with 'Other Development Affecting the Setting of a Protected Structure or an Architectural Conservation Area'-

- Section 13.8.1 states-
 - *When dealing with applications for works outside the curtilage and attendant grounds of a protected structure or outside an ACA which have the potential to impact upon their character, similar consideration should be given as for proposed development within the attendant grounds. A visit to the site should be considered an essential part of the assessment.*
- Section 13.8.2 states-
 - *New development both adjacent to, and at a distance from, a protected structure can affect its character and special interest and impact on it in a variety of ways. The proposed development may directly about the*

protected structure, as with buildings in a terrace. Alternatively, it may take the form of a new structure within the attendant grounds of the protected structure. A new development could also have an impact even when it is detached from the protected structure and outside the curtilage and attendant grounds but is visible in an important view of or from the protected structure.

6.3. Clare County Development Plan 2017-23 as varied

6.3.1. Section 3.2.5 deals with Single Housing in the Countryside and sets out ‘Rural Area Types’ as required by the 2005 SRHG. The site is identified within a ‘Rural area under Strong Urban Pressure’. One key objective is-

To facilitate the genuine housing requirements of the local rural community (rural generated housing), subject to satisfactory site suitability and technical considerations; (Page 48)

6.3.2. CDP3.11 Development Plan Objective: New Single Houses in the Countryside within the ‘Areas of Special Control’ states-

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 C² below and meets the necessary criteria.

² 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.

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.

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

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

Appendix 1 – Development Management Guidelines where the following is relevant:

A1.3.1 – Rural Residential

- Development which deals with matters relating to siting and design, road frontage, plot size and wastewater treatment systems.

6.3.4. The site is located c. 140m to the north east of Racket Hall which is designated Protected Structure No. 146 in the Record of Protected Structures (RPS). It is described within the RPS as a “Two-storey three-bay house, built c.1834, with small rear return and a central fanlit front door. Outbuildings to the rear. The listed ‘Categories of special interest’ are- Architectural, Detail/Design, Setting

6.4. Natural Heritage Designations

6.4.1. The site is located c. 1km west of-

- the Lower River Shannon SAC (002165)
- the River Shannon and River Fergus Estuaries SPA (004077) and
- Proposed Natural Heritage Areas: Fergus Estuary And Inner Shannon, North Shore (002048)

6.5. EIA Screening

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

7.0 The Appeal

7.1. Grounds of Appeal

One third party appeals has been received from Florence and Albert Murphy (of Racket Hall, house to immediate south west of site). The grounds of appeal can be summarised as follows-

- The Applicant does not have a Rural Housing Need and has not proven a demonstrable economic or social need to live at this location.
- The lack of sufficient sight distances onto a dangerous bend of the public road is a serious concern for public safety. Does not meet development plan requirements.
- Planning history on the site including a refusal by the Board and works since carried out which are not considered exempt. These works have resulted in surface water from the site into the Appellants site. There are further surface water disposal concern in relation to the conditions of the Environment section.
- The site suffers from poor drainage evident in a T value of 105.67. This contributes to a public health risk given the proximity of a Spa Well in the area (identified on a submitted Appendix).
- Concerns of flooding of entrance to the Appellants home and the public road which could endanger public safety. A trench indicated on the layout plan does not exist and the concrete pipes are covered over and blocked up with no flow. Further drainage to this will compound flooding of Appellants entrance.
- The proposal impacts the aesthetics of Racket Hall House (a Protected Structure) given the site is elevated and open. It will severely impact views to and from Racket Hall. It will form a dominant obstruction on the landscape. It will cause overlooking and affect privacy impacting residential amenity. It should be protected as per section 13.8.1 and 13.8.2 of the Architectural Heritage Protection Guidelines and objectives of the County Development Plan. Reference is made to the An Taisce submission.

- The proposal will devalue Racket Hall in monetary historical and heritage value.
- There is a national monument 30-40m behind the site impacting its value. An Archaeological Assessment should be carried out in advance of a grant of permission.

7.2. Applicant Response

The Applicant's response to the grounds of appeal can be summarised as follows-

- The appeal is not grounded in legitimate planning matters but in historic grievances which are detailed in the submission. The grounds of appeal are spurious and the Board are requested to dismiss the appeal as vexatious and without substance and are an attempt to delay the development with consequential cost implications for the Applicant.
- The Applicant asks the Board to use its discretion under section 145(b) to direct the Appellant to pay to the Applicant compensation for the expense occasioned by the Applicant.
- The Applicants mother has consented to the application for her daughter and a letter supporting medical grounds can be supplied on a confidential basis if required.
- The Applicant has complied with the relevant housing need objectives in the County Development Plan.
- The Planning Authority has considered the proposed entrance acceptable. The Applicant is open to moving the entrance to the contiguous boundary if considered more appropriate.
- There is no question of surface water transferring from the application site to the Appellants site other than by way of the long standing road drain which has historically been in place. The Applicant proposes to pipe the entirety of the front boundary of her site with a 600mm concrete pipe to connect to the pipe at the entrance to Racket Hall.
- The claim of a T value of 105.7 is incorrect. The determined value is 38.

- The matter of visual impact is addressed in detail. The distance and separation of the site are such that they will not have any contextual or material effect on the protected structure and its immediate context.
- The site is not located within the curtilage of Racket Hall. It is over 140m from the protected structure and have no impact on its architecture.
- Archaeological conditions are normal.
- The Applicant has no intention of causing any impact on the existing amenity of the Appellants.
- A number of Google images are submitted in support of the response to the appeal.

7.3. Planning Authority Response

The planning authority's response to the grounds of appeal can be summarised as follows:

- The Applicant has demonstrated compliance with CDP3.11 and is not altered by the information outlined in the third party appeal.
- The proposed site entrance location affords greater separation distance from the section of the road where there are alignment issues. Maintenance works regarding cutting hedgerows can be carried out before and after bird nesting season.
- Enforcement file UD08-139 is no longer active and has been closed. Onsite infilling across the north of the site was deemed exempted development.
- Surface water is adequately managed by condition 10.
- The proposed development will not have an adverse impact on visual amenities of the area or the context and setting of either the ringfort or Racket Hall. Conditions were attached regarding window design.
- The proposal would not have adverse impacts on the adjacent property by reason of overlooking.

- The Applicant wishes to reside adjacent to her family home (social, personal and family reasons to reside in the area and has demonstrated compliance with the Development Plan.

8.0 **Assessment**

8.1. **Introduction**

8.1.1. I have examined the application details and all other documentation on file, including the submissions received in relation to the Appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance.

8.1.2. I am satisfied the substantive issues arising from the grounds of this third party Appeal relate to the following matters-

- Rural Housing Need
- Built Heritage Impact including Archaeology
- Road Safety Issues
- Wastewater Disposal
- Surface Water Disposal and Flooding
- Other Matters
- Appropriate Assessment

8.2. **Rural Housing Need**

8.2.1. The Planning Authority consider the Applicant has proven her rural housing need in accordance with objective CDP3.11 of the County Development Plan. This is based on social/personal/family requirements. The applicant has indicated in question 2(b) of the application form she has never owned a house or apartment and that she is living in her parent's home where she has lived for the majority of her life save for a period where she lived abroad. The Applicant indicates she is a fashion designer and works from home. The Applicant then signed the declaration section of the form.

8.2.2. Objective CDP3.11 of the CDP requires applicants to meet one of three categories to prove their rural housing need. They must be one of –

- Local Rural Person (which includes 3 criteria in itself)
- Persons working full time or part-time in rural areas.
- Exceptional Health and / or family circumstances.

8.2.3. The Applicant has submitted personal information which shows she is a 'local rural person', seeking to build in her 'local rural area' and has satisfied a 'Local Rural Housing Need'. The information submitted by the Appellant does not challenge any of these considerations. The Planning Authority have considered she complies with Objective CDP3.11 of the County Development Plan and I concur with their assessment.

8.2.4. The Appellants put forward an argument the Applicant works elsewhere as detailed in the appeal submission. They then refer to NPO19 of the NPF and conclude the applicant has not proven a demonstratable economic or social need to live at this location.

8.2.5. I have considered NPO19 which clearly details the core consideration is for a demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements. In this regard, it is clear to me based on the information on file that the Applicant is not required to demonstrate nor is she required to have both an economic and social need. The Applicants case is clearly made on her social need only.

8.2.6. While all new housing in all rural area types challenge the viability of smaller towns and rural settlements to some extent, it is clear the NPF does provide for circumstances where one-off housing in rural areas under urban influence can be facilitated and this includes where an applicant demonstrates a social need to live at such locations.

8.2.7. The Sustainable Rural Housing Guidelines for Planning Authorities April 2005 (SRHG) provides additional guidance for consideration of applications such as that proposed. In particular section 3.2.3 seeks to explain 'Rural Generated Housing' and provide examples of people who would generate such housing. One example given is "Persons who are an intrinsic part of the rural community". The guidelines describes these persons as-

“Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include..... people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence.....”

- 8.2.8. Appendix 3 of SRHG Box 1 provides additional direction for ‘Areas under strong Urban Influence’ and details the key development plan objectives should be to on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.
- 8.2.9. The merits of Box 1 are similar to NPO19 and the Guidelines where used in the formulation of objective CDP3.11 of the Development Plan. In this context I am satisfied the applicant has demonstrated she lived in her family home on the site adjoining the application site for most of her life, is seeking to build her first home near that family home, has not owned another home and she has signed and declared this in her application. Accordingly she has a genuine rural housing based on the core consideration of a ‘social’ need to live at this location.

8.3. Built Heritage Impact including Archaeology

- 8.3.1. The Appellant raises concerns relating to the impact of the proposed development upon the built heritage of the area. In this regard the Appellant’s home- Racket Hall is recorded as Protected Structure No. 174 in the RPS in the Development Plan. The listed ‘Categories of special interest’ are- Architectural, Detail/Design, Setting. I note a submission has been received on the file from An Taisce who consider the proposal would alter the character and landscape setting of Racket Hall.
- 8.3.2. The Board are reminded that similar concerns were raised in the previous application at this site under reference number PL.03.226115 and the Inspector did recommend ‘Refusal’ on this basis with other reasons. The Board did not include this matter or reason in its decision to refuse the permission.

- 8.3.3. I note the RPS considers the setting of Racket Hall as a one of its Categories of Special Interest for protecting the structure. The Appellants make references to section 13.8 of the Architectural Heritage Guidelines which considers how development can affecting the setting of Protected Structures.
- 8.3.4. The western boundary of the proposed site is located c. 140m from Racket Hall. Racket Hall is c. 175m from the western gable of the applicants family home and will be c. 152m from the western gable of the proposed house. Racket Hall is accessed via a long bending driveway and is generally orientated facing north east and not at a right angle to the public road. The western boundary of the site will range from c. 14m from the access road at its closest point to c. 60m at its furthest.
- 8.3.5. The proposed house maintains a building line with the neighbouring property to the east, shares a similar proposed ground level and proposes a ridge height of c. 0.5 higher. Having considered these, I am satisfied the proposed development is significantly distant, of a reasonably modest design and is sited accordingly to avoid significant impacts that would negatively detract from the architectural design, the setting or character of Racket Hall.
- 8.3.6. The Appellant also questions the Planning Authority's decision to condition an Archaeology Assessment given the proximity of the site to a ringfort c.30-40m to the south of the site. Given the nature of the development and the distance to the Ringfort I consider a condition of this type to be appropriate.

8.4. Road Safety Issues

- 8.4.1. The Appellant highlights a lack of sufficient sight distances onto a dangerous bend of the public road and the fact they do not meet Development Plan requirements.
- 8.4.2. The Planning Authority Engineers report details the road is a local primary road with a speed limit of 80 kph, the submitted drawings show the application meets the criteria for acceptable sightlines and the proposal would not unduly affect the safety of the road at this location. I note section A1.9.2 of the Development Plan details requirements for Sight Distances from proposed entrances e.g. 160m are required in each direction where a road has a design speed of 85kph,
- 8.4.3. The submitted site layout plan drawing shows sightlines of 142m to the east of the proposed entrance and 93m to the west. The western sightline is shown traversing

the centre point of the road and crossing the roadside boundary on the opposite side of the road. A letter of consent is submitted from this landowner detailing permission to the Applicant to cut back the existing hedgerow to achieve the required sightline. I note this area of proposed works is not shown in the red line application site boundary or within a blue landholding map. The drawing and proposal as submitted is not an appropriate way to demonstrate or provide for sightlines.

- 8.4.4. The local road fronting the site does not have a design speed of 85kph and a requirement for 160m sightlines in both directions is therefore not appropriate. Having inspected the site and considered the drawings, a sightline of c. 140m is achievable to the east. I estimate a sightline of c.60m is achievable to the near side road edge to the west. I note the Development Plan seeks a sightline of 70m for a road design speed of 50kph. The Appellant details the nature of the road bends to the west of the site and this is evident on the ground where the speed of traffic slows considerably at this point. In this context I consider that traffic is unlikely to be travelling significantly in excess of 50kph from west to east around this bend given the alignment of the road at this point and also further west.
- 8.4.5. Having considered the above and having regard to the limited number of additional vehicular movements arising from a single dwelling and the nature of the proposed site access, I consider that the proposed development would not result in a significant traffic hazard.

8.5. **Wastewater Disposal**

- 8.5.1. The Appellant raise concerns over the sites ability to treat and dispose of wastewater. They refer to an average T value of 105.67 indicating poor drainage and the proximity of the site to a nearby Spa Well.
- 8.5.2. The applicants have submitted a Site Characterisation Report in which they propose to discharge treated discharge to groundwater. They identify the site over a locally important aquifer, with a groundwater vulnerability of High and an R1 groundwater protection response. The trial hole was opened to 2.8m on the 26/10/21 with the water table after 48 hours encountered at 2m.
- 8.5.3. The T Test holes were pre-soaked on the 26th and tested on the 27th. Stage 3 recorded an Average T₁₀₀ of 105.67 indicating progress to stage 4 i.e. the Standard

Method where the value is less than or equal to 210 minutes. The overall result of the test was 38.22 and the assessor noted two of the three recorded values exceeded 40 so a factor of safety was incorporated into the system design. A secondary treatments system with low pressure distribution trenches with 5 by 17 metre polishing filter is proposed i.e. an area of 164.90 sq.m.

8.5.4. The Planning Authority's Environment Section have raised no concerns over the proposal to treat and discharge wastewater. The site assessor has tested the site and designed a proposal that is considered to comply with the requirements and minimum separation distances from sensitive receptors as per the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2021).

8.5.5. The Appellant appears to have misinterpreted the actual T Test value recorded on the site as set out in the submitted Site Characterisation Report and in this context I am satisfied the proposed development will not create a public health risk.

8.6. Surface Water Disposal and Flooding

8.6.1. The Appellants raises concerns in relation to surface drainage water proposals and flooding of their property from same. They point to the condition 7 of the Environment Report requiring surface water from the roof, paved areas or otherwise not to drain to the wastewater treatment system or onto adjoining road.

8.6.2. Condition 10 of the Planning Authority's decision requires All surface water generated within the site to be collected and disposed of in accordance with the drawings and particulars received on the 23/12/21. The Planning Authority's response to the appeal details that surface waters are adequately managed by Condition 10 and are these issues are assessed in the original planners report.

8.6.3. The original planners report details historic overland flows may have been disrupted which may have implications for adjacent lands but these matters appear to relate to maintenance issues.

8.6.4. Question 20 of the application form indicates the applicants proposes a soakpit to deal with surface water disposal. I have not been able to identify a location for this within the site layout plan drawing but consider there to be ample room to provide for one or more as required. I note the drawing does show a proposal for a cattle style

grid at the entrance and a culverted drain within the site along the roadside boundary. This is further detailed in the Applicants response to the appeal.

8.6.5. The proposal to provide an entrance to the site crossing an existing culverted drain and proposals to replace the existing whole drain within the site would appear to be necessary to manage an existing roadside drain along the front of this site. While I did not observe flooding or blockages at the entrance to Racket Hall during my inspection, I am satisfied that subject to good maintenance of the existing and proposed drain within the application site as well as by adjoining landowners there should be no risk of flooding resulting from the development as proposed.

8.6.6. While the drawings do not show proposals for surface water drainage from the house and hard surface areas, I am satisfied that surface water drainage can be managed through appropriate conditions to include for such drainage to the ground e.g. soak pits and/or permeable paving.

8.7. **Other Matters**

- The Appellant raises residential amenity concerns including overlooking of Racket Hall and potential impacts upon privacy of its residents. The side gable of the proposed development will be located c. 150m from the front elevation of Racket Hall. It will not overlook any area of private amenity space. The proposed development will not significantly impact existing residential amenity by way of overlooking.
- The Appellant refers to works on the site that they consider are not exempted development. Matters of unauthorised development are ones for the Planning Authority and not An Bord Pleanála.
- The Applicants have requested the appeal be dismissed under section 138 of the Act as it is considered vexatious and/or the Appellant be directed to pay to the Applicant a sum which the Board could specify as compensation for the expense occasioned by the Applicant under section 145 of the Act. The Board may wish to give consideration to these matters.

8.8. **Appropriate Assessment**

8.8.1. Having regard to-

- the nature and scale of the development proposed in this rural area,
- the separation distances of the site to the nearest European sites (the Lower River Shannon SAC (Site code: 002165) and the River Shannon and River Fergus Estuaries SPA (Site code: 004077) both located approximately 1km to the east as the bird flies)
- the absence of any direct pathway between the appeal site and these European sites,
- the hydrological distance of indirect pathways to these European Sites via roadside drainage ditches, tributary streams and the Owenslieve River where any likely pollutant in surface waters would be sufficiently diluted and or dispersed

no Appropriate Assessment issues are considered to arise, and the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European site.

9.0 **Recommendation**

9.1. I recommend that permission is granted subject to the following conditions

10.0 **Reasons and Considerations**

10.1. Having regard to the information submitted with the application and the nature and scale of the proposed development, including its siting and design, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be injurious to the visual or residential amenities of the area, would not unduly impact upon the setting or character of Racket Hall a Protected Structure, would not create a traffic hazard and would not endanger public health. The proposed development would comply with the provisions of Objective 19 of the National Planning Framework, the Sustainable Rural Housing Guidelines for Planning Authorities and the current Clare County Development Plan 2017-23 as

varied, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000, as amended to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation. This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately

restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The roadside boundary shall be setback in accordance with the submitted site layout plan. The proposed front boundary shall consist of a sod/stone wall to match the removed boundary. The area between the new set-back boundary and the edge of the carriageway shall be graded to the level of the existing road and shall be finished to match the existing road surface, at the expense of the applicant. The details of this work shall be submitted to, and agreed in writing with the planning authority, prior to first occupation of the dwelling.

Reason: In the interests of visual amenity and traffic safety.

4. Details of the materials, colours and textures of all the external finishes to the proposed house shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interest of visual amenity.

5. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

6. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

7. (a) All surface water generated within the site boundaries shall be collected and disposed of within the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage. Surface water shall be discharged to soakways and/or sustainable urban drainage methods within the site to be agreed in writing with the Planning Authority.

Reason: In the interest of traffic safety and to prevent pollution of watercourses.

8. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

9. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document "Code of Practice for Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)" by the Environmental Protection Agency in 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

10. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential and visual amenity.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Adrian Ormsby

Planning Inspector

24th of January 2023