



An
Bord
Pleanála

Inspector's Report ABP-313359-22

Development	Construction of 2 houses with private garages, entrance and access road, erection of fencing along rail line.
Location	Bearnafunshin, Barefield, Ennis, Co. Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	2276
Applicant(s)	NS Masonry
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	NS Masonry
Observer(s)	None
Date of Site Inspection	30/12/22
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The site is located in the 'Cluster' settlement of Bearnafunshin/Ballyogan as designated in the Clare County Development Plan 2017-23 (as varied). The site is located on a local county road c.250m south east of the R548 Regional Road linking Ennis and Barefield to Crusheen and on to Gort. The Regional Road generally runs close to and parallel to much of the M18 Motorway.
- 1.2. The Bearnafunshin/Ballyogan Cluster is characterised by the Limerick Galway Railway line that runs generally from north to south and parallel to the eastern boundary of the site. There is a signalised level crossing (XE071) at the juncture of the local road and railway. The Cluster generally includes a number of individual house plots, single and two storey with access directly onto the local road and road side boundaries set back from the public road.
- 1.3. The site itself includes an existing recessed splayed entrance with rendered, painted and capped walls to both sides. There is an existing hardcore access way from the entrance to the rear of the site. There is a solid white line along the centre of the public road to the front of the existing entrance and a yellow hatched box at the point of the level crossing. There are a number of level crossing security railings, utility poles, low level wall/plinth, signage obstacles etc directly to the road side boundary of the level crossing and adjoining the site boundary.
- 1.4. Surface water flooding was apparent near the entrance to the site along the accessway at the time of the inspection. I could not access the site due to security fencing at the entrance. The access way runs directly parallel to the adjoining rail line at a lower level. The western boundary of the accessway includes a low fence boundary along the side of the existing house.
- 1.5. The site has a stated area of 0.491 ha.

2.0 Proposed Development

- 2.1. The proposal comprises off construction of-
 - 2 single storey houses with garages-
 - House 1- 167.58 sq.m, garage- 32.86 sq.m

- House 2- 159.53 sq.m, garage- 32.86 sq.m
 - 2 onsite wastewater treatment systems with polishing filters
 - 1 shared access road and one entrance off the public road
 - erection of 2.4m tall Palladian fencing along rail line and
 - connections to public water supply
- 2.2. The Applicant submitted the following unsolicited information on the 11/02/2021-
- Isometric and Prospective view drawings of the proposed development

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission on the 28th of March 2022 for five reasons as follows-

1. *The subject site is located in the cluster of Bearnafunshin/Ballyogan, which is designated as a Cluster in the settlement hierarchy of the Clare County Development Plan 2017-2023, as varied. Objective CDP 3.7 of the County Development Plan seeks to ensure that development within such Clusters maintains their existing character. It is considered that, having regard to the layout of the proposed development, with the proposed dwellings location to the rear of the established building line, the subject development would constitute a form of development that is not consistent with the established character of the area, and that to permit the development as proposed would set an undesirable precedent for other such development. The subject development would therefore seriously injure the visual and residential amenities of the area, and constitute haphazard development of the site, which would be contrary to Policy Objective CDP 3.7 of the County Development Plan, as varied, and would therefore be contrary to the proper planning and sustainable development of the area.*

2. *The subject site encroaches onto the Shannon Rail Link Infrastructural Safeguard, as identified in the Clare County Development Plan 2017-2023, as varied. It is the policy of the Planning Authority under objective CDP8.15 of the Clare County Development Plan 2017-2023, as varied to safeguard the route of the proposed Shannon Rail Link and permit development, only where it is demonstrated it will not inhibit the future development of the selected route as a rail link. It is considered that to permit the proposed development would inhibit the future development of the selected route as a rail link, and thus the proposed development would contravene objective CDP8.15 of the Clare County Development Plan 2017-2023, as varied, and would be contrary to the proper planning and sustainable development of the area.*

3. *Having regard to the location of the subject site on an elevated position to the rear of a number of existing dwellings, and with its means of access consisting solely of an accessway running parallel to the railway line and to the immediate east of a dwelling under construction, without any other public road frontage, it is considered that the proposed development would represent haphazard backland development to the rear of existing houses which would set an undesirable precedent for this form of development. Furthermore, it is considered that this form of development would constitute an incongruous feature in the landscape and would seriously injure the visual and residential amenities of properties in the vicinity by reason of overlooking, loss of privacy and disturbance by the use of its means of access alongside existing dwellings. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area*

4. *The entrance to the subject site is located on the local third class road where the speed limit of 80km/h applies and where sightlines and sight stopping distances of 160 m from a setback of 2.4m are required which, given the presence of a signaled railway crossing to the immediate southeast of the proposed entrance, are not available at the proposed entrance. The traffic movements associated with the proposed development would endanger*

public safety by reason of traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 5. The subject site is located in an un-serviced area in terms of foul sewer, within a locally important aquifer, and where the groundwater vulnerability rating is designated as extreme. Having regard to same, and taken in conjunction with the existing developments in the vicinity, it is considered that the proposal would result in an excessive concentration of development served by on-site systems in the area, and would be prejudicial to public health.*

4.0 Planning Authority Reports

4.1. Planning Reports

The planning report generally reflects the decision of the Planning Authority. The following is noted-

- The need for EIA can be excluded at preliminary examination and a screening determination is not required.
- The proposal would not be likely to have significant effects individually or in combination with other plans or projects on Natura 2000 sites and Appropriate Assessment is not required.
- The site is located within the Bearnafunshin/Ballyogan Cluster. Sections 3.2.2, CDP3.7 and CDP3.10 of the County Development Plan (CDP) apply.
- The proposal is not consistent with established character of the cluster, which is characterised by single storey houses addressing the public road. The proposal on high ground to rear would result in a haphazard form of development.
- Objective CDP8.15 of the CDP seeks to safeguard the route of the Shannon Rail Link and permit development only where it demonstrates it will not inhibit future development of the rail route. As house1 and the access encroach on this safeguard the proposal contravenes this objective.

- The proposal is similar to Pl. ref. no. 21/1009 save for the design. The substantive reasons for refusal under 21/1009 have not been addressed.
- Sightlines and stopping sight distance of 160m cannot be achieved due to the close proximity of a railway level crossing.
- The density of WWTS in a limited area is a serious concern and is a risk to public health.
- The proposal is considered backland development and on substantially higher ground. The proposal would result in an incongruous development which is not appropriate at this rural location. The revision from two storey houses to single storey in this application does not address concerns over impacts to visual and rural amenities as a result of this form of backland development.
- Noise and disturbance from houses to the rear will impact existing houses. The land to the rear of houses while within the cluster are not zoned for development. There would have been no feasible expectation from existing residents that dwellings would be located to the rear of them.
- The difference in finished floor levels from existing and proposed will be in the range of 4m. This is substantial and would result in an overbearing impact on existing amenities. Details of potential retaining walls are not clear.
- Future noise impacts from the rail line could impact future occupants. This is not considered a substantive reason for refusal.
- The site is located outside flood zone A and B. Flooding was not observed.

4.2. Other Technical Reports

- Fire Authority-
 - 10/02/22- no objections
- Roads Design Office-
 - 23/02/22- Sightlines not achieved, Further Information required
- Taking in Charge-
 - 09/03/22- no comments

- Environment-
 - 28/03/22- Further Information requested including demonstrating adequate subsoil to treat effluent, photos of two trial holes, all test holes etc with reference to both houses and separation distances of all adjacent wwtp and dwellings.

4.3. Prescribed Bodies

- IAA-
 - 17/02/22- No observations
- Iarnród Éireann / Irish Rail
 - 21/03/22- In principle no objections subject to conditions.

4.4. Third Party Observations

There are four third party submissions on file. The main issues can generally be summarised as follows-

- Impacts upon residential amenity, overdevelopment, overshadowing, overlooking, disturbance, noise (to existing and proposed houses) and light pollution
- Removal of hedgerow, non-compliance with planning permission of recently constructed houses in the area and subsequent loss of privacy, other alleged unauthorised development
- Backland and haphazard development and compliance with zoning objective
- Character and pattern of development in the area
- The site is located within the 'Rail Infrastructure Safeguard'
- Excessive density of houses with wastewater treatment plants and size of each site
- Proximity to a pNHA Inchicronan Lough (000038)
- Concerns of dangerous vehicular movements from and to the site endangering road and rail safety

- Flooding at road

5.0 Planning History

- This Site-
 - 21/1009- Two houses, permission **refused** 16/11/21 for five reasons in keeping with the subject appeal refusal reasons. (PL03.312175 Invalid)
- Adjacent Site-
 - 16/691- permission **granted** 02/07/2021 for a change of design to house no 2 granted under outline 09/27 and permission consequent 12/178 (and extended under 16/691), revise site boundaries and relocate the dwelling house and garage along with all associated works

6.0 Policy Context

6.1. Regional Spatial & Economic Strategy for the Southern Region- Limerick Shannon Metropolitan Area Strategic Plan

The site is not located within the Limerick-Shannon Metropolitan Area however the following considerations are relevant-

- Section 2.2 dealing with Shannon and states-

Rail link – an infrastructural safeguard has been incorporated into the existing Clare County Development Plan and Local Area Plan for a rail line to be provided to Shannon town and International Airport;

- Section 6.0 deals with ‘Integrated Land Use and Transport’ and states-

“There does not appear to be an immediate need for a rail link to Shannon International Airport, but the corridor should be protected into the future and regularly reviewed.”

- Section 6.3.6.4 details- Priorities for the Limerick Shannon Metropolitan Area Transport Strategy and states-

The following transport investment objectives have been identified for consideration in the preparation of the transport strategy subject to

required appraisal, planning and environmental assessment processes:

.....

(F) The optimal use of the rail network including

.....The ambition to create a rail link between Limerick City and Shannon International Airport;

- Limerick-Shannon MASP Policy Objective 7 states-

The MASP supports the ambition to create a rail link between Limerick City and Shannon International Airport and this should be investigated further

6.2. Ministerial and Other Guidance

- 6.2.1. Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2021)

6.3. Clare County Development Plan 2017-2023 (CDP)

- 6.3.1. Table 2.1 of the Plan sets out the Settlement Hierarchy for County Clare. Bearnafunshin/Ballyogan is identified as a 'Cluster'.

- 6.3.2. Section 3.2.2- Settlement Hierarchy and Strategy describes 'Clusters' as-

.....“the smallest type of settlement in the hierarchy and their character reflects traditional building patterns with a loose collection of rural dwellings clustered around one or more focal points. Focal points may include existing rural houses around a crossroad or a community or social facility such as a shop, school, church or post office. The strategy for these settlements is to facilitate a small number of additional dwellings and/or small enterprises to consolidate the existing pattern of development around the focal points and utilise existing services in the area. To meet the needs of those wishing to settle in rural areas, the provisions of Objective CDP 3.11 (i.e. ‘Local Need’ requirement) will not apply to applicants for single houses within the designated cluster boundaries”

6.3.3. CDP3.7 Development Plan Objective: Clusters states-

It is an objective of the Development Plan:

To ensure that clusters throughout the County maintain their existing character providing only for very small scale growth.

6.3.4. CDP3.10: Planned Growth of Settlements-

It is an objective of the Development Plan:

- a. *To ensure that the sequential approach is applied to the assessment of proposals for development in towns and villages and to ensure that new developments are of a scale and character that is appropriate to the area in which they are located;*
- b. *To restrict single and/or multiple large scale developments that would lead to the rapid completion of any settlement within its development boundary, in excess of its capacity to absorb development in terms of physical infrastructure (water, wastewater, surface water, lighting, footpaths, access etc.) and social infrastructure (schools, community facilities etc.).*

6.3.5. Section 8.2.10 Public Transport Rail Network details the 'Shannon Rail Link' and states-

A proposed route for the Shannon rail link has been identified (see Volume 2 – Maps) by a Shannon Rail Link Feasibility Study. The proposed rail link is in line with the Government's objective of achieving balanced regional development and is an objective of the Mid-West Regional Planning Guidelines 2010- 2022. It is considered necessary to safeguard the selected route from development or other activities that would compromise its future development.'

- CDP8.15 Development Plan Objective: Shannon Rail Link states-

"It is an objective of the Development Plan: To safeguard the route of the proposed Shannon Rail Link and permit development where it is demonstrated it will not inhibit the future development of the selected route as a rail link.

6.3.6. 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 including wastewater treatment systems
- A1.9.2 Sight Distances methodology
 - E.g. 160m for design speed of 85kph, 90m for 60kph and 70 for 50kph

6.4. Natural Heritage Designations

6.4.1. The site is located-

- c. 1.5km east of the Dromore Woods and Loughs SAC (000032)
- c. 2.1km west of the Slieve Aughty Mountains SPA (004168)
- c. 210m south west of Proposed Natural Heritage Areas Proposed Natural Heritage Areas: Inchicronan Lough (000038)

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

The grounds of this first party appeal can be summarised as follows-

- It is not agreed that the proposed development would seriously injure the visual and residential amenities of the area and would constitute a haphazard development of the size.

- The proposed single storey houses are a considerable distance from the road facing houses and from their rear lawns and private amenities.
- The proposed development should not be classed as negative backland development considering its location within a designated cluster under the county development plan.
- Precedents are cited of dwellings constructed in a similar nature-backland of an existing house in the area (outside the cluster)
- Precedents are cited of similar developments in other designated Clusters and these do not seriously injure the visual and residential amenities of the road facing houses nor do they inhibit the enjoyment of the outdoor recreation space enjoyed by the road facing occupants.
- The proposed development would not inhibit the future development of the selected route as a rail link. Irish Rail do not object to the proposed development. The proposal includes a suitable fence line along the extent of the junction of the site with the rail line, which would enhance the protection offered to the rail line at this location.
- The Council Road Design Office did not recommend refusal in their report, further information was requested.
- The access road gradient would have been between 2.5% based on a two metre lift across c.80 metres from the public road.
- The entire access road would be below the level of the adjoining rail line. The access road would be privately owned with services from the public road edge.
- A turning bay is shown in the revised site layout accompanying the appeal.¹
- Roadside drainage is usually conditioned for agreement with the Council.
- It is not proposed to build a footpath or light the driveway as the access road is a private access road servicing just two private dwelling houses in a rural housing cluster.

¹ There is no revised site layout on file with the appeal.

- A grass verge and coniferous hedge is proposed along the grass verge to the west of the access road and rail fencing along the boundary with the rail line.
- The access road would not constitute an incongruous feature in the landscape and would not seriously injure the visual and residential amenities of properties in the vicinity by reason of overlooking loss of privacy and disturbance.
- The access way would start at a lower level than the rail line and adjoining dwelling and will be suitably screened on either side. It would gently rise to the levels of the proposed houses.
- The proposed floor levels are not significantly elevated when compared to the levels of the existing road facing houses and are sufficiently distanced (minimum 59 metres) from the nearest road facing houses so as not to create a situation whereby overlooking of neighbouring properties would become an issue.
- There is no requirement for any retaining walls in the development. The sites of the two proposed houses are far enough away from the existing road facing houses and enjoys extensive existing surrounding natural vegetation and trees to the south and west which serve to protect the privacy of the adjoining properties.
- The orientation of the houses are proposed so that the private outdoor recreation space to the rear of the road facing dwellings is respected. It is proposed to further enhance the site boundaries with added vegetation to protect the private residential amenity of the existing houses and that of the proposed houses.
- The proposed access way running parallel to the railway line is similar to other interjections in road facing development pattern of development in existing clusters e.g. Barntick, Ballyduff, Drumeen & Noughaval.
- The Planning Authority's requirement of sight stopping distances of 160 m from a setback of 2.4m is contrary to TII's guidelines. The existing road is a local third class road with a design speed of less than the 80 km/h. In other

applications on this class of road 70 and 90 m sight distance in both directions has been deemed adequate.

- The proposed entrance has very good sight distance in both directions. Vehicles approaching the rail line would realistically not be able to achieve speeds of in excess of 60 km/h.
- Road users accessing and egressing the proposed entrance would benefit from the reduction in speed by vehicles approaching the rail line in both directions along the public road.
- The proposed development would not result in an excessive concentration of development served by on-site systems in the area and would not be prejudicial to public health.
- For each of the proposed percolation areas serving the proposed houses minimum required separation distances as set out under the EPAs guidelines are achieved.
- There is no reference in the county development plan to a maximum number of on-site treatment systems in any of the clusters. Other clusters retain a much higher density of houses.
- The surrounding lands to the north and east of the proposed development are largely free from development and are unlikely to be developed as they are not zoned for development.

7.2. Planning Authority Response

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

- The proposed development is not in accordance with the proper planning and sustainable development of the area due to-
 - The backland nature of the proposed development, which would be contrary to the established pattern of development in the vicinity.
 - The encroachment onto the Shannon Rail Infrastructural Safeguarded route.

- The location and proximity of the proposed entrance relatively to the railway crossing, and the unobtainable sightlines resulting in a traffic hazard.
- The concentration of WWTS In a limited area.
- It is respectfully requested An Bord Pleanala uphold the Council's decision.

7.3. Observations

- None

8.0 Assessment

8.1. Introduction

8.1.1. I have examined the application details and all other documentation on file, including the appeal submission. 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-

- Refusal Reason 1- Contrary to Objective CDP3.7
- Refusal Reason 2- Shannon Rail Link Infrastructural Safeguard and contrary to Objective CDP 8.15
- Refusal Reason 3- Haphazard backland development, injury to visual and residential amenities
- Refusal Reason 4- Endanger public safety by reason of a traffic hazard.
- Refusal Reason 5-Excessive concentration of on site wastewater treatment systems, prejudicial to public health.
- Appropriate Assessment

8.2. Refusal Reason 1- Contrary to Objective CDP 3.7

- 8.2.1. The Planning Authority's first refusal reason considers the proposed development to constitute a form of development that is not consistent with the established character of the area, would seriously injure the visual and residential amenities of the area, and would be haphazard development of the site, contrary to Policy Objective CDP 3.7. The Planners Report details the character of the Cluster to be of single detached dwelling houses on individual sites, each addressing the public road.
- 8.2.2. The Appellants argue the proposal should not be considered as such given that it is located within the designated cluster and there are many examples of similar developments in Clusters within the county.
- 8.2.3. Objective CDP 3.7 seeks to ensure that clusters throughout the county maintain their existing character providing only for very small scale growth. During my inspection I travelled the length of Bearnafunshin/Ballyogan cluster. It includes a number of individual housing plots (single and two storey) with individual accesses of the public road. However I do not consider this to be the defining consideration of this Cluster's character.
- 8.2.4. The CDP describes Clusters with character reflective of traditional building patterns with a loose collection of rural dwellings clustered around one or more focal points. I did not observe any specific focal point within the Bearnafunshin/Ballyogan cluster other than the 'level crossing'.
- 8.2.5. The two proposed houses are single storey designs located to the rear of the established building line but at a reasonable distance exceeding 20m from the rear boundary of the existing houses. The proposal is not considered overdevelopment and will not significantly or negatively impact visual or residential amenity.
- 8.2.6. The site is clearly located within the boundary of the designated cluster and is of sufficient size to provide for both houses. In this context, I do not consider the development to create haphazard development that would seriously injure the visual and residential amenity to an extent that would seriously detract from the character of the Cluster. The proposal would not be contrary to Objective CDP3.7. I recommend the Board set aside the Planning Authority's first refusal reason.

8.3. Refusal Reason 2- Shannon Rail Link Infrastructural Safeguard and contrary to Objective CDP 8.15

- 8.3.1. The Planning Authority's second refusal reason details the site encroaches upon the 'Shannon Rail Link Infrastructural Safeguard'. Objective CDP 8.15 of the CDP seeks to safeguard this link. In this regard development should only be permitted if it demonstrates it does not inhibit the future development of the selected route as a rail link.
- 8.3.2. The Appellants do not believe the proposal will inhibit the future development of the selected route as a rail link. They detail consultations with Irish Rail who do not object to the proposal.
- 8.3.3. Objective CDP8.15 seeks to safeguard lands in order to provide for a future 'Shannon Rail Link'. This link will be off the existing Galway to Ennis to Limerick rail line. The objective specifically details "*safeguarding the route of the proposed Shannon Rail Link*" and permitting development only where it is demonstrated that it will not inhibit the future development of the selected route as a rail link.
- 8.3.4. This objective and the associated mapping (I4) are not considered consistent. The legend in the associated mapping shows 'Infrastructure Safeguard (Rail)' and does not refer to the 'Shannon Rail Link'. The highlighted route for safeguarding on Map I4 is along the existing Galway-Ennis-Limerick rail line.
- 8.3.5. The actual 'Shannon Rail Link' route appears to me to be proposed in Map I11 of the CDP i.e. from Shannon with two spurs linking to the existing Galway-Ennis-Limerick rail line near Newmarket on Fergus and Cratloe. Both of these linkages are a considerable distance from the application site.
- 8.3.6. The RSES discusses a 'Shannon Rail Link' in the context of the 'Limerick Shannon Metropolitan Area'. The application site is not located within this designated Metropolitan Area.
- 8.3.7. While I accept the rail line adjoining the application site is identified for safeguarding as per the CDP, it is difficult to see how the proposed development would inhibit the future development of the selected 'Shannon Rail Link' route as per Objective CDP 8.15 and as discussed/envisaged in the RSES and the Limerick Shannon Metropolitan Area Strategic Plan.

- 8.3.8. Furthermore the site is currently accessed via an existing entrance and existing hardcore accessway. The Council's planning report does not detail if this entrance and accessway are authorised, unauthorised or possibly exempt under class 16 of the Planning and Development Regulations 2001 (as amended) i.e. for works to permitted development 16/691 (which now appears complete). The existing entrance accessway and site boundary all appears to directly bound the railway line property. The proposed house and garage are to be located c. 12m and c. 7.6m off the site boundary.
- 8.3.9. In this context, and in the absence of certainty of how this site would impact or contribute to delivery of the 'Shannon Rail Link' in the CDP, I do not consider the proposal would inhibit the future development of the selected route as a rail link. I recommend the Board set aside the Planning Authority's second refusal reason.

8.4. Refusal Reason 3- Haphazard backland development, injury to visual and residential amenities

- 8.4.1. The Planning Authority's third refusal refers to the elevated location of the site to the rear of existing houses and specifically its means of access to the immediate east of an existing dwelling creating haphazard backland development. They consider the proposal would constitute an incongruous feature in the landscape and would seriously injure visual and residential amenities of properties in the vicinity by reason of overlooking, loss of privacy and disturbance by the use of its means of access.
- 8.4.2. This Appellants argue the access way is lower than the rail line and will rise gently to the level of the proposed houses. The proposed floor levels are not significantly elevated when compared to existing houses and are sufficiently distance at 59m. They detail the accessway will be suitably screened. Such screening is not shown on the site layout plan drawing.
- 8.4.3. This refusal reason shares much of the reasoning of the Planning Authority's first reason. I acknowledge the elevated nature of the site with floor levels c. 4m higher than the two storey houses to the public road. However, I do not consider the proposed single storey housing at this location to be incongruous or to have a significant or negative visual impact on the visual amenity of the area.

- 8.4.4. The main issues appear to be the impacts on residential amenity including overlooking and loss of privacy and such impacts including disturbance from the means of access. I note the rear boundaries of existing houses are currently enclosed by low level rail style fencing. Proposed houses 1 and 2 will be located in excess of c. 20m from the rear boundaries and areas of private amenity spaces of existing houses. These private amenity spaces range from 35-50m deep. The proposed single storey houses are sufficiently removed from the rear boundary of existing houses and their amenity spaces to adequately safeguard from undue overlooking and loss of privacy.
- 8.4.5. The proposed access way runs directly along the eastern and northern boundary of two existing houses with low level fence rail fencing around private amenity spaces. The use of this access road by vehicles or pedestrians would lead to undesirable overlooking, loss of privacy and certainly a sense of intrusion and disturbance.
- 8.4.6. However, I consider these impacts can reasonably be mitigated through appropriate boundary treatment and landscaping. I recommend the Board set aside the Planning Authority's third refusal reason and should they decide to grant permission it is further recommended an appropriate condition be applied detailing landscaping and boundary treatment for the means of access and the overall site to be agreed with the Planning Authority.

8.5. Refusal Reason 4- Endanger public safety by reason of a traffic hazard.

- 8.5.1. The Planning Authority's fourth reason for refusal details sightlines from a 2.4m set back and stopping sight distances of 160m are required. They detail these cannot be achieved given the presence of the level crossing.
- 8.5.2. The Appellants argue that the design speed of the road is less than 80kph and in other cases 90m and 70m has been deemed adequate by the council. They argue traffic would realistically not achieve speeds exceeding 60kph.
- 8.5.3. The application proposes the use of an existing entrance to a county road which directly adjoins an existing level crossing with its own necessary infrastructure to ensure safety of the rail line and public road. The speed limit on the road is 80kph and I agree with the Appellants, the design speed and actual speed of traffic is likely less than 80kph.

- 8.5.4. Drawing No. P/21/220/SLD titled '*Site Layout Plan – Indicating Sight Lines*' details 90 metres of sightlines in both directions from a 2.4m set back. I would consider a 90m sightline is likely to be appropriate for this road considering the design speed. Furthermore the road narrows at the level crossing which acts as a natural traffic slowing measure and traffic would be unlikely likely to reach 80kph.
- 8.5.5. However, having inspected the site, I consider the drawing does not accurately reflect the existing and significant obstructions associated with the level crossing to the immediate south east of the site. These obstructions are located very close to the road edge and appear to obstruct the 90m visibility splay from a 2.4m setback. The actual available sightline would likely be restricted to an unacceptable level thereby creating a risk of a traffic hazard endangering public safety. The proposal should be refused.

8.6. Refusal Reason 5-Excessive concentration of on site wastewater treatment systems, prejudicial to public health.

- 8.6.1. The Planning Authority's final reason for refusal details the sites extreme groundwater vulnerability and the excessive concentration of on-site wastewater treatment plants (WWTP) in the area. They consider the proposal prejudicial to public health. The Planners Report refers to the Environment Section FI request and considered in the absence of this information the proposal should be refused as there are other substantive reasons.
- 8.6.2. The Appellants argues the proposal meets all separation distances set out in the EPA Guidelines and there is no reference in the County Development Plan to a maximum number of onsite treatments systems within clusters. The Appeal does not attempt to address the matters raised in the Council's Environment Section report.
- 8.6.3. The Environment Section report raises concerns there may not be adequate suitable sub-soil to treat effluent on the site as there are rocks showing throughout. The FI required the Appellants to demonstrate adequate sub-soil to treat the effluent with the photos of the trial hole spoil submitted with the Sit Characterisation Report (SCR) considered inadequate. The report also highlighted the submitted photos to not clearly show the spoil profile from the trail holes, insufficient photos of test holes and

the absence of separation distance details of adjacent wastewater systems on neighbouring property.

- 8.6.4. The Board are advised that a Site Characterisation Report (SCR) for site no.1 is not on the Appeal file. I have identified this SCR on the Councils website². I remind the Board that I could not access the areas of the trial and test holes due to security fencing at the entrance. I also note considerable time has passed since the site assessor carried out his testing of the site in July 2021 and in such circumstances it is unlikely the holes would remain open and if they did they would not present as per the conditions of testing. Accordingly it is prudent that good quality photographs demonstrating what is stated in the submitted SCR's accompany the SCR and are reflective of the site and test conditions.
- 8.6.5. The EPA Code of Practise (COP) does not place a strict site size requirement for wastewater treatment and disposal systems. The purpose of testing the site is to identify the most appropriate solution for the specific site conditions to treat and dispose of wastewater safely i.e. a percolation area would usually require a much larger site than a polishing filter. In this instance the Appellants have proposed two 45 sq.m polishing filter for each house, which on examination of the submitted drawings would appear to comfortably meet the minimum separation distances required.
- 8.6.6. The Council's concern relates to the adequacy of the sub-soil to treat the effluent as there are rocks throughout the site and bedrock was encountered at 1.4m for both trial holes. Section 3.1 of both SCR's details the Visual Assessment of the sites. Under 'Outcrops (Bedrock And/Or Subsoil)' the following is recorded-

'Rock showing throughout the site as the top soil has been removed and piled in mounds on the site'.

This statement does not appear consistent with the photographs submitted with the SCR for site 1 or site 2. Nevertheless, having considered these visual assessments, examined the submitted photos for both sites and based on the other information on file, it is difficult to conclude that the depth of the trial holes, the nature of the subsoil,

² <https://www.eplanning.ie/ClareCC/AppFileRefDetails/2276/0>

and the wastewater treatment system with polishing filter proposed are adequate to safely treat and dispose of wastewater within the site.

- 8.6.7. The Appellant's have not addressed these concerns in their Appeal and in the absence of same, whilst noting the extreme groundwater vulnerability and the number of existing properties in the area which are all likely treating and disposing of their wastewater to groundwater, I tend to concur with the Planning Authority's reasoning that the proposal would be prejudicial to public health.

8.7. **Appropriate Assessment**

- 8.7.1. Having regard to the nature and scale of the development proposed and, the separation distances of the site to the nearest European sites, the absence of any direct pathway between the appeal site and European sites, the hydrological distance of indirect pathways to European Sites e.g. via roadside drainage ditches, tributary streams etc 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 refused for the following reasons-

10.0 **Reasons and Considerations**

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the traffic turning movements the development would generate on a public road at a point where sightlines are restricted in a south easterly direction.
2. Having regard to the information on file and as set out in the site characterisation reports submitted with this application, and the information provided in the appeal, the Board cannot be satisfied that the proposed development, taken in conjunction with existing development in the vicinity,

would not significantly and negatively impact on the environment and would therefore result in an excessive proliferation and concentration of developments in the area served by wastewater treatment systems discharging to groundwater. It is considered therefore, that the proposed development would be prejudicial to public health.

Adrian Ormsby
Planning Inspector

10th of February 2020