



To:	The Board
From:	Planning Inspector – Adrian Ormsby
Re:	Board Direction – BD-014846-23
Date:	31 st of May 2024
Development	(i) Chead Coinneála do chlaífort mar a tógadh é agus (ii) Chead chun teach cóaithe príobháideach, garáiste scoite, córas cóireála fuíolluisce agus na hoibreacha suímh go léir a bhaineann leis a thógáil
Location	Cnoc na Fhraoigh, An Chreatalach, Contae an Chlair

1.0 Introduction

- 1.1. This report is an addendum to an original report dated the 02nd of February 2023, in respect of a third party appeal against a decision to grant permission by Clare County Council.
- 1.2. My original Inspector's Report recommended a grant of permission subject to conditions. This was generally based on the provisions of the Clare County Development Plan 2017-23.

- 1.3. At a Board meeting held on the 11th day of December 2023 the Board decided to defer consideration of the case and to issue a Section 137 notice to the Parties as follows-

“The Board noted that the Clare County Development Plan 2023-2029 is now the current development plan. Having regard to the issue of rural housing policy, which is raised in the appeal documentation, the Board invites all parties to provide submissions on the relevant provisions of the development plan as it relates to rural housing policy, and in particular landscape, siting and design criteria.”

- 1.4. On the 4th day of April 2024 An Bord Pleanála issued a section 131 request to the third party Appellant. This requested the Appellant to make any submission or observations they may have in relation to the Applicant’s response to the section 137 request. A full copy of same was forwarded to the Appellant. The reason for this was in the interest of justice.
- 1.5. The third party Appellant’s section 131 response was received on the 22/04/24.
- 1.6. The file was received by the Planning Inspector on the 08th of May 2024 with a request for an Addendum Report as required by the Boards initial direction dated 13th of December 2023.

2.0 The Clare County Development Plan (CDP) 2023-29

- 2.1. Since my original Inspectors Report, a new Clare County Development Plan 2023-2029 (CDP) was adopted and came into effect on the 20th of April 2023.
- 2.2. Section 4.2.6 deals with Single Houses in the Countryside and sets out ‘Rural Area Types’ as required by the NPF, the RSES and the 2005 SRHG. The site is identified as within an ‘Area of Special Control’ and within a ‘*Rural area under Strong Urban Pressure*’- see CDP Volume 2 Maps C&D.

2.2.1. Relevant Objectives

- CDP 4.10- It is an objective of Clare County Council:

To ensure that the countryside continues to play its role as a place to live, work, recreate and visit having careful regard to the viability of smaller towns

and rural settlements, the carrying capacity of the countryside, siting and design issues and environmental sensitivities.

- CDP 4.14: New Single Houses in the Countryside within the 'Areas of Special Control'

It is an objective of Clare County Council:

i. In the parts of the countryside within the 'Areas of Special Control' i.e.:

- *Areas Under Strong Urban Influence*
- *Heritage Landscapes*
- *Sites accessed from or abutting Scenic Routes*

To permit a new single house for the permanent occupation of an Applicant who meets the necessary criteria as set out in the following categories. (see section 2.3.1 and 2.3.2 below for categories)

ii. To ensure compliance with all relevant environmental legislation as outlined in Objective CDP3.1 and have regard to the County Clare House Design Guide, with respect to siting and boundary treatments.

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 CDP11.13 and 11.14 as set out in Chapter 11.

- *Western Corridor Working Landscape¹ CDP14.3 It is an objective of Clare County Council:*

a) To permit development in these areas that will sustain economic activity, and enhance social well-being and quality of life - subject to conformity with all other relevant provisions of the Plan and the availability and protection of resources;

b) To ensure that selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design, are directed towards minimising visual impact;

¹ Criteria- All lands within 10km on either side of the N18/M18 – except as excluded by Heritage Landscapes. The site is c. 6.5km east of the N18/M18.

c) To ensure that particular regard should be had to avoiding intrusions on scenic routes and on ridges or shorelines. Developments in these areas will be required to demonstrate:

i. That the site has been selected to avoid visual prominence

ii. That site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, public amenities and roads

iii. That design of buildings and structures reduces visual impact through careful choice of form, finishes and colours and that any site works seek to reduce the visual impact of the development.

- **Scenic Routes CDP14.7**

It is an objective of Clare County Council:

a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;

b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact; and

c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

2.3. The categories relevant to Objective 4.14 are as follows-

2.3.1. Category A – Economic Need

- i. Such persons shall be defined as persons who by the nature of their work have a demonstrable economic need to reside permanently in the rural area close to their place of work. Such circumstances will normally encompass persons involved in fulltime farming, horticulture, forestry, bloodstock or marine-related activities as well as others who can demonstrate a genuine need, because of their occupation or business (not including bed and breakfasts) to live in a specific rural area. Similar part-time occupations can also be considered where it*

can be demonstrated that it is the predominant occupation and that the ancillary occupation(s) are located within a reasonable daily commuting distance from the site or alternatively may be facilitated through remote working. The Applicant must not already own or have owned a house in the surrounding rural area (except in sub-category iii as set out under the Social Need criteria) and needs the dwelling for their own permanent occupation. Where a person's economic need relates to their engagement in farming or bloodstock they shall have a minimum farm size of 12.5 hectares within the local rural area. Where this minimum requirement is not achieved favourable consideration will only be given where a business plan can satisfactorily demonstrate that the person's predominant occupation relates to farming or bloodstock activities on their landholding and which also demonstrates the viability of the activity(s).

Or

- i. An Applicant who is considered ineligible under the preceding category may be considered for the construction of a permanent home in the rural Area Under Special Control, subject to being able to satisfy the Planning Authority of their commitment to operate a full-time business (not including bed and breakfasts), from their proposed home in a rural area, as part of their planning application, in order for example, to discourage commuting to towns or cities. The Applicant must not already own or have owned a house in the surrounding rural area (except in sub-category iii as set out under the Social Need criteria) and needs the dwelling for their own permanent occupation. Applicants must be able to submit evidence that:*
 - Demonstrates that the nature of their employment or business is compatible with those specified in the demonstrable economic need criteria for rural Areas Under Special Control (i.e. that they are serving a predominantly local rural business need).*
 - Their business will contribute to and enhance the rural community in which they seek to live.*

For the two Economic Need categories outlined above, the documentation available/required will vary depending on the nature of the economic activity. Examples of the information to be submitted with the application include:

- *Details of the functional requirement to reside either at or close to their rural based business.*
- *The overall extent of the landholding and the location(s) of same.*
- *The nature of the operations associated with the economic activity*
- *The planning history associated with the economic activity (where available).*
- *Buildings and physical infrastructure requirements associated with the economic activities.*
- *Number of persons employed (or to be employed).*
- *Livestock and herd numbers (if applicable).*
- *Participation in government schemes/ programmes (e.g. Bord Bia Quality Assurance, Basic Payment Scheme (BPS), GLAS, or any similar/updated programmes or schemes).*
- *Any other information that would support the application.*

2.3.2. Category B – Social Need

- i. A person who is an intrinsic member of a local rural community who was born within the local rural area, or who is living or has lived permanently in the local rural area for a minimum of 10 years either as one continuous period or cumulatively over a number of periods prior to making the planning application and who has a demonstrable social need to live in the area. This includes returning emigrants seeking a permanent home in their local rural area who meet these criteria. It also includes persons who were born or lived in a rural area for substantial periods of their lives and where that area is now within an urban settlement boundary/zoned land. The Applicant must not already own or have owned a house in the surrounding rural area (except in the*

exceptional circumstances as set out in sub-category iii below) and needs the dwelling for their own permanent occupation.

Or

- ii. Special consideration shall be given in limited cases for persons who need a dwelling for permanent occupation in a rural area for exceptional health reasons. Any application for permission in this category shall be accompanied by a report or recommendation (and other relevant supporting documentation) from a registered medical practitioner outlining the reasons why it is necessary for the Applicant to live in the rural area or to reside near family/carer support (or alternatively requires care support to live in close proximity to them). Where applicable the Applicant shall demonstrate why their existing home cannot be adapted to meet their needs and shall also demonstrate why their need for a house cannot be accommodated either in an existing settlement or in the countryside outside of the Areas of Special Control. In instances where the house is proposed to accommodate the person that will provide care for a person already residing in the rural area (such as elderly persons who have resided in the area over 10 years, and/or persons who qualify due to exceptional health reasons) the new dwelling must be sited adjacent to the existing dwelling, which shall be taken to mean sites that are in close proximity to the dwelling of the person that will be cared for.*

Or

- iii. A person who is an intrinsic member of a local rural community, who was born within the local rural area or who is living or has lived permanently in the local rural area for a minimum of 10 years at any stage either as one continuous period or cumulatively over a number of periods prior to making the planning application, who previously owned a home and is no longer in possession of that home due to the home having been disposed of following legal separation / divorce / repossession and can demonstrate an economic or social need for a new home in the rural area.*

2.3.3. Rural Area Criteria

The rural area includes the countryside, designated clusters and small villages but excludes those settlements listed within the County Settlement Hierarchy which are urban settlements (Ennis, Shannon, Service Towns, Small Towns and Large Villages). For Rural Areas Under Strong Urban Influence the rural area is defined as the area within 10km of the site. For Heritage Landscapes and sites accessed from or abutting Scenic Routes the rural area is defined as the area within 10km of the site. Where the proposed site is of a greater distance than those as specified herein but the Applicant can demonstrate a social or economic need to reside in the rural area these cases will each be considered on their individual merits.

2.3.4. Landscape, Siting & Design Criteria

“For proposed sites located in Heritage Landscapes and/or sites that are accessed from or abutting Scenic Routes the Applicant will be required to demonstrate that no alternative sites are available in Settled Landscapes, the Shannon Estuary Working Landscape or the Western Corridor Working Landscape. The assessment of an application for a rural house shall have regard to environmental considerations, the viability of smaller towns and rural settlements and siting and design issues and the Clare Rural House Design Guide.”

3.0 Section 137 Responses

3.1. Planning Authority

- 3.1.1. The Planning Authority’s response was received on the 23rd of January 2024 and simply summarises relevant objectives and provisions of the new CDP. It does not offer any commentary on the Applicant’s compliance with same.

3.2. Applicant

- 3.2.1. The Applicant and his agent have submitted a comprehensive response on the 24/01/24. This can be summarised as follows-

- The Applicant's personal circumstances have changed since the planning application was lodged initially. In July 2022 the Applicant **did²** have a home in the local rural area. However he did not have use of this house at the time of lodging the application nor did he have use at the time the Council granted permission on the 5th of September 2022 or at the time he responded to the third party appeal lodged in October 2022.
- There are personal reasons for this circumstance as set out in the submission, which includes a letter from the Applicants' solicitor Micheal O'Connor. This details the Applicant's uncle transferred ownership of his dwelling house to the Applicant together with his farmland in 2018. The Deed of Transfer dated 14/11/18 reserved the right to exclusive residence of the dwelling house to the Applicants uncle (Tom Crowe) for the duration of his natural life. The Applicant while registered owner was not entitled to possession of the property nor was he entitled to rent, renovate or extend it.
- The Applicants uncle passed away on the 25th of September 2023 and upon his passing the Applicant obtained formal possession of the property. The Applicant did not have recourse to inform the Board of these changed circumstances as per Section 129 (4) of the Acts (as amended).
- The submission then focuses on 'Procedural Matters' and section 138 of the Acts. It details the Applicants original response to the appeal highlights issues with respect to the vexatious nature of the appeal. This submission is accompanied by a 'Legal Opinion' from Mary Moran Long BL PhD which examines the legality of the said appeal. It contends the evidence is incontrovertible that the Appellant was living in an address in County Limerick from July 2021 before and on the date of the appeal was submitted. This address is not the one provided in the Appeal and therefore is a reason why the appeal is invalid and should be dismissed.
- The 'Opinion' considers the third party appeal to be vexatious and it is hoped the Board will agree and disregard the appeal under section 138.

² Emphasis added.

- The submission then focuses on the Boards Section 137 letter. It considers policy regarding rural housing, landscape, siting and design criteria have not significantly changed.
- The Applicant is a farmer of more than 100 acres of land at this location and complies with objective CDP 4.14- Category A regarding 'Economic Need'. The Applicant together with his wife is a full time farmer. Since 2020 he has been on a career break from his primary school teacher role so that he can fulfil his elected role as a TD.
- He was born in the local rural area within 12 mins drive from the site at V94E1VF i.e. the Applicant's family home. He therefore also complies with objective CDP 4.14- Category B regarding 'Social Need'.
- The 2023-29 plan 'Economic Need' category also gives special consideration for persons with exceptional medical requirements. The plan allows for such persons to build their own home and also allows for carers to build their own home adjacent. The Applicant is seeking to combine two houses into one to accommodate both his housing needs and his sisters, who would qualify to build a house for herself in accordance with Category B 'Social Need'.
- The Applicant has made it clear in this application that his sister will reside at the proposed house given her personal circumstances which are detailed and described as urgent. A letter from his sisters Medical Practitioner as well as the Applicant and his sister's parents is included.
- In terms of housing need given the Applicant has now received full possession of the dwelling house his uncle resided in it may be construed that he does not have a housing need. This house is not large enough nor is it capable of meeting the Applicant's family or his sister's exceptional requirements. It will require significant remediation and extension if it were to be used for the Applicant's needs. A report is submitted from McKenna Consulting Engineers in this regard. It concludes-
 - The location of the house in such close proximity to the embankment and farm road poses significant health and safety risks
 - This existing property is in very poor condition and significant remedial works will be required to bring it up to standard.

- The current floor layout of the dwelling would not be suitable for their needs including suitable access ramps
 - For the dwelling to suit their needs it would require the remedial works to take place along with a reconfiguration of dwelling floor layout and an extension to the front or left side of the dwelling (no extension works can take place to the rear or right sides due to its proximity to the embankment and farm road). These works would require the benefit of planning permission and would need to take into account its location adjacent to a Natural Heritage Area (Woodcock Hill Bog NHA).
 - There are significant costs associated with turning this existing dwelling into a home that will suit the Applicant's needs.
- If permission were sought for a replacement house or an extension to the existing house concerns will be raised with respect to the impact of a wastewater treatment plant upon the Woodcock Hill NHA designated area. On this basis the proposed house is far more suitable being over 1km from any designated site.
 - There are also legitimate concerns that any planning application to the existing house would be subject to further appeals.
 - In terms of Landscape, Siting and Design Criteria chapter 14 of the new plan sets out relevant policy. It is almost identical to policy under the previous plan. It considers the site is in an area designated 'Settle Landscape' and described under section 14.3.2.1³. CDP Objective 14.2 is then detailed.
 - The submission acknowledges the public road to the west of the site is a designated 'Scenic Route' and objective CDP 14.7 is relevant.
 - The submission considers the site is not sensitive in respect of 'Settled Landscape' nor is it located within or adjacent to any Natura 2000 site.
 - The Applicant carefully considered the location of the house on the landholding which is considered the least intrusive. It is most suitable as it is the only part of the landholding which cannot be farmed due to its topography.

³ The Board will note the Council have indicated the site is located within the 'Western Corridor Working Landscape' and section CDP14.3 of the CDP applies. See also CDP Volume 2 Map C.

It is not contractually tied into the Organic Farming Scheme until 2028. A report was previously submitted from the Applicants 'Farm Planner' setting out a rationale for the proposal.

- The house is to be located on a natural plateau on the site to reduce its visibility from the adjacent scenic route. On this basis a Visual Impact Assessment has been prepared and is submitted. It acknowledges the house will be visible from view 1 and 2 along the public road but indigenous trees and shrubs have already been planted. The house will not be discernible to the naked eye out from view 3.
- In terms of the Clare Rural House Design Guide the house has been suitably sited on a plateau with landscape planting already provided. The house is designed to reflect a modern version of a traditional building with white render finishes and a slate or profiled metal roof reflecting traditional farm buildings in the area. The submission refers to an Architectural Statement submitted.
- In conclusion the submission sets out a summary of the Applicants circumstances. It details the Applicant has no intention of residing in the dwelling his uncle had lived in as it would not be suitable for his sister's needs. It considers the proposal complies with the standards of the new CDP. It highlights the vexatious nature of the appeal and the considered invalidity of same which the Board should dismiss.
- The submission is accompanied by a number of documents already referred to. It includes a comprehensive personal submission form the Applicant regarding the vexatious nature of the appeal as well as the matter of the Appellants address at the time of making the appeal.
- The Applicants personal submission includes reference to the Appellants agent who is details was a former member of An Bord Pleanála and a member of another political party.

3.3. Third Party Appellant

3.3.1. A section 137 response has not been received from the Appellant.

3.4. Observer

3.4.1. A section 137 response has been received from the observer to the third party appeal- Michael Nugent of Michael Nugent & Co. Solicitors, 6 Sandford Road, Ranelagh, Dublin 6. The relevant matters be summarised as follows-

- Reference is made to volume 1 of the CDP and its vision for the County and the goals set to realise that vision. It refers to the settlement strategy as set out in Chapter 4.
- The development plan provides the site is designated as being in the countryside for the purposes of its rural housing policy. The subject site sits directly on scenic route 23 designated in the CDP. The site is subject to requirements applicable to Areas of Special control. The CDP classifies the site as within a “Working Landscape” (Map 14a page 357 of CDP Volume 1) and part of “Western Corridor Working Landscape”. The submission refers to objective CDP14.3.
- Before consideration of issues of house design, site selection should be directed towards minimalizing visual impact and avoiding intrusions on scenic routes. The Applicant is required to demonstrate the site has been selected to avoid visual prominence. It is considered the site is elevated and prominent such that it will dominate the landscape for miles around. The application ought to be refused.
- In terms of rural housing in the Countryside siting and design issues and environmental sensitivities need to be considered.
- It is submitted the site chosen is singularly inappropriate for the reasons stated in the observer’s initial submission and for other reasons set out in the CDP.
- There is almost no design of house suitable for this site. At 236.7 sq.m it is almost twice the size of the average semi-detached family home. No attempt has been made to reduce the massing of the structure with one long single axis facing the public road and the valley. It is a two storey house and will stick out more than a single storey. The design is considered a crude landmark that will stick out and dominate the view for miles. The placing of

earthworks and planting of trees is incongruous and unsuitable from nearby roadside views. It is out of keeping with upland bog.

- The environmental sensitivity of an upland bog on a highly prominent hill on a scenic route is a combination of the worst of factors.
- In terms of single houses in the Countryside the CDP requires avoidance of ribbon development and overspill development. The proposal is a classic case of ribbon development and an overspill from the existing settlement.
- The CDP requires distinguishing between rural generated and urban generated housing with regards to demonstrable Economic Need and demonstrable Social Need.
- In terms of Economic Need the Applicant is not engaged full time in farming or horticulture nor is farming his predominant occupation. This is further elaborated on and it is considered the Applicants full time and predominant activities do not qualify him for rural generated housing under the category of Economic Need.
- A further consideration is the Applicant's ownership of a house despite detailing in the application that he does not have a house in the local rural area. This is incorrect as he owns a house at Woodcock Hill folio CE8086F. Screenshot snips are provided from land registry detailing the Applicant's ownership of same.
- This house is located in the midst of the Applicant's agricultural lands. Even if this house does not meet the Applicant's needs, he has plenty of room to extend it and he could build on several alternative sites all of which are less elevated and less prominent.
- As the Applicant already has a house he cannot qualify for 'Economic Need' or 'Social Need'.
- In section 8 of the application form the Applicant indicates he wishes to live in close proximity to his uncle. While the CDP makes provision to live close to a relative, the Applicant did not submit any information which would justify the exception or a medical report. The observer also submits information that suggest this need no longer applies.

- The observer considers the proposal to be ribbon development and it should be refused. The site is on a scenic route and must be afforded protection. The proposal will destroy it.
- The site is in an area of special control because it is a rural area under strong urban influence and is accessed from and abutting a scenic route. Specific reference is made to Objective CDP 14.4.
- Page 98 of the CDP Landscape, Siting & Design Criteria requires Applicants to demonstrate that no alternative sites are available in Settled Landscapes, the Shannon Estuary Working Landscape or the Western Corridor Working Landscape in order for sites to be accessed from or abutting Scenic Routes. The Applicant already owns a house and other sites, which are more suitable than the one proposed.
- In terms of siting, design, environment, heritage, amenity and traffic considerations the site is singularly inappropriate for housing. The Applicant has failed to demonstrate any attempt to avoid visual prominence.
- The response refers to section 14.3 of the CDP 'Clare's Living Landscapes' on page 347. It discusses the proposal in the context of-
 - visibility and prominence of the development from available vantage points,
 - the potential changes to the character of these views (including views from Scenic Routes, heritage sites and other important locations),
 - the capacity of the landscape to accommodate the development,
 - the height, bulk, scale, massing and finishes of the development and
 - the cumulative impact of the development
 and generally finds the proposal contrary to same.
- If the Applicant receives permission (his third house) there is a real danger of setting an unfortunate precedent. It may serve as a precedent to traverse and overturn the CDP for others.
- This response is accompanied by screenshots likely from the PRAI webpage appearing to identify the Applicants land folios and a copy of a death notice.

4.0 Section 131 Response from Third Party Appellant

4.1. The Appellant was requested to make any submission or observation they may have on the Applicants section 137 response. The Board considered this was necessary in the interest of justice.

4.2. The section 131 response can be summarised as follows-

- In relation to the '*Family Dispute*' between the parties the following is detailed-
 - The sad facts of the ongoing dispute between the two families involved is not relevant to the grounds of the Appeal.
 - The right of objection is clear and objections or appeals must be judged on their merits rather than on the basis of who made them.
- Reference to the '*matter being raised in the public domain*' has no relevance to the planning matters before the Board.
- In relation to the '*Opinion of Counsel*' submitted with the Applicants section 137 response-
 - the Appellant contends his address given at the time of making the appeal was where he was resident. A series of invoices dated after the appeal are lodged showing the Appellant or his wife's address. The submission also includes photographs detailing the property in Limerick (Duxtown/Duckstown) in which the Applicant alleges the Appellant lives was not in a habitable state at that time.
 - The Broggy family resided at Knockroe, Meelick until June 2021 and then rented a property at Derrymore, Meelick until May 2023. A letter from Ms Brigid Duffy owner of the rented property is attached confirming the date of residence at the time of the appeal.
 - The Appellant moved to Duckstown in Limerick in May 2023.
 - Supporting Letters from an auctioneer and solicitor involved in the sale are included. It is stated the sale was not completed until October 2022.

- The purpose of requiring an address is to ensure an Appellant can be identified and there is no such difficulty in this instance.
- There is no basis to suggest the Appellant would object to a future application to renovate the existing Crowe residence.
- This appeal is based entirely on planning matters.
- It is a matter for the Board to determine if an exception to existing housing policy should be made based on the Applicant's family circumstances.
- In relation to '*Housing Need*' the following is submitted-
 - The Appellant is not in a position to comment on whether the existing house is suitable for renovation. However no offer has been made to take this house out of use. It is clearly intended to continue this use if permission is granted.
 - It is accepted the Applicant was not in full possession of the house at the time the application was lodged. However possession of the house now affects the issue of housing need. It is difficult to see why the house would not be possible to renovate and extend.
 - The inherited house is closer to the farmstead than the application site. Photographs are enclosed of the access road which is perfectly adequate.
- In relation to the '*Revised Development Plan*'-
 - The revisions to the development plan do not materially affect the appeal. The policy issue has been enunciated in the appeal in terms of rural housing policy generally and its impact on the environment specifically.
 - The Applicant's section 137 response brings a whole series of other issues into play including the 'Counsel Opinion'. Should these '*new issues*' not be disregarded by the Board for that reason?
 - Submission of visual impact assessment drawings should also be disregarded by the Board.

5.0 Assessment

5.1. Introduction

5.1.1. The Board wrote to the parties involved in this appeal on the 19/12/23. The parties are-

- The Applicant- C MacConcradha
- The Planning Authority- Clare County Council
- The Appellant- Marcus Brody at Leahy Planning Limited
- The Observer- Michael Nugent

5.1.2. The letter clearly details that any submission or observation made should be confined to the issues specified which are-

“The Board noted that the Clare County Development Plan 2023-2029 is now the current development plan. Having regard to the issue of rural housing policy, which is raised in the appeal documentation, the Board invites all parties to provide submissions on the relevant provisions of the development plan as it relates to rural housing policy, and in particular landscape, siting and design criteria.”

5.1.3. Having considered the Boards request, I conclude that reference to ‘*landscape, siting and design criteria*’ refers to the provisions as set out following CDP Objective 4.14 on page 98 of the CDP regarding rural housing policy. This is set out in section 2.3.4 above and will be considered below.

5.1.4. The Board are also advised the Applicant has submitted matters in support of his case that in my opinion are outside the scope of the section 137 request. This is highlighted in the Appellant’s section 131 response which requested these ‘new issues’ be disregarded. There is merit to the Appellant’s contention but in the context of all the information now on file it is considered appropriate to address these issues to some extent in this Addendum Report. It will be a matter for the Board to decide how much weight, if any, they should give to these matters in their deliberations and final decision.

5.1.5. Therefore, I intend to consider the following in this Addendum Report-

- *The issue of Rural Housing Policy including landscape, siting and design criteria*
- *Submissions received including on Section 138 of the Act, vexatious nature of appeal the validity of same and from the Observer.*

5.2. Rural Housing Policy

5.2.1. In section 8.2 of my original report (dated 02/03/23) I concluded that based on the information on file and as declared in the application form, the Applicant-

- appeared to comply with Objective 3.11 of the previous CDP under Category A- 'Local Rural Person' only
- can be considered a person coming within the description of 'Persons who are an intrinsic part of the rural community' as provided in the Sustainable Rural Housing Guidelines for Planning Authorities April 2005
- seemed to have a genuine rural housing need based on one of the core considerations set out in NPO19 i.e. a demonstrable 'social' need to live at this location.

I recommended permission be granted on this basis.

5.2.2. In the Applicant's submission to the Boards Section 137 request he confirms that he is the registered owner of another house in the local rural area. He appears to have acquired the property on the 14/11/18 well before the submission of the application to Clare County Council. However he maintains, while he was the registered owner of the property, he did not have use of the house as his uncle retained exclusive residence at the time of the application.

5.2.3. The Board will note, in Part 2(b) of the application form the Applicant was asked if he or his spouse/partner have ever owned a house/apartment. The Applicant indicated 'Yes' but when asked for details, only the home at Clonard, Westbury, Co. Clare is provided.

5.2.4. On page 10 of the Application Form the Applicant is requested to sign a declaration to the best of their knowledge and belief the information given in this form is correct and accurate and fully compliant with the Planning and Development Act 2000 as amended and the regulations made thereunder. This is signed by the agent of the

Applicant in which question 7 of the application form indicates is the agent acting on behalf of the Applicant.

- 5.2.5. The full extent of the information required in the application form would not necessarily have been fatal to the decision, however it is fundamental to the consideration of rural housing policy and the Applicant's rural housing need. On the basis of the information now available it is appropriate to reconsider the Applicant's housing need based on the criteria of the 2023-29 CDP as detailed in the section 137 request.
- 5.2.6. The application site is located in a rural area which has been identified in Section 4.2.6 of the County Development Plan (CDP) and Volume 2 Map D as a 'Rural Area under Strong Urban Pressure' having regard to the NPF, the RSES and the 2005 Guidelines. The key objective of the CDP in this regard can be summarised to facilitate the genuine housing requirements of persons with a demonstrable economic or social need to live in these rural areas and to direct urban-generated development to areas zoned for new housing development in the adjoining urban centres, towns, villages and clusters as identified in the County Settlement Strategy and to seek to enhance the vitality and viability of these settlements.
- 5.2.7. The Clare CDP identifies '*Areas of Special Control*' which includes 'Rural Area under Strong Urban Pressure' and 'Sites accessed from Scenic Routes' (see Volume 2 Map D). The application site meets these two criteria. Objective CDP 4.14 of the CDP requires Applicants for houses in these areas to meet the necessary criteria as set out in two categories i.e. Category A 'Economic Need' and Category B 'Social Need'.

5.2.8. **Category A- Economic Need**

- a) This Category provides two subcategories in which a person may comply. I shall look at these in turn.

First Subcategory

- a) I have reconsidered the Applicant's 'Economic Need' (see section 2.3.1) against the criteria of the new CDP. In Part 2(a) question 4 of the application form the Applicant indicates his occupation is as a TD and he is on career break from as a primary school teacher. He indicates his actual place of work

as throughout Clare as a TD and as a teacher at Parteen N.S. in Clare. His present employer is indicated as the House of the Oireachtas with the distance and place of work detailed as representing all of Clare and Dail Eireann 212km from the site.

- b) The information submitted by the Applicant in support of his application makes a strong case for the Applicants need based on his work as a farmer. The new CDP defines Applicants with an 'Economic Need' to be-

Such persons shall be defined as persons who by the nature of their work have a demonstrable economic need to reside permanently in the rural area close to their place of work.

and such circumstances will normally encompass persons involved in full time farming as well as others who can demonstrate a genuine need, because of their occupation or business to live in a specific rural area.

- c) The CDP makes provisions for 'part-time occupations' to be considered

"where it can be demonstrated that it is the predominant occupation and that the ancillary occupation(s) are located within a reasonable daily commuting distance from the site or alternatively may be facilitated through remote working."

- d) The Applicant has clearly indicated in the application form his occupation is a TD on career break from his role as a teacher. In my opinion his occupation as a TD is his 'predominant employment'. While I accept, he may also be engaged in farming there is no evidence before me to conclusively say farming is his predominant employment and this is supplemented by what is put forward in the application form.
- e) Category A also requires Applicant must not already own or have owned a house in the surrounding rural area⁴. The Applicants Section 137 response clearly details he does own a house in the rural area.
- f) If the Applicant's case is based on farming, Category A also requires the Applicant to have their 'engagement in farming' to be of a minimum farm size of 12.5ha within the local rural area and if it cannot be achieved, favourable

⁴ An exception is provided under the social need criteria which will be considered later.

consideration will only be given where a business plan can satisfactorily demonstrate that the person's predominant occupation relates to farming.

- In section 3.2 of the Planning Report accompanying the application dated 27/06/22, it is detailed the overall landholding is 20 acres which the Applicant farms.
- This is further detailed as 20.5 acres in Part 2 (a) of the application form Q3 and page 6 of 14 the same planning report⁵.
- This equates to approximately 8.1 – 8.3 hectares and well below the minimum size required.
- Section 3.2.2 of the Applicants section 137 response details '*he is a farmer of more than 100 acres of land at this location and as such would comply with stipulations as set out under Category A*'.
- The Applicants 'Farm Planner' report submitted with the appeal identifies a number of parts of the Applicants landholding with an area of c. 113 acres or 45ha.
- However, from the information submitted it is not clear if these lands are actually being farmed (the Applicant's '*engagement in farming*') with the report detailing a significant majority is 'intended' for submission for the ACRES scheme.

Having considered the discrepancies in landholding and actual farming practises described I am not convinced the Applicant has adequately demonstrated his economic need relates to his 'engagement in farming' of a minimum farm size of 12.5 hectares within the local rural area. Furthermore, I have not identified any business plan⁶ on the file that would demonstrate the Applicant's predominant occupation relates to farming to allow for an exception to this requirement.

- g) I am not satisfied the Applicant has demonstrated he is a person who by the nature of his work has a demonstrable economic need to reside permanently

⁵ This page is provided separately on file with the information indicated as confidential. I do not consider the size of the landholding as confidential in the context of the other information on the page.

⁶ The Farm Planner report submitted is clearly not a 'Business Plan' in this context.

in this rural area close to his place of work. He already owns a house in the area and he has not adequately established he is engaged in farming a landholding of a minimum 12.5 hectares in the local area. The Applicant has therefore not demonstrated he is a person who complies with the criteria set out in Category A- Economic Need- the first subcategory.

Second Subcategory

- a) This subcategory provides for persons who are ineligible under the first subcategory if they can satisfy the Planning Authority of their commitment to operate a full-time business (not including bed and breakfast), from their proposed home in a rural area, as part of their planning application, in order for example, to discourage commuting to towns or cities. Again the Applicants must not already own or have owned a house in the surrounding rural area.
- b) Based on my consideration of the first subcategory it is clear to me that the Applicant cannot satisfy the requirements of the second subcategory.

Conclusion on Category A

- a) Based on the information on file including the information submitted in response to the Section 137 request, the Applicant has not demonstrated he is a person who complies with the criteria set out in Category A- Economic Need.

5.2.9. Category B- Social Need

- a) This Category provides three subcategories which I will consider in turn.

Subcategory i

- b) This requires the Applicant to be an intrinsic member of the local rural community who was born within the local rural area, or who is living or has lived permanently in the local rural area for a minimum of 10 years either as one continuous period or cumulatively over a number of periods prior to making the planning application and who has a demonstrable social need to live in the area. The CDP details *“For Rural Areas Under Strong Urban Influence the rural area is defined as the area within 10km of the site”*.

- c) The Applicant has submitted information identifying the family home and evidence he was born there. This home is located c. 4km to the southeast of the application site. Based on the information on file, I am satisfied the Applicant can be considered a person who is an intrinsic part of the rural community.
- d) This subcategory clearly details the Applicant must not already own or have owned a house in the surrounding rural area (except in the exceptional circumstances as set out in subcategory iii).
- e) The Applicant (or his agent on his behalf) has declared all previous places of residence and that he already owns a house. This house is in the urban area of Westbury, Co Clare and is not in the 'local rural area'. However the information submitted in response to the Boards section 137 request details the Applicant does own a house in the local rural area. **Therefore the Applicant has not demonstrated compliance with Category B subcategory i.**

Subcategory ii

- a) This makes provision where special consideration shall be given in limited cases for persons who need a dwelling for permanent occupation in a rural area for exceptional health reasons. Such applications shall be accompanied by a report or recommendation (and other relevant supporting documentation) from a registered medical practitioner outlining the reasons why it is necessary for the **Applicant** to live in the rural area or to reside near family/carer support (or alternatively requires care support to live in close proximity to them).
- b) The application does not put forward a case based on the exceptional health reasons of the **Applicant**. Instead the Applicant makes a case based on his sister's needs. The application and section 137 response are accompanied by letters from a medical professional dated 15/06/22 and 03/01/24. These do not outline the reasons why it is necessary for the **Applicant** to live in the rural area as required by the CDP nor do they set out reasons why it is necessary for the Applicant's sister to live at the proposed site. The letters do however explain why the sister has reason to reside near her family/carer

support and it is noted the CDP provision does provide an 'or' scenario for this requirement.

- c) Unfortunately the CDP is clear in that the exceptional health reasons justification must be for the **Applicant**. Therefore the Applicant does not comply with the requirements of subcategory ii. However, it may very well be the case that the Applicant's sister would comply with the rural housing policy of the CDP in any event. In such a situation a new planning application would be required.
- d) The Board will note the provisions of subcategory (ii) do provide for persons who wish to provide care to a person with exceptional health reasons as may be the case with this application. It clearly states-

"In instances where the house is proposed to accommodate the person that will provide care for a person already residing in the rural area.....the new dwelling must be sited adjacent to the existing dwelling which shall be taken to mean sites that are in close proximity to the dwelling of the person that will be cared for."

In this instance the proposed house is not located adjacent to the dwelling where the Applicant's sister currently resides nor do I consider it to be in close proximity to the dwelling of the person that will be cared for which is indicated in the submitted documentation at Eircode V94 E1VF or c. 5km by road from the application site.

- e) I have considered the information submitted and on file under subcategory ii. I acknowledge the genuine intentions of same. However, in my opinion the CDP provisions do not provide for the circumstances of the Applicant's case in this instance. **Therefore I can only conclude the Applicant has not demonstrated compliance with subcategory ii.**

Subcategory iii

- a) This subcategory provides for circumstances where an Applicant who is considered an intrinsic member of a local rural community, who was born within the local rural area or who is living or has lived permanently in the local rural area for a minimum of 10 years, who previously owned a home and is no longer in possession of that home due to the home having been disposed of

following legal separation / divorce / repossession and can demonstrate an economic or social need for a new home in the rural area.

- b) This subcategory does not provide for circumstances put forward by the Applicant where land and a house has been transferred from a family member as is clearly the situation here. There is certainly a question of fairness in such circumstances where the Appellant may consider themselves unduly penalised, but unfortunately that is not a matter on which I can adjudicate upon. The Board may feel differently. **The Applicant has not demonstrated compliance with subcategory ii.**

Conclusion on Category B

- a) Based on the information on file including the information submitted in response to the Section 137, the Applicant has not demonstrated he is a person who complies with the criteria set out in Category B- Social Need.

5.2.10. Landscape, Siting & Design Criteria

- a) The paragraphs following Development Plan Objective CDP 4.14 clearly provide pertinent information relevant to the implementation of this objective. The paragraph titled '*Landscape, Siting & Design Criteria*' which I have already considered forms a significant part of the section 137 request, details that for sites accessed from or abutting Scenic Routes the Applicant will be required to demonstrate that no alternative sites are available in Settled Landscapes, the Shannon Estuary Working Landscape or the Western Corridor Working Landscape.
- b) The application site is located on an elevated site accessed from and abutting a section of public road that has been identified as a 'Scenic Route' within the CDP.
- c) In my original assessment I noted the Applicant has detailed his landholding and sought to justify the site selection highlighting the unproductive nature of the lands from an agricultural perspective and the proximity of the site to his

other landholding. I considered this is a reasonable basis for site selection having regard to the provisions of the previous CDP.

- d) However the provisions of the new CDP place a requirement for the Applicant to demonstrate that no alternative sites are available in Settled Landscapes, the Shannon Estuary Working Landscape or the Western Corridor Working Landscape.
- e) The Applicants section 137 response details the site is located in a 'Settled Landscape' as per the new CDP and objective 14.2 applies. It argues the site is the least intrusive in the landholding and is the most suitable because it is the only part of the landholding which cannot be farmed due to its topography and is not contractually tied into the Organic Farming Scheme until 2028. A report from the Applicants Farm Planner is detailed to set out the rationale why the site is the most suitable on the landholding.
- f) The Councils Response to the Section 137 request suggests the site is located within the 'Western Corridor Working Landscape' and objective CDP14.3 applies. Given the sites distance from the N18/M18 at c. 6.5km I would agree with this. Notwithstanding the provisions of CDP14.3, the section 137 request focuses on 'rural housing policy' only and in this regard Objective CDP 4.14's 'landscape, siting and design criteria' where the Applicant is required to demonstrate that there are no alternative sites as this one abuts and is accessed from a designated scenic route.
- g) The submitted 'Farm Planner' report dated 10/10/22⁷ details '**a farmer must live on their farm**⁸ in order to keep a watchful eye over the herd and be able to carry out the many day-to-day jobs required on a farm.' The report appears to identify each plot of land in the landholding but does not appear to discuss the landholding where the house now confirmed in the Applicants ownership is located i.e. V94 XN84.

⁷ Response to Appeal

⁸ Emphasis kept from report.

- h) The file now suggests this house was owned and lived in by the Applicant's uncle who farmed the wider landholding before transferring ownership of the farm landholding and house to the Applicant. Section 3.2.5 of the Applicants section 137 response details this house is located directly adjacent to an existing farmyard and this is supported by photographs in the Structural & Condition Report of the existing house.
- i) Having considered the above, the location of the existing house would appear to be a more preferable location in the context of the subject '*landscape, siting and design criteria*' of the 'rural housing policy' especially when the 'Farm Planner' has stated a farmer must live on their farm in order to keep a watchful eye over the herd and be able to carry out the many day-to-day jobs required on a farm.
- j) In the Applicant's section 137 response he acknowledges he owns the house V94 XN84 in the rural area but only received full possession during the appeal period. He argues that this house is not large enough nor capable to meet the family requirements including those of his sisters' exceptional requirements.
- k) The Applicant has submitted a Structural & Condition Report of the house to support his case. The report is prepared by McKenna Consulting Engineers which generally concludes-
- The location of the house in such close proximity to the embankment and farm road poses significant health and safety risks
 - This existing property is in very poor condition and significant remedial works will be required to bring it up to standard.
 - For the dwelling to suit their needs it would require the remedial works to take place along with a reconfiguration of dwelling floor layout and an extension to the front or left side of the dwelling (no extension works can take place to the rear or right sides due to its proximity to the embankment and farm road). These works would require the benefit of planning permission and would need to take into account its location adjacent to a Natural Heritage Area (Woodcock Hill Bog NHA).

- There are significant costs associated with turning this existing dwelling into a home that will suit the Applicant's needs.
- l) I have read and considered the report in full and notwithstanding the findings of same, I see no planning reason why the existing house cannot be refurbished, extended or replaced to meet the Applicant's needs especially in the context of the overall landholding available to the Applicant at the location of the existing house, which is not abutting or accessed directly from a scenic route. I note CDP Objective CDP 4.17 provides for the replacement of a Substandard Habitable House in the Countryside. While a separate grant of planning permission would be required there is no evidence submitted to suggest it cannot be achieved. The proximity of the site to a Natural Heritage Area does not mean normal planning considerations cannot be overcome especially in the context of a replacement house.
- m) While I acknowledge the justification put forward by the Applicant for the proposed site, it would appear the contents of the 'Farm Planners' report and the Applicants own submission would suggest the site of the existing house adjacent to an existing farmyard would be preferable for keeping a watchful eye over the herd and to be able to carry out the many day-to-day jobs required on a farm.
- n) I have considered CDP 4.14 and the Councils stated 'Landscape, Siting & Design Criteria' as set out in the new CDP 2017-2023 where the proposed site is to be accessed from and will abut a designated 'Scenic Routes'. The Applicant has not convincingly demonstrated there are no alternative sites available for the proposed development.

5.2.11. Conclusion on Rural Housing Policy

- a) The Applicant has failed to demonstrate his compliance with the necessary criteria to permit a new single house within an Area Under Strong Urban Influence and on a site which is accessed from or abutting a designated Scenic Routes.
- b) I consider the Applicant is a person who is an intrinsic part of the rural community. However his local housing need can be met by his ownership of

an existing house in the local rural area at Woodcock Hill, Meelick, Co. Clare V94 XN84.

c) The application should, therefore, be **refused**.

5.3. Submissions received including on Section 138 of the Act, vexatious nature of appeal the validity of same and from the Observer.

5.3.1. While this matter does not form part of the Boards Section 137 request the Applicant did raise concerns over the vexatious nature of the third party appeal in their original response to the Appeal. I highlighted this in section 8.6 of my original report and suggested the Board may wish to consider this.

5.3.2. The Applicant has further sought to address this in his section 137 response. He has submitted a 'legal opinion' from Mary Moran Long BL PhD which examines the legality of the said appeal and argues the appellant has not resided at the address provided since the late 1990s.

5.3.3. The 'Opinion' refers to section 127 (1) of the Act which requires inter alia-

“(1) An appeal or referral shall—

(a) be made in writing,

(b) state the name and address of the Appellant or person making the referral and of the person, if any, acting on his or her behalf.....”

The 'Opinion' argues the appeal has provided an address that is wrong, false and misleading.

5.3.4. The 'Opinion' then refers to section 127 (2) (a) which states-

“(a) An appeal or referral which does not comply with the requirements of subsection (1) shall be invalid.”

5.3.5. The Board are advised the Applicant has submitted significant information with the application as well as the section 137 response that he believes supports his position the appeal is vexatious. However, the Board will also be aware that the appeal does have valid planning grounds of substance and foundation and in this context, it is difficult to state categorically the appeal is vexatious.

- 5.3.6. In the interest of justice the Appellant was afforded the opportunity under section 131 of the Act to respond to the Applicants section 137 response submission. In his response the Appellant categorically details he was so resident at the address provided at the time of making the appeal i.e. 'Derrymore, Meelick, County Clare' on the 23rd of September 2022. An Eircode is not provided. The Appellant submits documentary information in support of this position as set out in Appendix 2-6 of his section 131 response. It is a matter for the Board to decide if sufficient evidence is provided to demonstrate the interest of the Appellant at this address for the purpose of making the appeal and section 127 of the Act.
- 5.3.7. The Board will also note the Appellant has not made any submission or observation in response to the Section 137 request.
- 5.3.8. The Board should also consider the submissions of the Observer which are extensive in content and do have valid planning grounds which are of substance and foundation.
- 5.3.9. In conclusion, the Appeal does include valid planning grounds which are of substance and foundation. The Appellant stands over the address given at the time of making the appeal. The Board may wish to consider the matters set out in this section and the relevant information on file in their overall deliberations.

6.0 Recommendation

6.1. I recommend permission is refused for the following reason-

1. The proposed development is located in a Rural Area Under Strong Urban Influence and the site is accessed from and abuts a designated Scenic Route. Accordingly the proposed development is in an area specifically identified as an 'Area of Special Planning Control' to which Development Plan Objective CDP4.14 of the Clare County Development 2023-2029 applies. The Applicant has not demonstrated he meets the necessary 'Economic Need or Social Need' criteria as provided in the Development Plan nor has he demonstrated that no alternative sites are available that do not be access from or abut a designated Scenic Route. Furthermore and based on the information

submitted, the Board considers the Applicants 'need' to live in the local rural area could be met at property and lands in his ownership at Woodcock Hill Meelick, Co Clare V94 XN84.

It is therefore considered that the proposed development would be contrary to Development Plan Objective CDP 4.14 of the Clare County Development Plan 2023-2029 and as a result contrary to National Policy Objective 19 of the National Planning Framework (2018-40). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Adrian Ormsby
Planning Inspector

31st of May 2024