



An
Bord
Pleanála

Inspector's Report

ABP-315689-23

Development	Construction of a house and all associated site works
Location	Moarhaun, Kilnamona, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	221025
Applicant(s)	Cillian & Sadhbh Clancy
Type of Application	Permission
Planning Authority Decision	Grant permission with conditions
Type of Appeal	Third Party
Appellant(s)	Noel Gavin Anthony Travers
Observer(s)	None
Date of Site Inspection	31 st October 2023
Inspector	Ciara McGuinness

1.0 Site Location and Description

- 1.1. The site is situated in the townland of Moarhaun, c.1.5km east of Kilnamona Village and 3.2km northwest of Ennis. The N85 Road is located c.1km to the south of the site. Access to the site is from the L41441 local road. The site fronts onto this narrow local road which carries local traffic only. The area is rural in nature and is characterised by farmland with sporadic housing.
- 1.2. The site has a stated area of 0.302 hectares. The site is a low-lying greenfield site that comprises part of a larger agricultural landholding. The boundaries of the site consist of stone walls with some hedging and trees. There is a recorded monument CL033-018 "Earthwork" located to the southeast of the site.

2.0 Proposed Development

- 2.1. It is proposed to erect a two-storey dwelling with a stated floor area of 239.13sqm. A detached garage with a floor area of 42.55sqm is proposed to the northwest of the dwelling. Permission for a new site entrance and a wastewater treatment system and percolation area are also sought. The existing western and northern site boundaries are to be retained. Additional planting is indicated on the southern site boundary. Areas of rock and shrub to be retained are indicated to the west and east of the site.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 12 no. conditions. These were generally of a standard type. Condition 2 relates to an occupancy condition requiring the dwelling house to be the first occupied by the applicant as a permanent place of residence for a period of 7 years. Condition 11 relates to Archaeological Monitoring which is required to be undertaken for the proposed development works.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report outlines the relevant planning policy for the development, notes the planning history and submissions received. It was considered that, based on the information submitted, that the applicant has demonstrated an economic and social need to reside in this area. A grant of permission was recommended.

3.2.2. Other Technical Reports

Environment Section – No objections subject to conditions

3.3. Prescribed Bodies

DAU – The department acknowledges the findings of the submitted Archaeological Impact Assessment (AIA) Report and broadly concur with the statement of Archaeological Potential (Section 5.5), Mitigation Strategies (Section 6) and Conclusion (Section 7) as set out in the report. The department advises that licensed Archaeological monitoring be required as a condition of any grant of permission.

3.4. Third Party Observations

Submissions on the proposal were received from Anthony Travers and Noel Gavin (the appellants) and generally reflect the principal issues raised in the appeals. The submissions note the recent Board decisions in relation to the applicant's previous two applications. Concerns were also raised with regards to the archaeological impact of the proposed development, increased traffic, and possible flooding.

4.0 Planning History

Appeal Site

ABP-312520-22 (P.A. Ref No. 21/957) - Permission refused in 2022 for a house and garage because the applicants (Cillian Clancy & Sadhbh Cotter) had not demonstrated an economic or social need to live in this rural area. In the absence of an identified local need, the proposed development would result in a haphazard and unsustainable form of development.

Relevant Appeal

ABP-308829-20 (P.A. Ref. No.: 20/429): Permission refused in 2021 for a house and garage for the applicants (Cillian Clancy & Sadhbh Cotter) on a site located approximately 300m to the north of the appeal site because the proposed

development was considered to contravene the overarching provisions of the Sustainable Rural Housing Guidelines and the National Planning Framework.

5.0 Policy Context

5.1. Clare County Development Plan 2023-2029

5.1.1. Section 4.2.6 of the Clare County Development Plan 2023-2029 deals with Single Houses in the Countryside. It states that “the Council will ensure that development of the open countryside takes place in a manner that is compatible with the policy objectives of the NPF and the RSES, whilst ensuring the protection of key economic, environmental, biodiversity and cultural / heritage assets such as the road network, water quality and important landscapes.”

5.1.2. The site is situated in a rural area under strong urban influence as identified on Map H7 of the County Development Plan. In these areas, the key objectives of the Council are:

- a) To facilitate the genuine housing requirements of persons with a demonstrable economic or social need to live in these rural areas.
- b) 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.

Development Plan Objective: Countryside 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.

Development Plan Objective: New Single Homes in the Countryside within the “Areas of Special Control” CDP 4.14 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.

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

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 full-time 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

- ii. 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.

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.

5.1.3. Section 16.4 of the plan relates to Archaeological Heritage, with the following objectives considered relevant;

Development Plan Objective: Sites, Features and Objects of Archaeological Interest CDP16.8 It is an objective of Clare County Council:

- a) To safeguard sites, features and objects of archaeological interest generally;
- b) To secure the preservation (i.e. preservation in situ or in exceptional cases preservation by record) of all archaeological monuments included in the Record of Monuments and Places as established under Section 12 of the National Monuments

(Amendment) Act, 1994, and of sites, features and objects of archaeological and historical interest generally;

c) In securing such preservation, to have regard to the advice and recommendations of the Department of the Culture, Heritage and the Gaeltacht;

d) To have regard to the government publication Framework and Principles for the Protection of the Archaeological Heritage 1999 in relation to protecting sites, features and objects of archaeological interest; and

e) To advocate for greater financial assistance for the maintenance and improvement of features of archaeological interests in County Clare.

Development Plan Objective: Newly Discovered Archaeological Sites CDP 16.9

It is an objective of Clare County Council: To protect and preserve archaeological sites discovered since the publication of the Record of Monuments and Places.

Development Plan Objective: Archaeology and Infrastructure Schemes CDP

16.10 It is an objective of Clare County Council: To protect the Zones of Archaeological Potential located within both urban and rural areas as identified in the Record of Monuments and Places

5.2. National Planning Framework

National Policy Objective 15 Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

National Policy Objective 19 makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.3. Sustainable Rural Housing Guidelines for Planning Authorities

These guidelines differentiate between Urban Generated Housing and Rural Generated Housing and directs urban generated housing to towns and cities and lands zoned for such development. Urban generated housing has been identified as development which is haphazard and piecemeal and gives rise to much greater public infrastructure costs. Rural generated housing includes sons and daughters of families living in rural areas and having grown up in the area and perhaps seeking to build their first home near the family place of residence.

5.4. Natural Heritage Designations

Toonagh Estate SAC - located approximately 2.1km to the northeast of the site.

Lough Cleggan pNHA - located approximately 2.2km to the east of the site.

Ballyallia Lake SAC – located approximately 3.5km to the east of the site

5.5. EIA Screening

See completed Form 2 on file. Having regard to the nature, size and location of the proposed development, and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the third-party appeals received:

Noel Gavin:

- The appellant refers to the reasons and considerations for refusal set out by the Board in the applicants previous two applications. It is contended that there is no material difference in the information presented in the current application. The applicants have no demonstrable social or economic need to live in the area and based on the applicant's employment, their housing need could be accommodated in a nearby town/settlement.

- The applicant owns a house 250m from the proposed site despite not referring to it in his planning applications to date.
- The archaeological zone of influence extends over most of the proposed development. The proposed development would potentially have an adverse impact on the archaeological heritage of the area and as such would be contrary to Objective CDP 15.8, CDP 15.9 and CDP 15.10 of the County Development Plan 2017-2023.

Anthony Travers:

- The appellant refers to the reasons and considerations for refusal set out by the Board in the applicants previous two applications. It is contended that there is no material difference in the information presented in the current application. The applicants have no demonstrable social or economic need to live in the area and based on the applicant's employment, their housing need could be accommodated in a nearby town/settlement.
- The appellant notes that the transfer of land to the applicant from his granduncle also includes the transfer of the house. The applicant has omitted that he owns this house on the planning application form. This is a materially significant piece of information to omit.
- While the applicant's granduncle retains a right of residency this does not prevent the applicant from also occupying the house.
- The appellant contends that representations made by county councillors and locally based TD constitute political interference with the planning system.
- The applicant has previously submitted incorrect information in support of the planning applications. Therefore, the applicant cannot be relied upon to ensure the Condition in relation to Archaeological monitoring is carried out.
- The archaeological buffer zone is less than the minimum required distance of 30m, with the buffer zone only 13.5m to the site boundary and 21m from the edge of the proposed dwelling.

6.2. Applicant Response

A response prepared by Andrew Hersey Planning has been submitted on behalf of the applicant. The main issues raised in the applicant's response to grounds of appeal are as follows;

- The applicant qualifies as a 'Local Rural Person' from the 'Local Rural Area'
- The applicant has inherited the farmhouse from his granduncle; however the granduncle has a legal right to live there until the time of his death. The applicant's grandaunt who currently resides in Dublin, also has the legal right to reside in the house until the time of her death.
- Cohabitation with the granduncle is not considered suitable. The house is less than 80sqm and is not suitable to accommodate the applicants needs for their growing family. Furthermore, the granduncle does not want his nephew and young family living with him.
- The applicant needs to reside in close proximity to the farm to care for the animals.
- The proposal is consistent with NPO19 of the National Planning Framework, CDP 3.11 of the Clare County Development Plan 2017-2023, CDP 4.14 of the Draft Clare County Development Plan 2023-2029 and the Sustainable Rural Housing Guidelines.
- Reference is made to an application in Doonbeg for a dwelling house on a farm of 12.9ha. P.A. Ref 20/400 /ABP-308101-20 refers. The applicant in this case did not refer to any other paid profession. The applicant's farm holding relates to an area of 16ha. The applicants should not be penalised for working to subsidise their farming income.
- The applicant engaged an Archaeologist to prepare an Archaeological Impact Assessment Report. The conclusions have been accepted by the Department of Local Government Housing and Heritage as per their report on file.

The applicant has submitted a letter from his primary school confirming he attended school locally along with various correspondence showing proof of address. The applicant has also submitted various correspondence to demonstrate his farming activities on the land including the deed of transfer and land registry details, a letter confirming the name change on the herd number, a letter confirming the transfer of

farm entitlements, a copy of grant payment details, correspondence regarding stock density, copies of farming certificates/ qualifications, receipts from farm purchases and sale of livestock, and a letter of support from the chairman of the IFA County Executive and Teagasc.

6.3. **Planning Authority Response**

The Planning Authority has responded to the grounds of the appeal and confirms that the difference in principle between this application and the previous applications by the same applicant (P.A. Ref 20/249 and P.A. 21/957) is that he is now the registered owner of the landholding. On this basis, the Planning Authority was satisfied that the proposed development complied with the Sustainable Rural Housing Guidelines. The Planning Authority notes the third-party submissions which state that there is an existing dwelling on the landholding where the applicant's granduncle resides. Under the relevant succession legislation, the Planning Authority consider that the granduncle has a legal right to remain in this dwelling, and as such the dwelling is not considered within the *de facto* ownership of the applicant. The Planning Authority further outlined the acceptability of the proposed development in terms of political representation and archaeological impact.

6.4. **Observations**

None

7.0 **Assessment**

7.1. I consider that the main issues in the assessment of this appeal are as follows;

- Rural Housing Policy
- Archaeology
- Other Issues
- Appropriate Assessment

7.2. **Rural Housing Policy**

7.2.1. Section 4.2.6 of the Clare County Development Plan 2023-2029 sets out policy in relation to single houses in the countryside. The site is located at Moarhaun, Kilnamona, Co. Clare within the countryside. Within the open countryside, the Plan

identifies two types of areas for rural housing: 1. Areas under Strong Urban Influence and 2. Remaining Rural Areas. As illustrated on Map H7 of the Plan the appeal site is located within the Area of Strong Urban Influence. Areas under Strong Urban Influence are also Areas of Special Control, as such Objective CDP 4.14 of the plan applies. Part (i) of this objective states that applicants for a new single house for permanent occupation in Areas under Strong Urban Influence must meet either the economic or social criteria set out in the categories under that objective as detailed in Section 5.1 above.

- 7.2.2. The applicants are Cillian and Sadhbh Clancy. The applicant (Cillian Clancy) is the stated owner of the lands. As detailed in the application form the applicant has resided in the locality since he was 1 year old, primarily in the family home located 600m to the west of the appeal site and more recently in rented accommodation located 500m to the east of the appeal site. The applicant has submitted a letter from his primary school confirming he attended school locally. Various documents and bills dating from 2011-2022 have been submitted as proof of address.
- 7.2.3. Information on the file indicates that the first parties work as a psychiatric nurse (Cillian Clancy) with the HSE in Ennis and a Social Care Worker (Sadhbh Clancy) in Limerick City, respectively. It is also stated that Cillian Clancy is a farmer and farms the land (stated as 16 hectares acres) that the subject site forms part of at Moarhaun. The applicant has submitted proof that he owns, farms and receives an income from the farm in the form of the deed of transfer and land registry details, a letter confirming the name change on the herd number, a letter confirming the transfer of farm entitlements, a copy of grant payment details, correspondence regarding stock density, copies of farming certificates/qualifications, receipts from farm purchases and sale of livestock, and a letter of support from the chairman of the IFA County Executive and Teagasc.
- 7.2.4. In relation to CDP 4.14, Category A – Economic need (i) refers to 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. 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 and the minimum farm size

is stated as 12.5 hectares. In relation to the issue of a demonstrable economic need, the applicant states that he farms a landholding of 16ha, that farming in terms of working hours spent is his predominant occupation and that he also works at Ennis General Hospital which is located 6km to the west of the site. The policy does not specify criteria or standards for determining what can be considered a predominant occupation. The applicant has claimed that farming is the predominant occupation in terms of working hours spent. On the basis of the information submitted, including receipts from farm purchases and sale of livestock, I consider it reasonable to accept that farming is the applicant's predominant occupation.

- 7.2.5. In relation to CDP 4.14, Category B – Social need (i) refers to persons with a demonstrable social need to live in a particular local rural area, who have never owned a house in the rural area and who wish to build their first home on a site within their rural area, which is deemed as being within 10km of where they have lived permanently, for a minimum of 10 years. In relation to the issue of a demonstrable social need, the applicants (Cillian & Sadhbh) state that they have never owned a home and wish to build their first home on a site that is within 10km of their family homes, where they have lived all their lives.
- 7.2.6. The previous Board decision (ABP-312520-22) considered, on the basis of the information submitted with the planning application and the appeal, including the employment of the applicants, that the applicants did not demonstrate an economic or social need to live in this rural area having regard to the viability of smaller towns and rural settlements. It was considered that the proposed development would undermine the settlement strategy set out in the Clare County Development Plan and would be contrary to the relevant provisions of the 'Sustainable Rural Housing Guidelines for Planning Authorities' and the over-arching provisions of the National Planning Framework. I note that at the time of the previous application that the transfer of the land was 'under way'. Similarly, the process of acquiring a herd number was not complete. These processes have since been completed and documentary evidence provided in this regard. I consider that on the basis of the information provided with the current application, that the applicant has demonstrated a need to live at this rural location in accordance with Objective CDP 4.14.

- 7.2.7. I note that the previous applications by the applicant were determined under the previous County Development Plan 2017-2023. The subject application is assessed under the County Development Plan 2023-2029. This is a material change from the previous applications. I consider that the policies and objectives as they relate to rural housing and need, have been set out in the Clare Development Plan 2023-2029, in the context of the NPF, RSES and the Sustainable Rural Housing Guidelines (2005). There has been no Ministerial Direction pursuant to section 31 of the 2000 Act, with reference to rural housing policies and the Development Plan. I consider that the Board can assess the issue of rural housing and need as it is set out in the Development Plan without reference to the National Planning Framework and specifically NPO 19. Given, the forgoing I consider that the Development Plan is the primary document to reference when considering if an applicant qualifies with an actual and genuine need to build a new dwelling and live at a specific rural location. In this regard, and as outlined above, I consider that the applicant has adequately demonstrated compliance with Objective CDP 4.14.
- 7.2.8. The appellants note that the applicant already owns the existing dwelling on the landholding which is occupied by the applicant's granduncle and therefore the applicant does not have rural housing need. The applicant has submitted a letter from their solicitor and the Transfer Deed which outlines the details of the transfer of ownership of the landholding to the applicant. These documents confirm that the applicant has no right or entitlement to reside at the property until both his granduncle and grandaunt are deceased. The applicant's granduncle and grandaunt have exclusive use of the dwelling house for their respective lives. The Planning Authority have concluded that as such the dwelling is not considered within the de facto ownership of the applicant. I concur with the assessment of the planning authority. I do not consider it reasonable to preclude the applicant from rural housing need category on these grounds.
- 7.2.9. On the basis of the information provided on file, the applicant has demonstrated that they have a housing need for the specific area, and I conclude that the applicant falls into a category provided for in Objective CDP 4.14 of the Clare Development Plan 2023-2029. Therefore, I conclude that the applicant meets the qualification criteria to build a rural dwelling at this location in accordance with the provisions of the Development Plan.

7.3. Archaeology

- 7.3.1. The proposed site is located to the northwest of a designated monument (CL033 - 018 – Earthwork)) which is protected under the Clare County Development Plan 2023-2029 (CDP 16.8) and by the National Monuments (Amendment) Act 2004. Concern is raised in the appeals that the proposed development has the potential to harm this monument. I note that the proposed development is located partially within the zone of influence for this recorded monument.
- 7.3.2. The applicant has submitted an Archaeological Impact Assessment report prepared by John Purcell Archaeology Consultancy. The assessment notes that the structure is over 36m from the earthwork/enclosure, with a stone field boundary and hedgerow separating the site from the earthwork/enclosure. It is considered that the proposed development will not physically impact the earthwork/enclosure or its setting. A submission received from the DUA acknowledges the findings of this desk-based assessment and broadly concurs with the statement of Archaeological Potential (Section 5.5), Mitigation Strategies (Section 6) and Conclusion (Section 7) as set out in the report. The DAU therefore advise that licensed Archaeological monitoring be required as a condition any grant of planning permission. A recommended condition is outlined. I am satisfied that development would not have an adverse impact on the archaeological heritage of the area subject to the attachment of this condition. I note the appellant's concerns with regards compliance with this condition, however enforcement of same is a matter for the Planning Authority.

7.4. Other Issues

7.4.1. Alleged Political Interference

The appellant contends that representations made by County Councillors and a locally based TD constitutes political interference with the planning system. County Councillors and TDs are not prohibited from making representations on planning applications. As per legislative requirements, any interventions made by elected members in respect of individual planning applications should be noted on file, as has been the case in this instance. As such I consider that there is no foundation for the applicant's assertions of political interference.

7.5. Appropriate Assessment

- 7.5.1. The Planning Authority's report screened out appropriate assessment. The site is located approximately 2.1km southwest of Toonagh Estate SAC and 3.5km west of Ballyallia Lake SAC. It is considered that the hydrological connection to Ballyallia Lake SAC is indirect, weak and sufficiently remote. There is no direct or indirect pathway between the subject site and Toonagh Estate SAC. Foul and surface runoff will be treated and contained on site. Having regard to ground conditions and site characterisation assessment, it is considered that adequate treatment can be achieved on site.
- 7.5.2. Having regard to the nature and scale of the proposed development, and the separation distance to any European site, and in the absence of any hydrological or other connections to European Sites, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that permission is granted for the proposed development.

9.0 Reasons and Considerations

Having regard to the site's location and the provisions in the Clare County Development Plan 2023 – 2029, including Objective CDP 4.14, together with the nature, scale and design of the development it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the landscape or cultural heritage of the area, would not result in the creation of a traffic hazard or be injurious to public health, and would be an acceptable form of development at this location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be

required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

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

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

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The site shall be landscaped, using only indigenous deciduous plants and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All existing trees and hedgerow be retained except the extent that its removal is necessary to provide for the site entrance. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next

planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

4. (a) The effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 11th day of November 2022, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority within six months of the date of this Order.

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

Reason: In the interest of public health.

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

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

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

6. The roof colour of the proposed house shall be blue-black, black, dark brown or dark grey. The colour of the ridge tile shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

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

Reason: In the interest of visual amenity.

8. (a) The developer shall engage a suitably qualified archaeologist to monitor (licensed under the National Monuments Act) all site clearance works, topsoil stripping, groundworks, and/or the implementation of agreed preservation in-situ measures associated with the development. No groundwork of any type shall take place in the absence of the Archaeologist. The use of appropriate machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary.
- (b) The Archaeologist shall advise on and supervise the installation of an appropriate buffer zone to ensure the Recorded Monument is not impacted by the development works. This shall be a minimum of 30 meters from the outermost extent of the Recorded Monument as indicated in the submitted site layout plan and Fig. 6 of the submitted Archaeological Impact Assessment. No groundworks, landscaping, movement or storage of plant/machinery, storage of materials (including spoils) or other construction activities shall be permitted within the established buffer zone. The buffer zone shall remain in place for the duration of all construction works.
- (c) The archaeological monitoring program shall be carried out under license from the National Monuments Service of the Department of Housing, Local Government and Heritage and in accordance with an approved method statement.
- (d) Archaeological monitoring shall be informed and supplemented by licensed metal dictation survey.
- (e) Should Archaeological monitoring be identified during the course of archaeological monitoring, all works shall cease in the area of archaeological interest pending a decision of the planning authority, following consultation with the National Monuments Service, regarding appropriate mitigation (preservation in-situ/excavation). The developer shall facilitate the archaeologist in recording any remains identified.

(f) Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer.

(g) Following the completion of all archaeological work on site and any necessary post-excavation specialist analysis, the planning authority and the national Monuments Service shall be furnished with a final archaeological report describing the results of the monitoring and any subsequent required archaeological investigative work/excavation required. All resulting and associated archaeological costs shall be borne by the developer.

Reason: To ensure the continued preservation (either in-situ or by record) of places, caves, sites, features or other objects or archaeological interest.

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

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

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.

Ciara McGuinness
Planning Inspector

21st December 2023

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference				
Proposed Development Summary	Construction of a house and all associated site works.			
Development Address	Moarhaun, Kilnamona, Co. Clare			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	Yes	✓		
	No	No further action required		
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes		Class.....	EIA Mandatory EIAR required	
No	✓		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes	✓	Class 10(b)(i) Construction of more than 500 dwelling units - Sub Threshold		Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	✓	Preliminary Examination required
Yes		Screening Determination required

Inspector: Ciara McGuinness_____

Date: 21st December 2023_____

Appendix 2 - Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	315689-23	
Proposed Development Summary	Construction of a house and all associated site works	
Development Address	Moarhaun, Kilnamona, Co. Clare	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The nature of the development is not exceptional in the context of the existing residential environment.</p> <p>The proposed development will not result in the productions of any significant waste, emissions or pollutants. Localised constructions impacts will be temporary.</p>	No
<p>Size of the Development Is the size of the proposed development exceptional in the context of the existing environment?</p>	<p>The size of the development is not exceptional in the context of the existing residential environment.</p>	No

<p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>There is no real likelihood of significant cumulative effects having regard to existing or permitted projects</p>	
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The nearest European site is 2.1km to the northeast of the site. It is not considered that the proposed development would be likely to have a significant impact on the European site.</p> <p>The proposed development does not have the potential to significantly affect other significant environmental sensitivities in the area.</p>	<p>No</p>
<p>• Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p> <p style="text-align: center;">✓</p>	<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p>

Inspector: Ciara McGuinness

Date: 21st December 2023

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)