



An
Bord
Pleanála

Inspector's Report

ABP-315854-23

Development	Construction of dwelling with all associated site works
Location	Ballyvrislaun, Liscannor, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	22540
Applicant(s)	Siobhan Hewlett
Type of Application	Permission
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	Third Party
Appellant(s)	Michael and Della Malone Garrett Taylor
Observer(s)	None
Date of Site Inspection	19 th December 2023
Inspector	Ciara McGuinness

1.0 Site Location and Description

- 1.1. The site is located in the townland of Ballyvrilaun, approx. 3.2km to the north of Liscannor. Access to the site is from the L5146 local road. A considerable amount of ribbon development lies along this local road and there is a considerable amount of one-off housing in the overall area. The site is bound to the west and the south by agricultural lands. The lands to the east contain an existing residential dwelling which is owned and occupied by one of the third-party appellants.
- 1.2. The site is rectangular in shape and extends over an area of 0.258 hectares. The site has frontage onto the local road to the north. The site slopes away from the road at a moderate gradient away with a level difference of 3m from the road edge (+99.75m) to the rear of the site (+96.75m). The site currently comprises agricultural lands. There is an existing agricultural access to the site from the road and an existing stone ditch boundary. The site is open and exposed in nature.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a single storey dwelling house, proprietary wastewater treatment system and percolation area. The proposed house has a stated floor area of 124.57sqm and a maximum ridge height of 5.59m. It is proposed to provide the treatment system and percolation area in the northwest of the site as per the revised layout submitted by way of Further Information. Information submitted with the application include details of family land ownership area and a site suitability test report. A letter was enclosed from the applicant's mother in which it was stated that she is giving permission to her daughter to apply for planning permission.

3.0 Planning Authority Decision

3.1. Decision

In considering the application, the Planning Authority sought Further Information on the Site Suitability Assessment and the design of the Domestic Waste Water Treatment System (DWWTS). The Planning Authority subsequently decided to grant

planning permission subject to 10 no. conditions. These were generally of a standard type. Condition 2 relates to an occupancy condition requiring the dwelling house to be first occupied by the applicant as a permanent place of residence and not used as a holiday home. Condition 4 requires revised drawings which revise the size of the proposed infiltration area in accordance with the requirements of Section 10.2 of the EPA code of Practice for Domestic Wastewater Treatment Systems (EPA COP) (2021). Condition 4 also requires the installation of the wastewater treatment system and infiltration area in accordance with the EPA COP, a certificate of installation, and the undertaking of a maintenance contract for the treatment system.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planner's initial report (08/08/2022) stated that the location of the site is in a Rural Area under Strong Urban Influence. The site is located in the Ballyvrilaun cluster. Objective CDP 3.11 of the County Development Plan (2017-2023) does not apply to applicants for single houses within designated cluster boundaries. Further Information was requested on the basis of the report received from the Environmental Section (Section 3.2.2 below refers). Following receipt of Further Information, it was considered that the applicant had generally addressed the issues and any remaining issues were of a nature that could be addressed by condition (Planners Report 24/01/2023). A grant of permission was recommended.

3.2.2. Other Technical Reports

Environment Section

- Further Information was requested in relation to the following;
 - a) It is recommended that a new trial hole be excavated in the presence of Council staff due to the evidence of mottling in the trial hole;
 - b) Section 10.2 of the EPA COP states prefabricated tertiary systems *"must comply with EN 12566 Part 7 and SR66 as applicable when update"*. The applicant was requested to submit certification in this regard;

- c) It was also requested that site specific cross sectional drawing of the DWWTS proposal be submitted in order to comply with the requirements of the EPA COP (2021).
- Further Information was submitted on 20th December 2022. The FI stated that a new trial hole would not be excavated on site due to cost and time involved. A revised site characterisation report was submitted based on the original assessment conducted on site. The revised site characterisation report considered the presence of soil mottling at 0.6m below ground level and provided an updated design proposal for the DWWTS which took into account the soil conditions in the trial hole. The proposal is for a prefabricated tertiary treatment system as per Option 6 – Table 10.1 of the EPA COP. The Environment Section noted that there is currently no prefabricated tertiary treatment system approved for use in Ireland that comply with both EN 12566 Part 7 and SR66:2015. The proposed sizing of the infiltration area and associated hydraulic loading is not considered appropriate, and in compliance with the EPA COP. It is recommended that the applicant redesigns the infiltration area to achieve compliance with the EPA COP by way of condition.
 - A revised site layout plan was submitted with the DWWTS located in the front of the site, adjacent where the trial hole examination and percolation tests were carried out. A cross-sectional drawing of the DWWTS was also submitted.

3.3. Prescribed Bodies

Irish Water (17/06/2022) – No Objection

3.4. Third Party Observations

Two third party observations were received by the Planning Authority. The issues raised generally reflect the grounds of appeal. Concerns primarily relate to the site characterisation assessment and percolation characteristics of the site. Further concerns were raised with regards to the planning history on site, rural housing need and the design of the house.

4.0 Planning History

P.A Reg Ref 02/475 Outline permission refused in August 2002 to construct a dwelling house and septic tank.

Adjoining Site

P.A Reg Ref 23/60064 – Notification of decision to grant issued by Clare County Council in May 2023 for the construction of a sunroom extension and associated site works. Appealed to the Board under ABP-317207-23. Concurrent appeal.

5.0 Policy Context

5.1. Clare County Development Plan 2023-2029

- 5.1.1. The site is located within the Ballyvrisluan Cluster. A ‘Cluster’ is the smallest type of settlement in the County’s hierarchy and their character reflects traditional building patterns with a loose collection of rural dwellings, clustered around one or more focal points. The following objective relates;

Development Plan Objective: Clusters CDP 4.9 It is an objective of Clare County Council: To ensure that clusters throughout the county maintain their existing character providing only for very small scale growth of dwellings and/or small enterprises where they can be suitably integrated with respect to the setting and context.

- 5.1.2. It is stated in the Development Plan that *“To meet the needs of those wishing to settle in rural areas, the provisions of Objective CDP 4.14 (i.e. Social or Economic Housing Need requirement) will not apply to applicants for single houses within the designated cluster boundaries”*.

- 5.1.3. The site is also located in a Settled Landscape. The following objective relates;

Development Plan Objective: Settled Landscapes CDP 14.2 - It is an objective of Clare County Council: To permit development in areas designated as ‘settled landscapes’ to sustain and enhance quality of life and residential amenity and promote economic activity subject to:

- I. Conformity with all other relevant provisions of the Plan and the availability and protection of resources;
- II. Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;
- III. Regard being had to the need to avoid intrusion on scenic routes and on ridges or shorelines. Developments in these areas will be required to demonstrate:-
 - a) That the site has been selected to avoid visual prominence
 - b) That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads.
 - c) That design of buildings and structures reduces visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.

5.1.4. Section 11.4.3 of the plan contains policies and objectives relating to Wastewater Management including;

Development Plan Objective: Wastewater Treatment and Disposal CDP 11.32

A number of criteria are listed under this objective including the following;

It is an objective of Clare County Council:

g) To permit the development of single dwelling houses in unserviced areas only where it is demonstrated to the satisfaction of the Planning Authority that the proposed wastewater treatment system is in accordance with the Code of Practice for Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), EPA (2021);

5.2. 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.

5.3. Natural Heritage Designations

Cliffs of Moher (SPA 004005) – 1.1km west of the site

Cliffs of Moher pNHA (000026) – 1.4km to the west of the site

Inagh River Estuary SAC (000036) – 3.4km to the southeast of the site

5.4. 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;

Garrett Taylor

- The applicant does not have a genuine housing need. The applicant already owns a house in Ballyvrislaun. The owner has allowed the property to become derelict. The site owner does not reside in Ireland. The applicant should be directed to a nearby urban area or should restore the derelict cottage.
- The land has previously been subject to a refusal of planning permission (P.A. Ref 02/475). One of the reasons for refusal included that the site could not adequately facilitate a foul drainage system due to poor soil conditions. A tertiary drainage system was not considered an appropriate solution then.

- The percolation tests results have not been adequately proven. The applicant refused to excavate a new trial hole as per the Further Information request. This raises fundamental questions on the decision-making process.
- The Planning Authority and Irish water failed to adequately consider the 3.5m fall across the site and the proximity to adjoining farmland and livestock.
- Permission has been granted without any regard to the standards for rural housing design as set out in the Development Plan. The house ignores reference to good design and should be refused.

Michael and Della Malone

- The appellant has submitted photos of trial holes on two separate occasions (15th May 2022 and 24th September 2021). The site assessment on the 15th May was not completed because the water in the P test holes did not drop significantly over a 24hour period. No T test was undertaken. The appellant also queries the credibility of the assessment undertaken on the 24th September. A representative of the appellant was on site during the times stated in the Site Characterisation report and did not observe anyone else on site.
- The site assessment provided with the application is inaccurate. There are various indicators of poor percolation in the trial hole photos including smearing on the sides of the trial hole, cobbles in the upper layer and evidence of mottling in the upper profile of the trial hole.
- The appellant has submitted photographs of the land down gradient of the site which shows the ponding of water. The site cannot cater for infiltration of either storm water or treated domestic effluent and will give rise to ongoing run off contaminated water to the appellants lands.
- The site assessor indicated that the site is "level with no slope" despite the drawings showing a 3.5m fall across the site. The run-off from the lands flow to the Beaghy river catchment.
- The FI request to excavate a new trial hole was entirely reasonable. There is a significant problem with the infiltration characteristics on the site as evidenced by the first abandoned trial hole. No evidence of the capacity of the

site to receive and assimilate the wastewater load has been provided.

Importation of additional soil to be placed on top of an already impermeable ground will not address the requirements of the EPA COP.

- There is no evidence of a site visit by the Environment Services, or a rigorous environmental assessment. It sets a precedent that to accept flawed data.
- Reference is made to an unresolved boundary dispute. The appellant is currently engaged in agreeing party boundaries with the applicant's mother.

6.2. Applicant Response

The main issues raised in the applicant's response to the grounds of appeal are as follows;

- Request the board to dismiss the appeal on the grounds that they are vexatious. There is a long history of conflict between the applicant and appellant.
- The applicant believed that the site assessment undertaken in May 2021 was subject to tampering and interference with the area being completely saturated by a third party. The applicant camped overnight to ensure that there was no interference with the site assessment carried on in September 2021.
- The appellants and their agent were on the site without permission and were therefore trespassing.
- The site has a fall of 3.5m across the site, which results in a slope of 1:13.4 which falls in the 'Shallow' category and is well below 1:8 slope detailed in Figure 1.1 of the EPA COP.
- The applicant lives in the area and grew up in the area. Notwithstanding, the site is located in an area zoned 'Cluster' and therefore the provision of CDP Objective 3.11 (CDP 2017-2023) do not apply. The derelict cottage has no relevance to the application.

6.3. Planning Authority Response

The Planning Authority's response to the grounds of appeal are summarised as follows;

- The house is located in the Ballyvrislaun cluster. Clusters are designated in order to meet the needs of those wishing to settle in rural areas, where the provision of objective CDP 3.11 (CDP 2017-2023) will not apply to applicants for single houses within designated cluster boundaries.
- The proposed dwelling is single storey dwelling with modest proportions set back 16.3m from the public road. The F.F.L of the dwelling is 98.40m compared to the road level of 100m. Given that the site is within a cluster and given the character of the dwellings nearby there is no objection to the design of the proposed development.
- A separate report was provided by the Environmental Section. The report summarised the assessment of the original site characterisation report, the request for FI and the examination of the FI received.

6.4. Observations

None.

6.5. Further Responses

A further response was received from the appellant. Photographs with a timestamp from the appellants agent were submitted showing her observations on site. The response contends that the appeal is not vexatious. The Further information request to re-open the trial hole and to have the assessment repeated by the Planning Authority or in the presence of the planning authority would have resolved the issues which are the basis of the grounds of appeal. The appellant again queries the timings of the assessment that are recorded in the site characterisation report against what he and his agent observed on site. An independent re-assessment of the site with Planning Authority personnel would be welcomed.

7.0 Assessment

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

- Wastewater
- Rural Housing Policy
- Appropriate Assessment

7.2. Wastewater

- 7.2.1. On the day of my site inspection, I noted the heavy nature of the land and the presence of reeds / rushes, as indicators of poor percolation characteristics or high-water table levels, on the appeal site.
- 7.2.2. It is noted that the initial site characterisation report submitted with the application did not make any reference to the presence of mottling which was evident at 0.6m below ground level. The presence of mottling would have an impact on the depth of operation of the proposed treatment system. A Further Information request for a new trial hole to be excavated adjacent the existing trial hole was issued in this regard. The applicant responded stating a new trial hole would not be excavated due to cost. A revised SCR was instead submitted.
- 7.2.3. The site is classified (GSI mapping tool) as having high vulnerability with a locally important aquifer with moderately productive bedrock. This gives a ground water protection response of R1, acceptable subject to normal good practice, as reported in the Site Characterisation report (SCR).
- 7.2.4. The Trial hole log was excavated to 2200mm deep with water reported at 2100mm below ground level (BGL). The site assessor referenced depth of water ingress at 100mm BGL which given the trial hole photographs is a distinct possibility the site assessor appears to be referring to the equalisation of the water table at the base of the trial hole. Mottling was referenced at c.600mm BGL which in this instance would be indicative of impeded drainage, however based on the trial hole photographs submitted, mottling is indeed observed higher in the soil profile at between 200-300mm BGL. In theory this would be the level where the proposed polishing filter invert should be based. The site assessor indicates that there is 1500mm of unsaturated soil under the top 600mm of soil, this is not the case. Where the water

table is at a level above 500 mm below ground throughout the area of the site, it will usually be unacceptable for discharge to ground.

- 7.2.5. The site is mapped as having soils derived from Namurian sandstones and shales with surface water gleys and ground water gleys being the associated poorly drained soil grouping. In this regard that the percolation values returned would be expected to be higher than reported. The observation of distinct mottling observed at 200-300mm BGL would further support the mapped soil grouping.
- 7.2.6. The percolation values as reported were surface 38.78min/25mm and subsurface 43.22min/25mm. The EPA (2021) Code of Practice requires pre-soaks to be carried out 4-24 hours prior to the tests, this step is to mimic the worst precipitative conditions. The Pre-soaks for both the P and T tests were carried out, c.44.5 hours prior to the percolation tests, as such the validity of the percolation tests cannot be relied upon to form the basis for polishing filter design.
- 7.2.7. The proposal is to place the base of the gravel distribution layer at 300mm BGL within the mottled layer. The development is for a 4-bedroom residence which has a population equivalent of 6 with a maximum daily effluent loading of 900 litres or 150 litres per person. There is scant detail pertaining to the design of the polishing filter and the associated gravel distribution layer.
- 7.2.8. As noted in Section 5.1 above, the proposed development is located in a Cluster. The site characterisation report notes that there are 2 houses to the west of the site with septic tanks, and 5 houses to the east; 2 with septic tanks and 3 with a communal WWT unit. The EPA (2021) code of practice states 'Any potential impact of the proposed system due to the increased pathogen or nutrient loads on the groundwater quality in the area should be assessed in areas of high-density housing. Densities of domestic wastewater treatment systems greater than 6 per hectare in areas of extreme or high groundwater vulnerability may mean a negative effect on ground water quality particularly with respect to levels of Escherichia coli and nitrate.'
- 7.2.9. This is of particular importance in areas with elevated levels of nitrate in ground waters, especially within groundwater bodies at risk of failing to meet limits set out in the Water Framework Directive classification of groundwater chemical status for nitrate. Given the mobility of nitrate in soils and the high vulnerability of the area a more detailed hydrogeological investigation of the groundwater and the impacts from

the existing residences would need to be assessed and demonstrated. The groundwater body underlying the site is the Miltown-Malbay groundwater body (IE_SH_G_167) which was deemed to be of good status and not deemed to be at risk of achieving water framework directive objectives.

- 7.2.10. Based on the information to hand I am not satisfied that the site assessment has been conducted in accordance with the requirements of the EPA 2021, Code of Practice in addition some of the basic fundamentals of the site assessment have incorrectly assessed. This site characterisation report cannot be relied upon as an accurate reflection of the ground conditions on the site subject of this development.
- 7.2.11. The grounds of appeal contend that the lands have previously been subject to a refusal of planning permission (P.A. Reg Ref 02/475), with one of the reasons for refusal indicated as being related to poor soil conditions. On review of the planning history, I note that this is not the case. P.A. reg ref 02/475 was refused for a singular reason in relation to rural housing need. The issue of rural housing policy is addressed below in Section 7.4.
- 7.2.12. I conclude, based on the material submitted with the application and my observations of the site, that the application site is unsuitable for the safe disposal of domestic effluent. I therefore consider that the proposed development would create a serious risk of ground water pollution and would be prejudicial to public health.

7.3. Rural Housing Policy

- 7.3.1. The appellants content that the applicant does not have a genuine housing need. In this regard I note that the site is located within the Ballyvrislaun cluster. As outlined in Section 5.1 above, Clusters are designated in order to meet the needs of those wishing to settle in rural areas. The provision of objective CDP 4.14 (i.e. Social or Economic Housing Need requirement) will not apply to applicants for single houses within designated cluster boundaries.
- 7.3.2. The appellants have also raised concerns with regards to the design of the dwelling. I consider that the proposed one-storey dwelling is not excessive in scale and would be designed and sited to minimise visual intrusion and would be readily absorbed into the existing cluster. It is considered, therefore, that the proposed development would be in accordance with the Objective CDP 4.9 Clusters, CDP 14.2 Settled Landscapes, and the County Clare Rural House Design Guide.

7.4. Appropriate Assessment

- 7.4.1. An Appropriate Assessment Screening Report and determination was carried out by the Planning Authority which concluded that Appropriate Assessment is not required. The site lies 1.1 km to the west of the Inagh River Estuary SAC and 3.4 km to the southeast of the Cliffs of Moher SPA. 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 planning permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. Having regard to the conditions pertaining on site, and the failure to demonstrate compliance with the EPA Code of Practice 2021 Domestic Waste water Treatment Systems for PE 10, the Board is not satisfied, on the basis of the submissions made in connection with the application and appeal, that the site can be drained satisfactorily by means of a septic tanks, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

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

30th January 2023

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	Construction of dwelling with all associated site works		
Development Address	Ballyvrislaun, Liscannor, Co. Clare		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		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)
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: _____ **Date:** _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	315854-23	
Proposed Development Summary	Construction of dwelling with all associated site works	
Development Address	Ballyvrislaun, Liscannor, Co. Clare	
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.		
	Examination	Yes/No/ Uncertain
Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment? Will the development result in the production of any significant waste, emissions or pollutants?	The nature of the development is not exceptional in the context of the existing rural environment. The proposed development will not result in the productions of any significant waste, emissions or pollutants. Localised constructions impacts will be temporary.	No
Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? Are there significant cumulative considerations having	The size of the development is not exceptional in the context of the existing rural environment. There is no real likelihood of significant cumulative effects having regard to existing or permitted projects	No

regard to other existing and/or permitted projects?		
Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location? Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	The nearest European site is 1.1km 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. The proposed development does not have the potential to significantly affect other significant environmental sensitivities in the area.	No
Conclusion		
There is no real likelihood of significant effects on the environment. EIA not required. ✓	There is significant and realistic doubt regarding the likelihood of significant effects on the environment. Schedule 7A Information required to enable a Screening Determination to be carried out.	There is a real likelihood of significant effects on the environment. EIAR required.

Inspector:

Date:

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)