



An  
Bord  
Pleanála

## Inspector's Report ABP316000-23

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<b>Development</b>	Construction of a dwelling house and garage with effluent treatment system, assessed by means of an existing shared entrance and driveway from the public road, all with associated site works.
<b>Location</b>	Toberaniddaun, Lissycasey, County Clare.
<b>Planning Authority</b>	Clare County Council.
<b>Planning Authority Reg. Ref.</b>	221128.
<b>Applicant</b>	Shauna O'Malley.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Transport Infrastructure Ireland (TII).
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	29 <sup>th</sup> October 2023.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- 1.1. The proposed site is located in a rural area approximately 0.8 kilometres to the northeast of the village of Lissycasey in the southwest of County Clare. The site is accessed from an existing cul de sac private road off the N68 National Secondary Route which currently serves two existing dwellings and agricultural lands. The site is approximately 260 metres from the junction with the N68 and is not visible from the National Route. The general speed limit applies on the section of the N68 where the farm road has an access point onto the N68.
- 1.2. The site is of irregular configuration and has a stated area of 0.230 hectares. The roadway defines the site's western boundary which serves three other dwellings. There are open lands to the north east and south and there is a dwelling on the opposite side of the road to the appeal site. The site boundaries are defined by mature hedgerows.

## 2.0 Proposed Development

The proposed development provides for the construction of a dwelling house and garage with effluent treatment system, assessed by means of an existing shared entrance and roadway from the public road and all associated site works.

The proposed dwelling is single storied of modern design and construction with a stated floor area of 182.25m<sup>2</sup> and is centrally located on the site. A garage with a floor area of 37.24m<sup>2</sup> is proposed in proximity to the eastern boundary.

It is proposed to service the dwelling with an effluent treatment plant and discharge surface water to soakaways. As part of the documentation submitted a site characteristic report was submitted indicating suitability of the site for effluent treatment with a secondary treatment system and polishing filter.

Water supply is proposed from a connection to a group water scheme with a letter of consent submitted permitting a connection.

Documentation submitted indicates the applicant's connection to the area and that the site is currently owned by a grandparent who resides on the opposite (western) side of the roadway to the appeal site and that the holding has no other road

frontage or any local or regional road other than the point of access onto the N68 via the existing roadway off the N68.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The decision of the planning authority was to grant planning permission subject to ten conditions. Conditions of note are condition no.2 which is an occupancy condition and condition no 3 requires payment of a financial contribution.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The planning report dated the 10<sup>th</sup> February 2023 refers to the provisions of the then current County Development Plan and in particular Areas of Special Control, Motorways and National Roads and Direct access to National Roads. Reference is made to planning history and to the issue of local connection to the area and that the proposal complies with CDP 3.11. It is indicated that adequate sightlines are available onto the national road and having regard to documentation submitted it is appropriate to apply the exceptional circumstances as set out in the CPD. Permission was recommended.

##### **3.2.2. Other Reports**

Environment report of Clare County Council dated the 13<sup>th</sup> January 2023 recommended permission subject to conditions.

#### **3.3. Other submissions.**

3.3.1. Transport Infrastructure Ireland (TII) in a submission considered the proposal at variance with national policy as outlined in Spatial Planning and National Roads Guidelines for Planning Authorities DoECLG 2012.

3.3.2. The Irish Aviation Authority in a submission dated the 11<sup>th</sup> January 2023 indicated that they have no observations on the application.

## 4.0 Planning History

No relevant planning history.

### 4.1. Development Plan

- 4.1.1. The operative plan is the Clare County Development Plan 2023-2029. The application was assessed in the previous Clare County Development Plan 2017-2023.
- 4.1.2. The settlement policy for rural housing in both of these categories of area is set out in Chapter 4 Urban and Rural Settlement Strategy which is to ensure that future development is directed in a balanced, sustainable and plan-led manner across the county. It recognises the roles of the countryside and of each of the designated towns, villages and clusters in Clare in achieving a balanced Settlement Strategy for the county. The Countryside refers to those rural parts of the county outside of designated settlement boundaries and the strategy for the Countryside is to ensure that it is appropriately managed and that it continues to play its role in a balanced manner having regard to its carrying capacity and environmental constraints and this is restated in Development Plan Objective Countryside CDP 4.10.
- 4.1.3. Section 4.2.6 refers to Single Houses in the Countryside County indicating Clare has a long tradition of people living in dispersed settlement patterns in the countryside, where areas such as rural townlands remain as important units of identity. The Council will continue to support this tradition in a positive manner that is consistent with the requirements of the National Planning Framework, the Regional Spatial and Economic Strategy for the Southern Region and the Section 28 Ministerial Guidelines 'Sustainable Rural Housing - Guidelines for Planning Authorities (DoEHLG)'. This section of the Development Plan sets out how the development of single houses will be accommodated in the rural areas outside of the boundaries of towns, villages and clusters.
- 4.1.4. The site is located within an area designated as Rural Areas under Strong Urban Influence on map D of Volume 2 of the CDP.
- 4.1.5. Objective CDP 4-14 indicates in relation to Rural Areas under Strong Urban Influence to permit a new single house for the permanent occupation of an applicant

who meets the necessary criteria as set out which includes 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.

The plan outlines criteria of need in relation to compliance with CDP 4-14 including economic need and also social need in relation to 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.

- 4.1.6. Chapter 14 refers to Physical Infrastructure, Environment and Energy and section 11.2.9 to the Road Network.
- 4.1.7. In section 11.2.9.3 Access onto National Roads it is indicated that in order to retain the safety, efficiency and carrying capacity of national primary and secondary roads within the County, development proposals involving access onto national roads will be assessed by the Council having regard to Spatial Planning and National Roads – Guidelines for Planning Authorities (2012) and in relation to lands adjoining National Roads to which Speed Limits of Greater than 60kmh apply, the policy of the Planning Authority will be to avoid the creation of any additional access points from new developments or the generation of increased traffic from existing accesses onto national roads where speed limits greater than 60kmh apply in accordance with Spatial Planning and National Roads – Guidelines for Planning Authorities (2012), subject to the exceptional circumstances as set out below. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.
- 4.1.8. Exceptional Circumstances are identified in relation to a number of sections of the National Secondary Route network lightly-trafficked sections of National Secondary Routes which are identified as sections of the N67. It is noted that the N68 is not included within the exceptional circumstances provision.
- 4.1.9. In relation to Existing Accesses onto National Secondary Roads it is indicated that it is an objective of the Council to restrict the creation of additional access points for

new developments onto national roads to which speed limits of greater than 50kmh apply. A less restrictive approach will be applied to existing accesses onto national secondary roads where a balance needs to be struck between the important transport function of such roads and the social and economic development of the areas through which they pass.

The plan indicates that the Council will give consideration to individual rural house developments utilising existing accesses onto national secondary roads in circumstances which include; that there are no alternative sites available with access off a regional or local road; the development will not undermine the strategic transport function of the national road network, will not compromise the carrying capacity at adjacent road junctions; all safety issues and considerations are adequately addressed in accordance with the NRA's Design Manual for Roads and Bridges; the development fully complies with the objectives set out in Chapter 4; that there is a genuine need for the dwelling proposed; and the proposed development would not create an undesirable precedent for further development in the area.

This is further stated in objective CPD 11.13 Direct Access onto National Roads and that it is an objective of Clare County Council to safeguard the safety, efficiency and carrying capacity of national primary and secondary roads, including associated national road junctions, within the County in line with national policy; restrict individual accesses, and the intensification of existing access, onto national roads in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety, and to prevent the premature obsolescence of the network and to assess development proposals requiring direct access onto the national road network having regard to the criteria set out in Section 11.2.9.3.

#### **4.2. National Guidelines.**

##### **4.2.1. Spatial Planning and National Roads Guidelines for Planning Authorities DoECLG 2012.**

These guidelines set out planning policy considerations relating to development affecting national primary and secondary roads, including motorways and associated junctions, outside the 50-60kmh speed limit zones for cities, towns and villages.

The guidelines indicate the importance of the national route network and that the planning system must ensure that the strategic traffic function of national roads is

maintained by limiting the extent of development that would give rise to the generation of short trip traffic on national routes. Proper planning is central to ensuring road safety and the creation of new accesses to and intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduce additional safety risks to road users. Therefore, from a road safety perspective, planning authorities and road authorities must guard against a proliferation of roadside developments accessing national roads to which speed limits greater than 50-60 kph apply as part of the overall effort to reduce road fatalities and injuries.

Reference is made to a plan led approach and section 2.5 refers to required Development Plan Policy on Access to National Roads and with regard to access to national roads, all development plans and any relevant local area plans must implement the policy approaches outlined. Specifically on lands adjoining National Roads to which speed limits greater than 60 kph apply the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kph apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

Section 2.6 provides for Exceptional Circumstances and notwithstanding the provisions of Section 2.5, planning authorities may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted and taken on board the advice of the NRA and having followed the approach outlined below in relation to Developments of National and Regional Strategic Importance and Lightly-trafficked Sections of National Secondary Routes.

#### 4.2.2. Sustainable Rural Housing Guidelines 2005

The guidelines make clear distinction between urban and rural generated housing and to differentiate between development needed in rural areas to sustain rural communities and development tending to take place principally in urban areas.

Section refers to 3.2.3 Rural Generated Housing Persons who are an intrinsic part of the rural community and that such persons will normally have spent substantial

periods of their lives, living in rural areas as members of the established rural community which would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes or wish to care for elderly family members. Having defined rural generated housing needs, the development plan should make very clear that subject to satisfying normal planning considerations relating to siting and design, such as those outlined in section 4 of the guidelines, the planning authority will look favourably upon an applicant's proposal for an individual house in a rural area where that applicant comes within the development plan definition of need.

Rural housing policies will normally be linked to other sections of the plan dealing with landscape character; protection of key natural assets such as surface and ground water resources; the efficient ongoing development and safe operation of key transport arteries such as roads, particularly National Primary and National Secondary routes and that the consideration of individual sites will be subject to normal siting and design considerations and these would normally include provisions to the effect that any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.

#### 4.2.3. National Planning Framework 2040

In Section 5.3 National Policy Objective 19 provides for

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

#### 4.3. **Natural Heritage Designations**

None relevant.



#### 4.4. **EIA Screening**

- 4.5. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

### 5.0 **The Appeal**

#### 5.1. **Grounds of Appeal**

- 5.1.1. The appellant TII main grounds of appeal can be summarised as follows:

- **National Policy**

It is submitted that notwithstanding the planning authority assessment the proposal will result in additional traffic movements and an intensification of access onto a national secondary route. The proposal is at variance with national policy and guidance in relation to national routes and contrary to national planning guidelines.

- **Road Safety Considerations.**

Reference is made to the issue of traffic safety and that the restriction of direct access and intensification of use of direct access to the high speed national road network can and does contribute to a reduction in collisions and fatalities. Reference is made to guarding against a proliferation of roadside developments accessing national roads in speed limits greater than 50-60kph. The N68 is characterised by multiple access points and TTI finds it necessary to appeal the decision of the planning authority which results in an intensification of use of a direct private access to a national road.

- **Local Development Plan Policy.**

The grounds refer to objectives CPD 8.2(a) and CPD8.4(a) and section 8.2.3.3 of the Clare County Development Plan 2017-2023. Reference is also made to section 2.6 Spatial Planning and National Roads Guidelines for Planning Authorities DoECLG 2012 in the CDP but the guidelines advise that the less restrictive approach be confined to lightly trafficked sections of

national secondary routes and the TII contend that such circumstances are not reflective of the N68 at this location which is a critically important strategic link. The TII have identified sections of the N67 where exceptional circumstances apply but such agreement does not apply to the N68 and the planning authority were advised of the TII position in submissions to the planning authority and TII also outlined its position in relation to section 8.2.3.3 in this regard.

The appellant is of the view that no exceptional reason has been put forward which would justify a departure from standard policy and road safety considerations and the decision to grant is at variance with the provisions of the CDP and inconsistent with the provisions of national policy.

- **Planning Precedence**

In relation to this proposal, it will set an undesirable precedent and that no justification or reason is presented for a departure from official policy.

- **Protecting Public Investment**

Reference is made to the need to ensure maintenance of the national network in order to protect the value of public investment.

## **5.2. Applicant Response**

5.2.1. The main grounds of the response can be summarised as follows:

- Reference is made to the applicant's local connection to the area and to the family farming the landholding and that the applicant visits the holding every day.
- Reference is made to the provisions of the 2017-2023 CDP and the applicant is actively involved in the family farm and it makes sense to live on the holding.
- The applicant is the primary carer of her grandmother who lives on the landholding.
- Reference is made to the Rural Housing Policy as per National Planning Framework 2040 in particular section 5.3 and the applicant has an economic need to live in this rural area.

- Reference is made to the draft Clare County Development Plan 2023-2029 and in particular CDP14.4 and the applicant demonstrated compliance with this provision.
- Reference is made to the Sustainable Rural Housing Guidelines 2005 and that the applicant complies with the guidelines.
- In relation to access onto the N68 there is no other access point to the landholding from a local road.
- In relation to section 2.6 of the Spatial Planning and National Roads Guidelines for Planning Authorities DoECLG 2012 it is noted that that the planning report refers to this section of road having limited traffic volumes and to application of exceptional circumstances and that the applicant meets those circumstances.
- The proposal will not give rise to a traffic hazard and that sightlines onto the N68 are more than adequate.
- The development will not give rise to intensification of traffic movements as the applicant travels daily to and from the site and living on the farm will reduce current travel patterns.
- The planning authority have granted a similar type development onto a national route and it would be unjust to refuse the current proposal.
- The submission includes submissions from a solicitor and medical practitioner in support of the submission.

### **5.3. Planning Authority Response**

The response can be summarised as;

- Reference is made to the provisions of the Clare County Development Plan 2017-2023 and in particular to section 8.2.3.3 and objective CDP 8.4.
- Information submitted indicated no part of the family landholding benefited from road frontage other than the N68, that no alternative lands were available and the applicant complied with requirements of local housing need.

- The development complies with requirements of exceptional circumstances and is in compliance with relevant planning policy.
- The planning authority having regard to the alignment of the national road considers the proposed would not result in adverse impacts to traffic safety.
- The proposal does not set an undesirable precedent for the reasons set out in the planning report and this response.
- The Board is requested to uphold its decision to grant permission.

## 6.0 **Assessment**

6.1. The main issues in this appeal are those raised in the grounds of appeal and general policy matters relating to rural housing policy. Appropriate Assessment also needs to be considered. I am satisfied that no other substantive issues arise.

The issues are addressed under the following headings:

- Policy/Need for the development.
- Policy/National Routes
- Specific site considerations.
- Appropriate Assessment

### 6.2. **Policy/Need for the development.**

6.2.1. The initial policy to consider is the issue of rural planning policy in relation to housing need.

6.2.2. The applicant has submitted documentation in relation to social need and an intrinsic link to the rural area. National and development plan guidance set out criteria in relation assessment of housing development in the rural areas and areas designated as Rural Areas under Strong Urban Influence.

6.2.3. Based on the documentation as submitted I am satisfied that the applicant does meet the requirements as set out in section 3.2.3 of the national policy on rural housing and the provisions as set out in the CDP for consideration of a dwelling subject to other criteria being considered.

### 6.3. **Policy/National Routes**

- 6.3.1. The development as proposed must also be considered in the context of national and local policy in relation to access onto national routes.
- 6.3.2. National policy as stated is that access to national routes is minimised to maintain the carrying capacity of the route network, to safeguard public investment in relation to these routes and also in the interests of traffic safety.
- 6.3.3. The Spatial Planning and National Roads Guidelines for Planning Authorities DoECLG 2012 set out planning policy considerations relating to development affecting national primary and secondary roads, including motorways and associated junctions, outside the 50-60kmh speed limit zones for cities, towns and villages.
- 6.3.4. The guidelines indicate the importance of the national route network and that the planning system must ensure that the strategic traffic function of national roads is maintained by limiting the extent of development that would give rise to the generation of short trip traffic on national routes and that proper planning is central to ensuring road safety and the creation of new accesses to and intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduce additional safety risks to road users.
- 6.3.5. Reference is made to a plan led approach and section 2.5 specifically refers to required Development Plan Policy on Access to National Roads and with regard to access to national roads, that all development plans and any relevant local area plans must implement the policy approaches outlined. Specifically on lands adjoining National Roads to which speed limits greater than 60 kph apply the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kph apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.
- 6.3.6. The guidelines do make provision for in section 2.6 for exceptional circumstances and notwithstanding the provisions of Section 2.5, planning authorities may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted and taken on board the advice of the NRA and having followed

the approach outlined below in relation to Developments of National and Regional Strategic Importance and Lightly-trafficked Sections of National Secondary Routes.

- 6.3.7. The grounds of appeal does indicate that the appellant and planning authority have collaborated on identifying sections of national secondary routes and in particular sections of the N67 but such agreements do not apply to the N68 and that the provisions stated in the CDP in relation to existing accesses onto National Secondary Routes were not agreed with TII and conflict with national guidance.
- 6.3.8. The provisions of the current Clare County Development Plan 2023-2029 largely mirror the national guidance in restricting access onto national routes and identifying exceptional circumstances but in section 11.2.9.3 Access onto National Roads it does include provisions in relation to a less restrictive approach will be applied to existing accesses onto national secondary roads and that the Council will give consideration to individual rural house developments utilising existing accesses onto national secondary roads in circumstances which include where there are no alternative sites available with access off a regional or local road; all safety issues and considerations are adequately addressed in accordance with the NRA's Design Manual for Roads and Bridges; the development fully complies with the objectives set out in Chapter 4 of this plan – Urban and Rural Spatial Strategy and there is a genuine need for the dwelling proposed and this is further stated in objective CPD 11.13 Direct Access onto National Roads.
- 6.3.9. The applicant as already stated has I consider established local need and the appeal site which form part of the family landholding do not have any alternative means of access other than the national secondary route. The provisions as stated in the national guidance in my interpretation was to prevent largely direct frontage lands with individual housing with an access being used for intensification. In this particular case the means of access is a private road/laneway serving agricultural lands and the family farming those lands and, in this regard, it may not give rise to the precedence indicated in the grounds of appeal as the appellant has demonstrated exceptional circumstances and intrinsic links to the local area which would not necessarily apply to other prospective applicants.
- 6.3.10. The access point is well established and offers adequate sightline visibility onto the national route but national guidance and in particular section 2.5 is clear in stating

with regard to access to national roads, that all development plans and any relevant local area plans must implement the policy approaches outlined and the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kph apply. It is also clear in stating that this provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant unless provided for in the exceptional circumstances in section 2.6 of the guidelines and which are not expressly provided for the current CDP as applied to general speed limit sections of the N68.

6.3.11. In accordance with the stated national guidance therefore the proposal as submitted notwithstanding local need and the current configuration of the access point does not, I consider comply with the stated national guidance and therefore cannot be permitted unless there is a clear agreement on exceptional circumstances and what is reflected in the CDP is at variance with the provisions of section 2.6 of the guidance. The proposed development therefore does not comply with requirements of exceptional circumstances and compliance with relevant national planning guidance and policy.

#### 6.4. **Specific site considerations.**

6.4.1. In relation to the siting and design of the proposed dwelling I would have no objections as the dwelling will be well screened and not visually obtrusive in the receiving landscape.

6.4.2. The applicant has submitted a site characteristic report in relation to the treatment and disposal of foul effluent and based on the documentation as submitted the development would comply with the EPA Code of Practice Domestic Waste Water Treatment Systems (Population Equivalent  $\leq 10$ ) 2021 provides guidance on domestic waste water treatment systems (DWWTSs) for single houses or equivalent developments with a population equivalent (PE) in providing for secondary treatment and soil polishing filter prior to discharge. The development provides for a connection to a group water scheme and permission for a connection to this scheme is submitted and there no objection to the details submitted.

6.4.3. Specifically in relation to the access to the site from the laneway although the laneway is relatively narrow in width given the level of traffic likely to be generated would not give rise to any specific traffic hazard and as already indicated the sightline visibility at the access point onto the national route is adequate.

#### **6.5. Appropriate Assessment Screening**

6.6. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

### **7.0 Recommendation**

7.1. I recommend that permission be refused.

### **8.0 Reasons and Considerations**

8.1. Having regard to stated provisions of the Spatial Planning and National Roads Guidelines for Planning Authorities DoECLG 2012 in particular sections 2.5 and 2.6 which indicate the importance of the national route network; to ensure that the strategic traffic function of national roads is maintained by limiting the extent of development on national routes; that proper planning is central to ensuring road safety and capacity and that the intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduce additional safety risks to road users.

It is therefore considered that the proposed development would be in conflict with the stated guidance, would danger public safety by reason of traffic hazard and be an obstruction to road users by limiting the safety and free flow of traffic on the N68 National Secondary Route arising from the additional traffic movements generated onto the route at a point where the maximum speed limit applies and therefore 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.

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Derek Daly  
Planning Inspector

10<sup>th</sup> October 2023