



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316278-23

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<b>Development</b>	Construction of house, shed, vehicular entrance, piers to splayed wall, connection to waste water treatment system and ancillary site works.
<b>Location</b>	Roo West, Ardnacrusha, Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	2360009
<b>Applicant(s)</b>	Ben Moloney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Ben Moloney
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> December 2023
<b>Inspector</b>	Ciara McGuinness

## 1.0 Site Location and Description

- 1.1. The site is located in the townland of Roo West, approximately 1.3km north of the centre of Ardnacrusha. The settlement boundary of Ardnacrusha is located c.60m to the south of the site. The site is located between two existing properties which are in family ownership to the north and south. An existing commercial use (furniture warehousing business) is also located within the family landholding to the south of the subject site. I note from my site visit that the full extent of the commercial use on site has not been shown on the submitted drawings in particular a large hard stand area and a canopied area. There is also an existing large shed within the development site, which is not depicted on the submitted drawings, the use of which was not apparent on my site visit.
- 1.2. The site has a dual frontage onto local roads to its east and west. There is an existing mature tree line/hedgerow along the eastern and western boundary. The site is roughly rectangular in shape and extends over an area of 0.29 hectares. The Glenlon South River flows along the west/southwest boundary of the site and is hydrologically linked to the Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (Site Code 004077).

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of a detached dwelling house, shed/garage, new vehicular entrance and piers in existing splayed wall. The proposed house has a stated floor area of 171sqm and a maximum ridge height of 6.675m. The proposed shed has a stated floor area of 60sqm and a maximum ridge height of 5.21m. It is proposed to connect to an existing treatment system within the site. A letter was enclosed from the applicant's father in which it was stated that he is giving permission to his son to apply for planning permission. The applicant intends to share an existing recessed entrance with the existing commercial use on site.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to refuse permission for the following reasons;

1. It is an objective, under the provisions of CDP 8.27(c) of the Clare County Development Plan 2017-2023 (as varied) inter alia to permit the development of single dwelling houses only where it is demonstrated that the proposed wastewater treatment system is in accordance with the EPA 'Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses. The proposal to connect the dwelling house to a wastewater treatment system associated with an adjoining property which is in third party ownership, the capacity and condition of which is unknown is not a satisfactory proposal for the treatment and disposal of domestic effluent. The proposed development would, therefore, be prejudicial to public health, and would contravene Objective CDP8.27 of the Clare County Development Plan 2017 -2023 (as varied) and would be contrary to the proper planning and sustainable development of the area.
2. The proposal site is located in a Rural Area under Strong Urban Pressure where is an objective under CDP3.11 of the Clare County Development Plan 2017-2023 (as varied) to permit a new single house for the permanent occupation of an applicant who meets the definition of the 'local rural person', seeking permission on a site in their own 'local rural area' and who has a 'local rural housing need'.

Having regard to the information submitted in support of the application, the Planning Authority is not satisfied that the applicant complies with the criteria of Objective CDP3.11 of the County Development Plan. The proposed development is contrary to Objective CDP3.11 of the Clare County Development Plan 2017-2023 (as varied) and would conflict with the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government in April, 2005. The proposed development would, therefore, be contrary to the proper planning and development of the area.

3. Having regard to the proposal to construct a new entrance gate to serve the proposed dwelling within the recessed, splayed entrance associated with an adjoining property which has an established commercial use, the Planning Authority considers that the proposal has the potential to result in conflicting traffic movements at the entrance to the site.

The proposal would endanger public safety by virtue of the creation of a traffic hazard and would therefore, be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planners Report notes that the applicant's father is not the registered owner of the lands. The applicant has not provided any information to demonstrate compliance with rural housing policy. The proposed entrance adjoining the existing entrance serving a commercial use and has the potential to lead to conflicting traffic movements and create a traffic hazard. No details of the in-situ treatment system, its condition or capacity have been provided. The proposal to share a treatment plant with an adjoining property in separate ownership is not acceptable. A separate treatment plan to serve the site would result in 2 no. plants within a site <0.3ha is size.

The applicant proposes to connect to the public water main in the area, which is served by the Roo West Group Scheme. The applicant has not provided a letter of consent to connect to the scheme. It is noted that recent applications for a connection have been declined because the scheme is at capacity. The applicant has not demonstrated how a potable water supply will be demonstrated.

It is recommended that planning permission be refused.

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

Environmental Section – There is not enough information provided by the applicant to demonstrate that the in-situ wastewater treatment plant is capable of treating effluent from this dwelling. The applicant is requested to submit report from a suitably qualified professional or Site Suitability Assessor outlining the design, capacity and

condition of the existing septic tank/wastewater treatment plant and percolation area, the capacity of same to accommodate the loading from the dwelling, and the appropriateness of the system for this site/location. Where the existing treatment system and percolation are not deemed appropriate a new on site system shall be installed. This shall be informed by percolation tests carried out by the Site Suitability Assessor. The applicant must also outline any/all existing connections to the existing wastewater treatment system.

### **3.3. Prescribed Bodies**

None

### **3.4. Third Party Observations**

None

## **4.0 Planning History**

PA Reg Ref P99/2496 – Permission Granted in 2000 for retention of existing furniture warehouse and permission to construct a new furniture warehouse.

## **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.

- 5.1.3. As the site is located in a rural area that is designated as experiencing “Strong Urban Influence”, it is therefore within the “Areas of Special Control” as per the Development Plan.

**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.

**5.1.4. Development Plan Objective: Wastewater Treatment and Disposal CDP 11.32 –**

A number of criteria are listed under this objective including;

It is an objective of Clare County Council:

g) To permit the development of single dwelling houses in unserved 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);

**5.1.5. Appendix 1 – Development Management Guidelines** where the following is relevant:

**A1.4.1 – Rural Residential Development**

- Development which deals with matters relating to siting and design, road frontage, plot size and wastewater treatment systems.

**A1.6.2 – Sight Distances**

- Design speed of a major road 60kph requires sight distances of 90m.

## 5.2. National Planning Framework

- 5.2.1. **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.
- 5.2.2. **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

- 5.3.1. 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

Knockalisheen Marsh pNHA (002001) – c. 2.7km to the south of the site

Lower River Shannon SAC (002165) – c. 2.7km to the south of the site

Glenomra Wood SAC (001013) - c. 4.1km to the north of the site

Glenomra Wood pNHA (001013) – c. 4.1km to the north of the site

Woodcock Hill Bog NHA (002402) – c. 4.8km to the west of the site

River Shannon and River Fergus Estuaries SPA (004077) – c. 6.5km to the south 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, or EIA determination, therefore, is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

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

**Local Rural Person** - A site location map has been submitted showing the 40 acre landholding owned by the applicants father and properties in which the wider family reside. Clare County Council's guidance note on policy for single houses in the countryside quotes the definition of a local rural person as "A person who has links to the rural area by virtue of being an established rural landowner. This is defined as a person and/or their son or daughter, or sibling, who has owned a land holding in a rural area prior to 1999 and who wishes to build on that land. The definition applies to the applicant. The applicant meets the criteria and the council should be promoting the use of infill sites.

**Entrance Gate Proposal** - A revised site plan is submitted indicating 2 alternative options for relocating the site entrance. Option A indicated a recessed entrance on the east (front) boundary, with Option B showing a recessed entrance on the west (rear) boundary. The Planning Authority gave no opportunity to the applicant to provide adequate alternative entrances.

**Wastewater Treatment System** - The applicant states that treatment plant was installed under PA reg ref 99/2496 but never used as the permitted extension to the warehouse was never carried out. The existing treatment plant was installed on the applicant's father's lands (the same lands as the subject site).

A letter is also submitted by the applicant outlining his family ties to the area and his visits to the area during his childhood.

## 6.2. Planning Authority Response

The Planning Authority has responded to the grounds of the appeal with the following points of note;

- The applicant must show compliance with Objective CDP4.14. The site forms part of the landholding owned by the wider family. The applicant has indicated that he has been a frequent visitor to the Ardnacursha area to visit family. The applicant has not submitted part B of the application form so details of his residence or place of employment is not known. No evidence has been submitted to demonstrate the applicant has lived permanently within the rural in which the site is located. The applicant has not demonstrated either a social or economic need to reside in this rural area.
- The planning authority do not agree with the applicant's assertion that the site is an infill site. Objective 4.16 defines an infill site as *a 'small gap site, sufficient to accommodate only one house, within an otherwise substantial and continuously built-up frontage'*. The planning authority does not consider the existing pattern of development in the vicinity of the site to constitute a *'substantial and continuously built up front'*.
- The provisions in relation to established rural landowners are not included in the Clare County development Plan 2023-2029. Under the CDP 2017-2023 (as varied) a local rural person could include a person and/or their son or daughter, or sibling who has owned a landholding in a rural area prior to 1999. The applicant has not submitted any documents to demonstrate the duration of family landownership. It is also noted that the applicant's father, who provided the letter of consent is not the registered owner of the property.
- The applicant intends to connect to this existing treatment system permitted under P.A. reg ref P99/2496, located within the site boundary. Under this application bathroom facilities in one of the warehouse units were connected to the treatment plant (site layout included with the submission). While some of the overall development permitted under 99/2496 was not completed, the unit in which the bathroom facilities was proposed is present on the site. It is reasonable to assume that the facilities within said unit are connected to the existing treatment plant. The ownership of the treatment system and consent

of use has not been clarified. The treatment plant is 20 years old. No report on the condition or capacity of the treatment system has been provided. It has not been demonstrated that EPA standards in wastewater treatment can be achieved on site.

- The matter in relation to water supply in Arnacrusha as outlined in the Planner's Report is also noted.

### 6.3. **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
- Public Health
- Access/Traffic Hazard
- 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 Roo West, outside of the settlement of Ardnacrusha, 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 with the Area of Strong Urban Influence. Areas under Strong Urban Influence are also Areas of Special Control and 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 applicant is Ben Moloney. The site is stated to be owned by Ben's father and a letter of consent to make the application is noted on file. The applicant has not completed Part 2 of the planning application form. No information was provided with the application to demonstrate that the applicant has either a social or economic need to reside in this area. As such refusal was recommended.
- 7.2.3. As part of the Grounds of Appeal a letter was submitted by the applicant outlining his family ties to the area and his visits to the area during his childhood. However, no evidence has been submitted to demonstrate that the applicant has resided permanently in the rural area in which the site is located at any point of his life.
- 7.2.4. The applicant contends that the Planning Authority should be promoting the use of infill sites. I note that in areas of special control the provisions of CDP4.14 (Economic or Social need requirement) will not apply to infill sites. Objective 4.16 defines an infill site as "*a small gap site, sufficient to accommodate only one house, within an otherwise substantial and continuously built-up frontage*". I am satisfied that this is not a small gap site and is not a substantial and continuously built-up frontage as described under Objective CDP4.16 of the Development Plan and, therefore, cannot be considered an infill site.
- 7.2.5. The Grounds of Appeal refer to provisions relating to established rural land owners. Under the CDP 2017-2023 (as varied) a local rural person could include a person and/or their son or daughter, or sibling who has owned a landholding in a rural area prior to 1999. I note that this provision is not included on the Clare County Development Plan 2023-2029, nor has the applicant submitted any documents to demonstrate the duration of family landownership. The Planning Authority have further noted that the applicant's father, who provided the letter of consent is not the registered owner of the property. I have reviewed the Site Location Map submitted with the appeal. The map indicates that the lands outlined in blue (c.40 acres) are owned by the applicant's father. I note that the application site is within this blue line boundary. The Planning Authority has not stated any reasons as to why they do not consider the applicant's father to be the legal owner. Notwithstanding the Planning Authority's assessment, I am satisfied that the applicants have provided sufficient evidence of their legal interest for the purposes of the planning application and decision. Any further consents that may have to be obtained are essentially a subsequent matter and are outside the scope of this planning appeal. In any case,

this is a matter to be resolved between the parties, having regard to the provisions of S.34(13) of the Planning and Development Act.

- 7.2.6. On the basis of the above, I do not consider that the applicant meets the requirements of Clare County Development Plan 2023-2029 relating to rural housing and specifically Objective CDP4.14. I recommend refusal on this basis.

### 7.3. **Public Health**

#### Wastewater

- 7.3.1. The applicant intends to connect the proposed development to an existing treatment plant permitted under PA Reg Ref P99/2496, located within the boundary of the appeal site. No details of the in-situ treatment system, its condition or capacity have been provided. The Planning Authority have noted that the proposal to share a treatment plant with an adjoining property which appears to be in a separate ownership is not acceptable. It is noted that should a separate treatment plant be installed to serve the proposed dwelling it would result in 2 no. treatments plants within a site <0.3ha is size which is considered excessive.
- 7.3.2. The applicant in their grounds of appeal has stated that the treatment plant was installed but never used as the extension to the warehouse was never carried out due to financial and economic reasons. It is also stated that the existing treatment plant was installed on the applicant's father's lands. However, no further information was provided in the appeal with regards to the condition or capacity of the treatment system.
- 7.3.3. The Planning Authority in their response have noted that while some of the overall development permitted under 99/2496 was not completed, the unit in which the bathroom facilities were proposed is present on the site. It is contended that it is therefore reasonable to assume that the facilities within said unit are connected to the existing treatment plant. The Planning Authority have again reiterated their concerns that ownership of the treatment system and consent of use has not been clarified. As outlined above is Section 7.2.5, I consider the applicant's father to be the legal owner of the lands having reviewed the site location map and blue line boundary therein. Notwithstanding the issues in relation to ownership, in the absence of a properly constituted site suitability assessment by a qualified assessor in

accordance with the EPA 's Code of Practice, it is my opinion that the Board cannot be satisfied that the installed system is capable of the adequate treatment and disposal of the foul effluent.

- 7.3.4. In the absence of sufficient information, I conclude that the proposed development would create a serious risk of ground water pollution and would be prejudicial to public health. I recommend that the Planning Authority's reason for refusal be upheld in this regard.

#### Water Supply

- 7.3.5. I also note the issues raised in relation to water supply. The applicant has stated that the proposed development will connect to the public mains. In this regard, the planning authority note that the public water main in the area is served by the Roo West Group Scheme. The applicant has not provided a letter of consent to connect to the scheme and the planning authority notes that recent applications for a connection have been decline because the scheme is at capacity. The applicant has not made reference to the issue of water supply in their appeal. Based on the information on file, I am not satisfied that the proposed development will be served by a safe drinking water supply. The Board may wish to seek further information on the matter to ascertain if a connection to the group water scheme can be facilitated, or if the site can safely accommodate a bored well and waste water treatment system without leading to a public health issue. However, in the context of the other substantive reasons for refusal it is not considered necessary to circulate this matter for comments. I advise that permission should be refused on that grounds that the development would be prejudicial to public health.

#### **7.4. Access/Traffic Hazard**

- 7.4.1. The Planning Authorities 3<sup>rd</sup> reason for refusal states that the proposed new entrance has the potential to result in conflicting traffic movements with the commercial entrance. I consider that this refusal reason is reasonable. As part of the appeal the applicant is proposing 2 no. alternative options for relocating the site entrance. Option A indicates a recessed entrance on the eastern (front) boundary, north of the existing commercial use entrance. The applicant notes that this is on a very straight road and can provide the required sightlines. It is also stated that an



alternative access could be provided on the western (rear) boundary, however I note that there is sharp bend on this road near the indicated entrance and adequate sightlines are unlikely to be achieved, notwithstanding the low level of traffic on the roadway.

7.4.2. Having inspected the site and viewed the location of the proposed entrance and having regard to the details set out in the appeal I am satisfied that an adequate sightline distance is available in both directions for Entrance Option A. Furthermore, the proposed development of a single dwelling would not generate substantial volumes of additional traffic. On inspection of the site, I noted that traffic volumes on this stretch of roadway are low, and no vehicles passed during my site visit. Furthermore, the nature of the commercial use (furniture warehousing) on the wider site, does not give rise to a significant volume of traffic.

7.4.3. Accordingly, having regard to the revised proposals submitted with the appeal having inspected the site and local road in the vicinity and given the relative low volume of traffic using the public road, I am satisfied that the revised access proposal would be acceptable from an access and traffic perspective.

## 7.5. **Appropriate Assessment**

7.5.1. Stage 1 Screening

### **Compliance with Article 6(3) of the Habitats Directive**

7.5.2. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

### **Background on the application**

7.5.3. A screening report for Appropriate Assessment was not submitted with this application/ appeal case. The Planner's Report notes that in the absence of proximity or connectivity to a European Site, the proposed development is not considered likely that to have a significant effect individually or in combination with other plans or projects, on a European site. The Planner's Report concludes that Appropriate Assessment is not required.

### **Screening for Appropriate Assessment- Test of likely significant effects**

- 7.5.4. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.5.5. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

### **Brief Description of the Development**

- 7.5.6. The development is described in Section 2 of this report. In summary, it is proposed to construct a house, shed, vehicular entrance, piers to splayed wall, connection to waste water treatment system and ancillary site works.
- 7.5.7. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
- Construction related -uncontrolled surface water/silt/ construction related pollution
  - Habitat loss/ fragmentation
  - Habitat disturbance /species disturbance (construction and or operational)

### **Submissions/Observations**

- 7.5.8. None

### **European Sites**

- 7.5.9. The development site is/is not located in or immediately adjacent to a European site.
- 7.5.10. The Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (Site Code 004077) have been 'screened in' having regard to the connectivity and proximity with the appeal site. As the crow flies the River Shannon SAC is c.2.6 kilometres to the south of the appeal site. However, there is a hydrological connection which is somewhat more convoluted. The Glenlon South River flows along the west/southwest boundary of the site, flowing approximately 1.2 km south before outflowing into the Blackwater River, which then flows approximately 6 km south before joining the Lower River Shannon. All other Natura

2000 sites surrounding the proposed development have been 'screened out' due to a lack of connectivity.

- 7.5.11. There are 21 qualifying interests for the Lower River Shannon SAC (002165), including 2 priority habitats – Coastal Lagoons and Alluvial Forests. The full list available from the NPWS website; [https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO002165.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002165.pdf) (accessed on 26th February 2024)
- 7.5.12. The 22 qualifying interests of the River Shannon and River Fergus Estuaries SPA (Site Code 004077). The full list is available from the NPWS website; [https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO004077.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004077.pdf) (accessed on 26th February 2024).
- 7.5.13. The Conservation Objectives for each of these European sites seeks to maintain or restore favourable conservation condition, which is defined by a list of site-specific attributes and targets for each of the habitats and species.

#### **Identification of likely effects**

- 7.5.14. The key issues considered for examination in terms of implications for likely significant effects of the European site include changes in water quality and habitat disturbance /species disturbance. During construction phase there is potential for surface water runoff from site works. This would be a temporary impact, but it may be of significance due to the proximity and pathway to the European sites and the sensitivity of the QI (aquatic species) to sedimentation.
- 7.5.15. For the operational phase, foul water is proposed to be treated with an existing wastewater treatment system on site. The Glenlon South River forms part of the west/southwest site boundary and is c. 50m to the north of the percolation area from examining the site layout map. It is noted that this distance exceeds the recommended minimum distance of 10m from a watercourse/ stream set out in the EPA Code of Practice. No information was submitted with the application with regards to the condition or capacity of the existing treatment system on site and I am therefore not satisfied that the installed system is capable of the adequate treatment and disposal of the foul effluent. This impact may be significant due to the proximity and pathway to the European sites and the sensitivity of the aquatic species to changes in water quality. This in turn could affect the conservation objectives of the

sites having regard to the characteristics and sensitivities of the QI to changes in water quality.

7.5.16. In terms of cumulative effects, I have had regard to the provisions of the current Clare County Development Plan 2023-2029 and to the planning authority's planning application database. I note that permission has recently being granted for a Solar Farm on a site extending to 70 hectares near the subject site. I also note that an Electricity Development Application has been submitted to the Board for the proposed construction of a 110kV underground grid connection cable connecting the permitted Carrownagowan windfarm to the existing 110kV substation at Ardnacrusha. The grid connection is to be laid under the local road to the east of the site. Having regard the scale of development and distance from the European site, significant in-combination effects are not considered likely.

#### **7.5.17. Mitigation Measures**

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

#### **7.5.18. Screening Determination**

7.5.19. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 002165 and 004077, or any other European site, in view of the site's Conservation Objectives. This is a new issue in the consideration of this appeal, however in the context of the other substantive reasons for refusal, it is not necessary to circulate this matter for comment.

## **8.0 Recommendation**

8.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

1. Having regard to the location of the site within a rural area under strong urban influence as identified in the Clare County Development Plan 2023-2029, where housing is restricted to persons demonstrating local need, it is considered that the applicant does not come within the scope of the housing need criteria as set out in Objective CDP 4.14 of the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. In the absence of sufficient information with regards to the capacity and condition of the existing waste water treatment system 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 the existing waste water treatment system on site. Furthermore, the applicant has failed to demonstrate that the proposed development will be served by a public water supply and there is no information to show that a well can be accommodated on site, having regard to Table 6.2: *Minimum separation distances from the entire DWWTS* set out in the Code of Practice, should a public piped water supply be unavailable. The proposed development would, therefore, be contrary to the EPA Code of Practice 2021 Domestic Waste Water Treatment Systems for PE 10, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.
3. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse impacts on the integrity of the Lower

River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (Site Code 004077) in view of the site's Conservation Objectives. The likely significant effects cannot be ruled out having regard to the precautionary principle and the lack of information submitted. In such circumstances the Board is precluded from granting 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.

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Ciara McGuinness  
Planning Inspector

28<sup>th</sup> February 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>				
<b>Proposed Development Summary</b>	Construction of house, shed, vehicular entrance, piers to splayed wall, connection to waste water treatment system and ancillary site works.			
<b>Development Address</b>	Roo West, Ardnacrusha, Co. Clare			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>		
		<b>No</b>	No further action required	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>Yes</b>		Class.....	EIA Mandatory EIAR required	
<b>No</b>	✓		Proceed to Q.3	
<b>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]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>	✓	Class 10(b)(i) Construction of more than 500 dwelling units - Sub Threshold		Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>	✓	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_



## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	316268-23	
<b>Proposed Development Summary</b>	Construction of house, shed, vehicular entrance, piers to splayed wall, connection to waste water treatment system and ancillary site works.	
<b>Development Address</b>	Roo West, Ardnacrusha, Co. Clare	
<p><b>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.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></p> <p>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 rural 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><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having</p>	<p>The size of the development is not exceptional in the context of the existing rural environment.</p>	No

regard to other existing and/or permitted projects?	There is no real likelihood of significant cumulative effects having regard to existing or permitted projects	
<p><b>Location of the Development</b></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 2.7km to the south 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>	No
<b>Conclusion</b>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p> <p style="text-align: center;">✓</p>	<p><b>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</b></p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p><b>There is a real likelihood of significant effects on the environment.</b></p> <p>EIAR required.</p>

**Inspector:**

**Date:**

**DP/ADP:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)