



An
Bord
Pleanála

Inspector's Report

ABP-317197-23

Development	Construction of entrance, a single storey dwelling with a wastewater treatment system and all associated site works.
Location	Tyredagh Upper, Tulla, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	2360082
Applicant(s)	Ergo Kannikka and Ilze Santare
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Ergo Kannikka and Ilze Santare
Observer(s)	None.
Date of Site Inspection	18 th April 2024
Inspector	Claire McVeigh

1.0 Site Location and Description

- 1.1. The subject site is located in the townland of Tyredagh Upper approximately 5km northwest of Tulla and approximately 13km northeast of Ennis in County Clare. The subject site comprises a sloping agricultural field bounded with a natural hedgerow and ditch along the roadside, with some mature trees close to the northern boundary, and western boundary.
- 1.2. An ESB line traverses the southern portion of the site. An existing entrance gateway into the agricultural field with a raised grassed access route is located in the southern section of the field.
- 1.3. A separate access laneway is located to the northern edge of the subject site and leads to a farmstead cluster of agricultural buildings screened by mature trees. The subject site red boundary aligns with the edge of this access laneway. The southern boundary is demarcated by a post and wire fence with open views to the south.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a new vehicular entrance, driveway, to be finished in gravel or tarmac, a single storey 4 no. bedroom detached dwelling (189.82 sq. metres gross floor space with a proposed ridge height of 5660mm) with a wastewater treatment system including percolation area and all associated site works.
- 2.2. The site layout plan (Drwg. No. 2311.3.101) indicates that the ditch is to be removed or cut down and replaced with timber fence with natural hedge, example of Beech noted on the drawing, to provide for 70m sightlines from the centre of the entrance.
- 2.3. A new private well is proposed for the water source and a tertiary treatment system and infiltration/treatment area is proposed to treat wastewater. Surface water is proposed to be disposed via soakpit. The stated site area on the application form is 1.7ha.

3.0 Planning Authority Decision

3.1. Decision

On the 16th May 2023, the planning authority decided to refuse permission for the proposed development for two reasons, as follows:

1. The site is located in a rural area which is designated as an Area Under Strong Urban Influence in the Clare County Development Plan 2023-2029. In such areas, it is an objective of the Council, as set out under Objective CDP4.14 of the Development Plan to permit a single house for the permanent occupation and housing need of local rural persons where the applicants have a demonstrable economic or social need to reside in said location.

The Planning Authority is not satisfied based on the submitted information that the applicants comply with the objectives of the County Development Plan as they relate to new single houses in the countryside within Areas of Special Control. Accordingly, the proposed development would materially contravene the objectives of the Clare County Development Plan 2023-2029 and would be contrary to the proper planning and sustainable development of the area.

2. Under Objective 11.32 of the Clare County Development Plan 2023-2029 it is an objective of the Council to permit the development of single dwelling houses 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 Wastewater Treatment and Disposal Systems Serving Single Houses' (EPA 2021). On the basis of the information submitted with the application and having regard to the characteristics of the site as noted during the site inspections undertaken, the planning authority is not satisfied that the site is suitable for the treatment of domestic effluent. The proposed development would therefore be prejudicial to public health and contrary to the proper planning and sustainable development in the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The site is accessed via a local road which is wide enough for one vehicle only. The site was extremely wet underfoot and difficult to traverse on the day of the site inspection. A drainage channel has been dug across the site but standing water was still noted on the site, particularly where the wastewater treatment plant is proposed.
- Notes the site is located in a rural area under strong urban influence and it is also within the Western Corridor Working Landscape and the Slieve Aughty Mountains SPA.
- Outline of the planning history of the lands south of the subject site.
- Non pre-planning held in relation to the current proposal.
- Summary of the report received from the Environment Section.
- Excludes the need for environmental impact assessment at preliminary examination stage.
- An appropriate assessment screening report and determination is attached to the report concluding that there is no likelihood of significant effects on a European site.
- Recommends refusal based on concerns that the site is unsuitable for the treatment and disposal of effluent and that the development may be prejudicial to public health. In addition, the applicants have not demonstrated compliance with development plan objective CDP4.14

3.2.2. Other Technical Reports

Environment Section Planning Report notes that the majority of the site was found to be saturated underfoot apart from some areas in the upper parts of the field. The Environment Section is concerned that this site may not be suitable for the treatment of wastewater.

Mottling has been reported at 0.8m and it must be demonstrated that there is adequate suitable unsaturated soil above this level.

Highlights that the information and proposal submitted does not comply with the requirements of the 2021 EPA Code of Practice for Domestic Wastewater Treatment Systems as the sizing of the polishing filter is inadequate, a Eco Flo Coco Tertiary Filter does not have tertiary treatment certification i.e. I.S. EN 12566 Part 7 and SR66:2015 certification as per section 4. Standards of EPA Code of Practice 2021.

It was recommended that further information be sought:

- The applicant to arrange for the trial hole and percolation test holes to be reopened on the site in the presence of Clare County Council environmental staff following two pre-soaks carried out 4-24 hours before the start of the percolation tests.
- A revised polishing filter to be submitted in accordance with Table 10.1 of the EPA Code of Practice for Domestic wastewater treatment plant systems.
- The applicant to indicate what the proposal is for the drainage channel that crosses the site.
- A revised site layout showing separation distances as per Table 6.3.
- The type of secondary wastewater treatment system shall be specified, a copy of its certification to be submitted.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

05/1288 Outline planning permission refused for Marie Martin to construct two dwelling houses, garages and treatment systems, on lands due south of the subject site. Refused on grounds relating to site drainage and impacts on the visual amenities of the area.

- 05/2299 Outline planning permission refused for Marie Martin to construct a dwelling house, garage and treatment system on lands due south of the subject site. Refused on grounds relating to site drainage and impacts on the visual amenities of the area.
- 21/762 Planning permission granted to Michael & Orla Lynch for dwelling house, garage, entrance, driveway and wastewater treatment system on the opposite side of the road to the subject site (southeast of the subject site).

5.0 Policy Context

5.1. Development Plan

Under the Clare County Development Plan 2023-2029, which took effect on the 20th April 2023, the subject lands are unzoned and located within an area designated as *'Rural Areas Under Strong Urban Influence' (Map H8 Area of Special Control)*

Section 4.2.6 Single Houses in the Countryside sets out 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.

To achieve this the Council must distinguish between rural-generated housing (that is for those with a demonstrable economic or social need to reside in a specific rural area) and urban generated housing (that is for those with no demonstrable economic or social need to reside in a specific rural area).

The key objectives in rural areas under strong urban influence 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 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.

The Area of Special Control' includes Rural Area Under Strong Urban Influence.

Relevant development plan objectives, include:

CDP 4.14 New Single Houses in the Countryside within the 'Areas of Special Control'. Under CDP 4-14 when applying the Rural Area Criteria, namely Category A – Economic Need and/or Category B Social Need, the 'rural area' is defined as the area within 10km of the site.

The Core Strategy has taken into account the management of urban generated growth in rural area under strong urban influence, by ensuring single houses in the open countryside are based on the core consideration of demonstrable economic or social need to live in the rural area in addition to compliance with statutory guidelines, plans and having regard to ensuring the viability and vitality of villages and towns.

CDP3.1 It is an objective of Clare County Council to support the delivery of the Core Strategy in accordance with the Table 3.4 Core Strategy Table and Map 3A Core Strategy.

Development Management guidelines *A1.4.1 Rural Residential Development and County Clare Rural House Design Guide*, with respect to siting and boundary treatments.

The subject site sits within the designated *Western Corridor Working Landscape*, section 14.3.2.2 of the development plan refers, and CDP 14.3 Western Corridor Working Landscapes applies:

It is an objective of Clare County Council:

- a) To permit development in these areas that will sustain economic activity and enhance social well-being and quality of life - subject to conformity with all other relevant provisions of the Plan and the availability and protection of resources.
- b) To ensure that selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design, are directed towards minimising visual impact.
- c) To ensure that particular regard should be had to avoiding intrusions on scenic routes and on ridges or shorelines. Developments in these areas will be required to demonstrate:

- i. That the site has been selected to avoid visual prominence.
- ii. That site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, public amenities, and roads.
- iii. That design of buildings and structures reduces visual impact through careful choice of form, finishes and colours and that any site works seek to reduce the visual impact of the development.

Many areas within the 'Western Corridor Working Landscape' contain ground and surface waters that are sensitive to the risk of pollution and also coincide with areas identified for nature conservation. Applicants for planning permission are advised that rigorous standards will be applied at all stages of the evaluation of site suitability, site design and the design and management of all installations for the interception, storage and treatment of all effluents.

At the time of the planning authority's decision there was a draft direction in the matter of section 31 of the Planning and Development Act, 2000 as amended, issued by the Minister on 18th April 2023. As noted in the appeal response from the planning authority the draft direction relates to the zoning of certain lands for development purposes and does not relate to the adopted rural housing policy or infrastructure related objectives. For clarity the direction does not relate to the subject site lands. The final direction issued on the 3rd August 2023.

5.2. Natural Heritage Designations

- The subject site is located within the Slieve Aughty Mountains SPA (Site code 004168)
- The subject site is approximately 2.5km from the Old Domestic Buildings, Rylane SAC (Site code 002314)

5.3. 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

A first party appeal has been received from the applicants. The grounds of the appeal can be summarised as follows:

- The land was selected for the proposed dwelling as it was not in an area of strong urban influence in the County Clare Development Plan 2017-2023.
- It is put forward that the decision to refuse planning permission based on the County Clare Development Plan 2023-2029 is unlawful as it is not the relevant plan in place at the time of making the application.
- Reference to the Ministerial Direction under section 31 of the Planning and Development Act highlighting the issues with the 2023-2029 development plan.
- The water treatment system was selected to accord with the County Clare Development Plan 2017-2023 and all requirements were followed including the appointment of an engineer who carried out the percolation test.
- Applicant willing to provide alternative water treatment system and carry out percolation tests again but that the requirements for further information was not communicated with them prior to the decision being made.
- Concerns that the internal advice from the Environment section was received on the 15th May 2023 and the planner's recommendation was also made on the 15th May 2023 just two days before the decision to refuse was issued.
- Dispute that the site was waterlogged as described in the planner's report.
- Copy of correspondence from the applicant's appointed engineer that suggests that the: "If the council were not satisfied with the ground conditions at the lower end of the site, an opportunity to explore other areas on the site, particularly at higher elevations, should have been given via Further

Information request, to carry out further site characterisation tests, it is very likely that tests at a higher elevation on the site will provide more suitable ground conditions for effluent treatment.”

- Other non-planning concerns have been raised with respect to communication issues with the planning authority. Letter of complaint has been sent separately to the planning office and customer care of Clare County Council.

6.2. Planning Authority Response

Response received 16/06/2023:

- Strongly refute the claims of discrimination in terms of the decision-making process.
- Planning authority assessed the application under the Clare County Development Plan which took effect on the 20th April 2023. Clare County Council is satisfied that this was procedurally correct.
- The wastewater treatment proposals were assessed in terms of compliance with the relevant EPA Code of Practice as required under Objective CDP 11.32 of the current development plan (and under Objective CDP8.25 of the Clare County Development Plan 2017-2023). At the time of inspection, the site was heavily waterlogged throughout and there was significant standing water in the location of the proposed percolation areas. (Photographs included on the planning application file). The Environment Section of Clare County Council conducted their own site inspection and noted similar ground conditions.
- Clarifying that the report from the Environment Section was an internal report providing expertise to the planning authority and not a direct correspondence with the applicant.
- The applicant has indicated that they have not had any feedback from the planning authority between lodging their application and the decision. Clarifying for the record that this is normal procedure. There is no provision in planning legislation for discussions or correspondence with the applicant during the assessment period.

- The Clare County Development Plan 2023-2029 is the subject of a draft Ministerial Direction issued under section 31 of the Planning and Development Act 2000, as amended. The draft relates to zoning of certain lands and does not relate to the adopted rural housing policy or infrastructure related objectives.

6.3. Observations

None

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, the reports of the local authority and having inspected the site, and having regard to the relevant local, regional, national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Applicable development plan policy and the principle of development
- Site suitability for wastewater treatment
- New Issue - Design and layout

7.2. *Applicable development plan in effect and the principle of development*

- 7.2.1. The applicant has raised concerns with respect to the application of the incorrect development plans policy and objectives to their application. I acknowledge that the applicants submitted their application on the 23rd March 2023 with the planning authority and the effective in plan in place at this time was the Clare County Development Plan 2017-2023. Notwithstanding, the submission of the application was post the adoption of the new Clare County Development Plan 2023-2029 at a special meeting held on the 9th March 2023, with the new plan coming into effect six weeks from the day it was adopted on the 20th April 2023 in accordance with Section 12 (17) of the Planning and Development Act 2000, as amended.
- 7.2.2. The planning authority made the decision to refuse planning permission by Chief Executive Order dated the 16th May 2023. I would concur with the planning

authority's response in that the relevant plan applicable to the assessment of the application at the time of making the decision is the Clare County Development Plan 2023-2029.

7.2.3. Furthermore, the applicants state in their appeal submission that the property agent selling the site had highlighted 'changes coming at some point in the future'. So, from this information I understand that they had a general awareness that the policy context for their application may be subject to change in advance of making their application. I note also that the elected members had already adopted the new development plan prior to the application being made. However, it would appear from the information submitted with the appeal that the applicants did not have an awareness that the new plan was adopted (9th March 2023) and coming into effect within the appropriate period for the determination of their subject application. I acknowledge and can appreciate the applicant's upset with the course of events with respect to the timing of the application, however, in terms of proper planning and procedures the planning authority made their decision correctly based on the Clare County Development Plan 2023-2029. Therefore, in conclusion, on this point the relevant development plan taken into account in my assessment is the Clare County Development Plan 2023-2029.

7.2.4. Moving to consider the principle of development. The subject site is within an area designated as Rural Area Under Strong Urban Influence. Application form Part 2 (b) indicates that the applicants have never owned a house/apartment and they are currently renting a property in Limerick. As such, I accept that there is a housing need. I note that the proposed house is located a similar distance, approximately 32km, from one of the applicant's employment base as is their current rented property. The second applicant works from home.

Supplementary information in respect to (a) the category of economic need to reside permanently in the rural area close to their work and /or (b) the category of social need to demonstrate compliance with the objectives for single housing in the countryside, CDP 4.14, is not submitted with the application. I acknowledge that in making their application under the now superseded Clare County Development Plan 2017-2023 the applicants were not required under that development plan to submit such supplementary information, given that the lands were not included in the designated of 'Areas of Special Control'. Notwithstanding, the current Clare County

Development Plan 2023-2027 has now included the subject lands within the designated Rural Area Under Strong Urban Influence which come under the Areas of Special Control. As such additional documentation is required to be provided to demonstrate compliance with the objectives for single housing in the countryside. On the basis of the information submitted in Part 2 (b) the applicants have not demonstrated that they meet with either 'Category A' an economic need to reside permanently in the rural area close to their place of work or of their commitment to operate a full-time business from their home and has not demonstrated that they meet with 'Category B' a social need in terms of living permanently in the local rural area for a minimum of 10 years. I am of the opinion the planning permission should be refused on this basis.

I note for the Board that the planning authority's reason for refusal states that the proposed development materially contravenes the objectives of the Clare County Development Plan 2023-2029 as they relate to new single houses in the countryside within Areas of Special Control.

7.3. *Site suitability for wastewater treatment*

7.3.1. From the Site Characterisation Form (SCF) I note the following characteristics of the subject site:

- Soil type is a Sandstone till (Devonian) with subsoil till derived chiefly from Devonian sandstones. Bedrock type is the Ayle River Formation. Devonian Old Red Sandstones.
- Aquifer is identified as poor and of low vulnerability. The groundwater body with a good status is Tulla-Newmarket on Fergus. Groundwater protection response R1.
- Vegetation indicators noted as rushes on the lower end of site. Ground conditions stated as soft to firm.
- Lower drainage ditch with water level 0.80m.

The results of the trail hole identify a peaty topsoil, with sandy gravelly silt sub soils with mottling evident at 0.80m. I note that no water ingress has been identified in the trail hole results in the SCF. However, the photographs

accompanying the SCF do illustrate water evident in Figures 3 (Test 2) and 4 (Test 3).

The landscape position of the proposed wastewater treatment system is in the middle of the slope and the area tested has a stated gradient of <1:8.

- 7.3.2. The proposed dwelling is a four bedrooms property and therefore would have a 6-population equivalent (PE). The selected DWWTS is identified as a tertiary treatment system and infiltration/treatment area. Drawing RPF1 'ETS and Raised Polishing Filter Details' indicates a 15mx10m (150sq.m) plan of a raised polishing filter labelled "to EPA CoP 2009" with an Ecoflo Coco Filter Module centrally located on the raised polishing filter.
- 7.3.3. Clare County Council's Environment Section's planning report considered it necessary to request further information requesting the site assessor acting on behalf of the applicant to re-open the trial hole and do percolation tests in the presence of Clare County Council environment staff to demonstrate that there is adequate suitable unsaturated soil above the mottling reported at 0.8m. In addition, the proposal submitted with respect to the sizing of the polishing filter is noted as inadequate, as the EcoFlo Coco Tertiary Filter does not have tertiary treatment certification. The report also requests clarification on the proposed works to the drainage channel that crosses the site, a revised site layout plan showing separation distances as per Table 6.3 [sic] Table 6.2 of the EPA Code of Practice: Domestic Wastewater Treatment System (Table 6.2 refers to minimum separation distances) and a copy of the certification of the type of wastewater treatment system proposed to be submitted.
- 7.3.4. I acknowledge the applicant's concern with the decision-making process and their willingness to engage in the process and submit revised wastewater treatment proposals.
- 7.3.5. The planning authority did not issue as request for further information as there was a fundamental objection to the proposal given the applicant's non-compliance with the rural housing policy as already addressed in section 7.2. I note the planning authority's decision-making accords with the Section 28 ministerial guidelines 'Development Management' (2007) which states that requests for further information under Article 33 on one aspect of a proposal should not be sought where there is a

fundamental objection to the proposed development on other grounds; applicants should not have to suffer unnecessary delay or expense if a refusal is likely". I am of the opinion that the planning authority's decision not to request further information is in accordance with the guidelines.

7.3.6. I concur with the onsite findings of both the planner and the environment section engineer as I noted during my site inspection the ground conditions were quite heavy underfoot with vegetation indicators evident i.e. significant rush growth. There are omissions in the submitted documentation and new tests required which may require a repositioning of the wastewater treatment system and the proposed dwelling. As indicated in correspondence from the site assessor acting on behalf of the applicant in which he states, "It is very likely that tests at a higher elevation on the site will provide more suitable ground conditions for effluent treatment". Such revisions would be material and by moving the proposal to a higher elevation would potentially make the proposed dwelling more prominent, instead of the building being contained in the landscape. I shall address this issue separately in section 7.4.

7.3.7. Taking into account the site suitability assessment, mottling evident at 0.8m and the ground conditions found on site the viability of the proposed wastewater treatment system is, therefore, questionable. Therefore, it is considered that the proposed wastewater treatment system poses a pollution risk. It is considered that the proposed development would therefore be prejudicial to public health. I consider that the proposed development should be refused on these grounds.

7.4. *New Issue – Design, layout and impact on landscape.*

7.4.1. The subject site is located within the Shannon Estuary, Fergus Floodplains and Lowland Farmland landscape type, as identified in the County Clare Rural House Design Guide. It is stated that single storey farmhouses with attic rooms are frequently found in this area, usually painted and rendered walls with groups of farm buildings around large single storey or two storey farmhouses. It is also noted in the design guide that the rapid urbanisation of the county is very evident due to the development pressures within the Ennis-Shannon-Limerick corridor and the use of urban built forms and housing estate designs in the countryside is often a discordant feature.

- 7.4.2. Given the elevated and sloping nature of the site I am of the opinion that the dwelling will be prominent from the lower road level and the proposed raising the ground levels around the dwelling to provide a level platform will accentuate the buildings prominence. As referenced in the planning history section 4.0 planning permission was granted for a house on the opposite side of the roadway with a similar platform approach leaving the building very exposed on the site and visually prominent. I note that the application comprises limited landscaping proposals and will, as illustrated in the submitted site layout plan area shaded brown (Drawing no. 2311.3.101), result in the removal of a significant length of hedgerow, bank and drainage ditch running along the eastern boundary. The proposals indicate the construction of a new boundary set back, to allow for appropriate sight lines, with a timber post and rail fence with natural hedge is not of sufficient quality or detail to justify the removal of the existing hedgerow.
- 7.4.3. Furthermore, I am of the view that proposed development, by reason of the unbalanced elevational treatment and highly glazed frontage facing the road, platform of raised ground levels around the dwelling with extensive driveway has not demonstrated sufficiently how the proposed development would meet with the guidance contained in the County Clare Rural House Design Guide.
- 7.4.4. I acknowledge that these issues were not raised in the planning authority's decision. The planner noted that the design of the single storey dwelling is satisfactory. I would not concur with this view. Therefore, having regard to the topography of the site, the elevated positioning of the proposed development, the resulting extensive driveway and the removal of a section of the substantial hedgerow and bank boundary, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment. I, therefore, consider that the development would not comply with the stated objective CDP 14.3 Western Corridor Working Landscapes of the county plan in relation to minimising visual impact.

8.0 AA Screening

- 8.1. See completed AA Screening Determination Form Appendix 3. The subject site is within the Slieve Aughty Mountains SPA (Site Code: 004168). The subject site is approximately 2.5km from the Old Domestic Buildings, Rylane SAC (Site code 002314)
- 8.2. I submit to the Board that, given the location of the proposed dwelling within the Slieve Aughty Mountains SPA, the proposed works to the existing hedgerow to facilitate vehicular sightlines should have been subject to an appropriate assessment screening report submitted by the applicant to the planning authority.
- 8.3. In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information
- 8.4. I conclude that the proposed development is likely to have a significant effect on the Hen Harrier of Slieve Aughty Mountains SPA and the Lesser Horseshoe Bat of Old Domestic Buildings. Rylane SAC 'alone' in respect of effects associated with potential hedgerow removal.
- 8.5. It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000 is required on the basis of the effects of the project 'alone'.
- 8.6. 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 the Slieve Aughty Mountains SPA and Old Domestic Buildings SAC, in view of the site's Conservation Objectives.
- 8.7. No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

9.0 Recommendation

I recommend that permission is refused in accordance with the following reasons and considerations:

10.0 Reasons and Considerations

1. It is considered that the applicants have not demonstrated sufficient justification for a house at this location, within the designated Rural Area Under Strong Urban Influence and Area of Special Control, consistent with Objective CDP4.14 of the Clare County Development Plan 2023-2029. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Taking into account the site suitability assessment, mottling evident at 0.8m and the ground conditions found on site the viability of the proposed wastewater treatment system is questionable. It is considered that the proposed wastewater treatment system poses a pollution risk. Therefore, the Board is not satisfied, that effluent from the development can be satisfactorily treated and disposed of on site. The proposed development would, therefore, be prejudicial to public health.
3. Having regard to the topography of the site, the elevated positioning of the proposed development, the resulting extensive driveway and the removal of a section of the substantial hedgerow and bank boundary, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment. I, therefore, consider that the development would not comply with the stated objective CDP 14.3 Western Corridor Working Landscapes of the county plan in relation to minimising visual impact.
4. 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 the Slieve Aughty Mountains, in view of the site's Conservation Objectives.

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.

Claire McVeigh
Planning Inspector

23 May 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317197-23		
Proposed Development Summary	Construction of entrance, a single storey dwelling with a wastewater treatment system and all associated site works.		
Development Address	Tyredagh Upper, Tulla, 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	
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?			
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/Threshold Part 2 Class 10 (b) Construction of more than 500 dwelling units	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	√	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ Date: _____

Appendix 2: Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	317197-23	
Proposed Development Summary	Construction of entrance, a single storey dwelling with a wastewater treatment system and all associated site works.	
Development Address	Tyredagh Upper, Tulla, 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
<p>Nature of the Development</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 proposed development is for the construction of a one-off rural dwelling house and wastewater treatment system, on a greenfield site and for works to the roadside hedgerow boundary and access.</p> <p>The proposal is for the development of a detached house and site works. No significant waste, emissions or pollutants are likely.</p>	No
<p>Size of the Development</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 regard to other existing and/or permitted projects?</p>	<p>The size of the proposed development is notably below the mandatory thresholds in respect of a Class 10 Infrastructure Projects of the Planning and Development Regulations 2001 as amended.</p> <p>There is no real likelihood of significant cumulative considerations having regard to other existing and/or permitted projects in the adjoining area.</p>	No
Location of the	The application site is located within the Slieve Aughty Mountains SPA (Site code 004168) and is	

<p>Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p>	<p>approximately 2.5km from the Old Domestic Buildings, Rylane SAC (Site code 002314).</p> <p>There is a lack of detail with respect to potential hedgerow removal, this is addressed in Section 8.0 and Appendix 3 my inspectors report with respect to Appropriate Assessment. Therefore, with respect the test of likely significant effect for EIA purposes I consider that the development would not be of such significance to require EIA.</p>	
<p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>It is considered that, having regard to the limited nature and scale of the development, there is no real likelihood of significant effect on other significant environmental sensitivities in the area.</p>	
<p>Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment in terms of the nature, size and location of the proposed development and having specific regard to the criteria set out in Schedule 7 of the P&D Regs 2001 (as amended).</p> <p>EIA not required.</p>		

Inspector: _____

Date: _____

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)

Appendix 3: Screening for Appropriate Assessment

Screening Determination

Step 1: Description of the project

I have considered the proposed construction of a dwelling, new entrance and wastewater treatment system in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

The subject site is located within the Slieve Aughty Mountains SPA (Site code 004168) and approximately 2.5km from the Old Domestic Buildings, Rylane SAC (Site code 002314).

The subject site comprises a sloping agricultural field bounded with a natural hedgerow and ditch along the roadside, with some mature trees close to the northern boundary, and western boundary.

The proposed development comprises the construction of a new vehicular entrance, driveway, to be finished in gravel or tarmac, a single storey 4 no. bedroom detached dwelling (189.82 sq. metres gross floor space with a proposed ridge height of 5660mm) with a wastewater treatment system including percolation area and all associated site works.

From my site inspection it appeared that the proposed site entrance had already been created or an existing entrance widened, and some clearance works to the hedgerows along the roadside edge also appeared to have been carried out.

No submissions or observation received from the prescribed bodies.

Step 2: Potential impact mechanisms from the project [consider direct, indirect, temporary/permanent impacts that could occur during construction, operation and, if relevant, decommissioning]

During the construction phase there is potential for hedgerow removal to facilitate sightlines for the proposed vehicular access. Application includes site layout plan (Drawing no. 2311.3.101) on which it is annotated that 'ditch to be removed or cut down and replaced with timber fence'. Further details on the impact to the hedgerow and ditch are not included.

I submit that it could reasonable be considered that potential impacts on the reference European site may arise by way of impacts on protected habitats with may potentially affect foraging habitat for qualifying species.

Step 3: European Sites at risk

With reference to the potential impact mechanisms from the proposal, identify the European site(s) and qualifying features potentially at risk. Examine Site specific conservation objectives and relevant and supporting documents.

Table 1 European Sites at risk from impacts of the proposed project

Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
A: The removal of hedgerow/cutting back to provide sightlines.	Extent and condition of hedgerows	Slieve Aughty Mountains SPA (Site code 004168)	Hen Harrier <i>Circus Cyaneus</i>
A: The removal of hedgerow/cutting back to provide sightlines.	Linear features (Hedgerows)	Old Domestic Buildings, Rylane SAC (Site code 002314)	Lesser Horseshoe Bat <i>Rhinolophus hipposideros</i>

The Slieve Aughty Mountains SPA is of ornithological significance, as it provides excellent nesting and foraging habitat for nationally important breeding populations of Hen Harrier and Merlin, two species that are listed on Annex I of the E.U. Birds Directive.

The Slieve Aughty Mountains are a stronghold for Hen Harrier, rare bird listed in Annex 1 of the EU Birds Directive and support the second largest concentration in the country.

Old Domestic Buildings, Rylane SAC, this site is situated approximately 5 km north-west of Tulla, Co. Clare and consists of two old domestic buildings, approximately 1 km apart, and adjacent sheds and hedgerows. Extensive hedgerows in the immediate area of both roosts provide suitable commuting routes

for the bats, but full details of the foraging areas and winter roost used by this population have yet to be established.

Step 4: Likely significant effects on the European site(s) 'alone'

Taking account of baseline conditions, and the effects of ongoing operational plans and projects, consider whether there is a likely significant effect 'alone'. The question being asked is whether it is possible that the conservation objectives might be undermined from the effects of the project 'alone'.

Table 2: Could the project undermine the conservation objectives 'alone'

European Site and qualifying feature	Conservation objective (summary)	Could the conservation objectives be undermined (Y/N)?			
		Effect A	Effect B	Effect C	Effect D
Slieve Aughty Mountains SPA Hen Harrier	To restore the favourable conservation condition of hen harrier in Slieve Aughty Mountains SPA, which is defined by the following list of attributes and targets available here: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004168.pdf	Y			
Old Domestic Buildings, Rylane SAC Lesser Horseshoe Bat	To maintain the favorable conservation condition of Lesser Horseshoe Bat in Old Domestic Buildings, Rylane SAC, which is defined by the following list of attributes and targets available here: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002314.pdf	Y			

Having regard to the NPWS 'Conservation Objectives' the Qualifying Interest for the Slieve Aughty Mountains SPA at risk is the Hen Harrier. The extent and conditions of hedgerow is a monitorable attribute of the stated conservation objective with a target to 'maintain at least the length and quality of this resource to

support the targets relating to population size, productivity rate and spatial utilisation’.

The hedgerow is within the designated SPA and, having regard to the lack of detail submitted with respect to the proposed removal or otherwise of this hedgerow I cannot be confident that the works will not undermine the defined targets of the conservation objective to restore the favorable status of the Hen Harrier.

Furthermore, with respect to Old Domestic Buildings SAC no significant loss of linear features within 2.5km of the qualifying roosts is a defined target of the conservation objective to maintain the favorable conservation condition of Lesser Horseshoe Bat. Map 3 identifies the foraging range and potential foraging grounds for the Lesser Horseshoe Bat. The subject site is located within the foraging range.

I conclude that the proposed development would have a likely significant effect ‘alone’ on the Hen Harrier of Slieve Aughty Mountains SPA and the Lesser Horseshoe Bat of Old Domestic Buildings. Rylane SAC from effects associated with potential hedgerow removal. An appropriate assessment is required on the basis of the effects of the project ‘alone’. Further assessment in-combination with other plans and projects is not required at this time.

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 the Slieve Aughty Mountains SPA and Old Domestic Buildings SAC, in view of the site’s Conservation Objectives.

Step 5: Where relevant, likely significant effects on the European site(s) ‘in-combination with other plans and projects’

Not applicable given findings at step 4.

Overall Conclusion- Screening Determination

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information

I conclude that the proposed development is likely to have a significant effect on the Hen Harrier of Slieve Aughty Mountains SPA and the Lesser Horseshoe Bat of Old Domestic Buildings. Rylane SAC ‘alone’ in respect of effects associated with potential hedgerow removal.

It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is required on the basis of the effects of the project ‘alone’.

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 the Slieve Aughty Mountains SPA and Old Domestic Buildings SAC, in view of the site's Conservation Objectives.

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.