



An
Bord
Pleanála

Inspector's Report ABP-319110-24

Development	House & wastewater treatment plant
Location	Barntick, Clarecastle, Ennis, County Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	2360498
Applicant(s)	Sinead Reidy
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Sinead Reidy
Date of Site Inspection	8 th May, 2024
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The site of the proposed development is located approximately 2.8km south-west of Clarecastle in County Clare. It has access onto Regional Road No. R473 via an existing agricultural track. The main body of the site would be located to the rear of established houses fronting onto the regional road. The site comprises part of an agricultural field which slopes from west to east. Development in the vicinity includes extensive ribbon development along the regional road. There is a small shed housing greyhounds to the north-east of the main section of the site.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a house, the installation of a wastewater treatment system, and the upgrading of an entrance. The house would be a single-storey, three-bedroom bungalow with a stated floor area of 145 square metres. The house would be served by a public watermain supply. The applicant's father would be transferring the ownership of the 0.357 hectare site to the applicant. The house would be located behind an existing two-storey house. Access from the regional road would be via an upgraded agricultural track and entrance.
- 2.2. Details submitted with the application included a copy of the applicant's birth certificate, bank details, a letter of consent from the applicant's father (the landowner) permitting the making of the application, letters from neighbours who have no objection to the proposed development, and letters from schools confirming the applicant's attendance. The applicant also attached a letter setting out the reasons for the application and referring to precedents for back land developments in the area.

3.0 Planning Authority Decision

3.1. Decision

On 26th January, 2024, Clare County Council decided to refuse permission for the proposed development for one reason relating to the proposal constituting

haphazard back land development, establishing an undesirable precedent and seriously injuring residential amenities.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted development plan provisions, planning history, pre-planning consultation for two previous applications, and the reports received. It was considered that the proposal would not likely have a significant effect on the Natura 2000 network. The back land nature of the development was not considered acceptable and would be seen to set an undesirable precedent. It was considered that the applicant adequately demonstrated compliance with rural housing policy. There were no concerns relating to traffic, public health, visual amenity, overlooking, overshadowing, and flood risk. A refusal of permission for one reason was recommended.

3.2.2. Other Technical Reports

The Environment Section had no objection to the proposed wastewater treatment system subject to conditions.

3.3. Prescribed Bodies

The Department of Housing, Local Government and Heritage noted the site is approximately 230m from Newhall and Edenvale Complex Special Area of Conservation (Site Code: 2091) and is within the mapped 2.5km foraging habitat for the three main bat roosts in the SAC. It was requested that the Council ensure that the proposal would not negatively impact on the conservation objectives of the SAC. The concerns were stated to be the potential impacts on foraging and commuting habitat for Lesser Horseshoe Bats, from lighting and loss of habitat. It was recommended that all existing native trees and hedges be retained and that the Council follows best practice in bat conservation. It was further noted that the site is approximately 2.3km from the Lower River Shannon Special Area of Conservation (Site Code: 2165) and River Shannon and Fergus Estuaries Special Protection Area

(Site Code: 4077). The Council was asked to ensure that it is satisfied that the proposed development would not negatively impact on the conservation objectives of these European sites.

3.4. Third Party Observations

Paul Murphy sent correspondence to the planning authority expressing a wish to make representations on behalf of the applicant.

4.0 Planning History

P.A. Ref. 23/60203

This application for a house and wastewater treatment plant was withdrawn.

P.A. Ref. 22/320

Permission was refused for a house and wastewater treatment plant because it was considered haphazard back land development.

5.0 Policy Context

5.1. Clare County Development Plan 2023-2029

Single Houses in the Countryside

The site is located within a designated 'Rural Area Under Strong Urban Pressure'. 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.

Designated 'Rural Areas Under Strong Urban Pressure' form part of designated 'Areas of Special Control'. The objective with these areas is as follows:

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.

Note: Where the proposed site is accessed from a National route or certain Regional routes, the proposal must, in addition to compliance with this objective, also be subject to compliance with objectives CDP11.13 and 11.14 as set out in Chapter 11

The Plan sets out the necessary criteria relating to CDP 4.14i under the headings of Economic Need and Social Need. The latter includes 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.

Clusters

These are the smallest type of settlement in the hierarchy and their character reflects traditional building patterns with a loose collection of rural dwellings, clustered around one or more focal points. Focal points may include existing rural houses around a crossroad or a community or social facility such as a shop, school, church or post office. The strategy for these settlements is to facilitate a small number of additional dwellings and/or small enterprises to consolidate the existing pattern of

development around the focal points and utilise existing services in the area. To meet the needs of those wishing to settle in rural areas, the provisions of Objective CDP 4.14 (i.e. Social or Economic Housing Need requirement) will not apply to applicants for single houses within the designated cluster boundaries.

The applicable objective is as follows:

CDP 4.9

It is an objective of Clare County Council:

To ensure that clusters throughout the county maintain their existing character providing only for very small scale growth of dwellings and/or small enterprises where they can be suitably integrated with respect to the setting and context.

Volume 3a - Ennis Municipal District Settlement Plans

Barntick

The cluster boundary for Barntick is set out in Section 4 of Volume 3a. The appellant has submitted a copy of this map with the appeal.

5.2. EIA Screening

Having regard to the nature, scale and location of the proposed development, there is no real likelihood of significant effects on the environment. The submission of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

- The reason for refusal is for backland development due to a lack of available road frontage. This can often result in potential for overlooking, loss of

privacy, noise, dust and light pollution. In this application these were considered in the design and have been mitigated. Mitigation included:

- The siting of the house would have little or no impact on the houses to the west, with the proposed floor level being 4.13 metres below the house to the west and 5m below the rise in the land between both houses. Overlooking is not possible.
 - Semi-mature trees would be planted to enhance privacy between the proposed house and existing houses.
 - There would be no potential for noise as the nearest house is over 80 metres from the proposed house and its services. The proposed heat pump would be behind the house.
 - There would be no light pollution due to the difference of level and the screening proposed.
- There are no third party submissions expressing any concerns. Two letters of support are included in the application from neighbours.
 - An undertaking is given that the field will not be developed after being granted permission.
 - Reference is made to a site visit by the Council's Senior Planner and discussion relating to CDP 5.9 of the Clare County Development Plan.
 - The applicant fulfils the criteria of CDP 4.14 of Clare County Development Plan.
 - The site is attached to the Barntick Cluster. Reference is made to the provisions of Clare County Development Plan as they relate to 'Clusters'. As the site is attached to the Barntick Cluster it would constitute a loose collection of dwellings.
 - There are plenty of precedents which highlights there is no consistent approach by the Council on backland development and there is no clear policy on it. Three examples are given where permissions were granted.

6.2. Planning Authority Response

The planning authority's response to the appeal may be synthesised as follows:

- The proposal is broadly acceptable in principle from a general and visual perspective. However, there are concerns in relation to the location, the potential for undesirable back land development and the undesirable precedent that would be set.
- There are no concerns in relation to the visual aesthetic of the proposal.
- The proposal does not appear to be in compliance with the definition of Clusters. It is back land and does not consolidate the existing pattern of development.
- There are no concerns in relation to overlooking or overshadowing. However, there are concerns about the proposal constituting haphazard residential development.

7.0 Assessment

7.1. Introduction

- 7.1.1. I consider that the principal issues for consideration in this application are the question of backland development, compliance with Clare County Development Plan, effluent disposal, and rural housing need.

7.2. The Question of Backland Development

- 7.2.1. The proposed development is in a rural area. The established pattern of residential development is expansive ribbon development along both sides of the regional road at this location. There are detached houses served by private wastewater treatment systems, each with expansive road frontage. The applicant seeks to add further to this unsustainable pattern of housing in the countryside but by seeking to site the proposed house behind established houses fronting onto the public road. Thus, not

alone would the proposed house add to the sprawl of one-off houses in this rural area but it would add to it by seeking to densify in a most haphazard manner. This brings with it several likely problems which include significant potential to adversely impact on residential amenity and the undesirable precedent such a development would set by encouraging further development of this nature in the vicinity.

7.2.2. The siting of a proposed house to the rear of other houses in this location would bring with it disturbance and nuisance with everyday use which would not be anticipated for residents of established one-off houses in the countryside. One can retain hedges, build walls, plant boundaries, etc. to mitigate overlooking and loss of privacy. However, the adverse impacts on residential amenity by way noise and nuisance arising from the occupancy of the house, works around and within the curtilage, vehicular movement, lighting, etc. would arise. The provision of further effluent treatment systems and the precedent such development creates would pose a real public health concern. The precedent for further development of this nature in the vicinity is of particular concern as permissions for houses on lands behind established houses will likely be pursued where there are gaps along the regional road frontage to allow for vehicular access. The more that development of this haphazard nature is permitted the more the demands follow for the unsustainable provision of public services. This brings with it demands for public lighting along the public road, public footpaths, seeking potential for collection of wastewater as the build-up of private wastewater treatment systems becomes a public health concern, traffic management along the regional road where the maximum speed limit applies as the build-up of individual private accesses onto the busy regional road becomes a traffic safety concern, etc. Thus, the backland nature of the proposed development is clearly a haphazard form of residential development in this rural area, not alone for its impacts on properties forward of it in terms of adverse impacts on residential amenity but also for much wider sustainability issues.

7.2.3. In conclusion, the proposed development constitutes haphazard backland development that is contrary to proper planning and sustainable development of the area.

7.3. Clusters and Compliance with Clare County Development Plan

- 7.3.1. I note the provisions of Clare County Development Plan as they relate to 'Clusters'. The applicant's submission is that the site is attached to the Barntick Cluster and a map is attached showing the Barntick Cluster and the location of the site.
- 7.3.2. I observe that the Barntick Cluster is ribbon development. It is very expansive lines of houses along both sides of a very busy regional road where the maximum speed limit applies. Most of the houses are modern houses, i.e. built in recent times. Contrary to the provisions of Clare County Development Plan as they relate to 'Clusters', I observe that there is no 'settlement'. There is no focus around any crossroads or around any community facilities. There is no reflection of traditional building patterns. There has been no facilitation of a 'small' number of additional dwellings at this location. There has been facilitation of very substantial one-off houses forming a pattern of ribbon development along both sides of the road. The gaps have been filled west of the appeal site, adding further to the ribbon development along this road. The field in which the proposed house would be located is not within the boundary as defined by the map provided by the appellant. Adding further to the sprawl of houses at this location would be contrary to the understanding of orderly development in the countryside. As stated earlier, this would put significant pressure on the demands for public services remote from settlements (water, wastewater, lighting, footpaths, etc.), increasing traffic safety concerns with the addition and intensification of entrances along a busy regional road, and significantly posing public health concerns with such a spread of one-off houses served by individual effluent treatment systems. Ultimately, this form of development undermines the focus of sustainable residential development being located within serviced settlements in the vicinity of this rural location which is evidently under a distinct strong urban influence due to its proximity to Ennis. Such development is at a public cost which is not sustainable.
- 7.3.3. In conclusion, it is noted that the proposed development is not within the Barntick Cluster. There is no understanding of what existing character the Barntick Cluster has that merits its maintenance and it is clear that the expansive nature of modern ribbon development at this location has more than addressed any desire to

accommodate “very small scale growth of dwellings” as set out in the Clare County Development Plan. The proposed development could not be viewed as a desirable addition to the Barntick Cluster and would be contrary to the proper planning and sustainable development of the area.

7.4. Effluent Disposal

- 7.4.1. In my opinion, this is a significant planning and environmental issue arising from the proposed development. My concern is based primarily upon the proliferation of private effluent treatment systems within a confined area where there are threats to groundwater. All of the houses in the immediate vicinity of this site are likely being serviced by individual private effluent treatment systems. Clearly, the proposal would result in increasing the effluent load and the consequent pressure on groundwater quality at this location.
- 7.4.2. The Board will note from the applicant’s Site Characterisation report that the subsoils under the site are Karstified bedrock outcrop or subcrop. Vulnerability at the site is extreme and the aquifer is regionally important. A shallow trial hole was dug to a depth of 1.5m before limestone bedrock was reached. The test results indicate that the soil on the site is not suitable for the installation of a conventional septic tank system. It is proposed to install a secondary treatment system and a soil polishing filter. This treatment system brings with the need for careful management of its installation and a high degree of maintenance.
- 7.4.3. With the extent of housing and private effluent treatment plants and septic tanks in this area, I submit that there is a significant threat to groundwater quality. It is unsustainable to allow the proliferation of septic tanks and other effluent treatment systems at this location discharging final effluent to groundwater.

7.5. Rural Housing Need

- 7.5.1. The applicant is an Occupational Therapist working in Ennis. The site is located in a designated 'Area of Special Control', being in a 'Rural Area under strong urban pressure'. This location is under pressure because of its proximity to the county town of Ennis.
- 7.5.2. I note the provisions of Clare County Development Plan as they relate to single houses in the countryside. The key objectives for Rural Areas under strong urban pressure are to facilitate the genuine housing requirements of persons with a demonstrable economic or social need to live in these rural areas and to direct urban-generated development to areas zoned for new housing development in the adjoining urban centres, towns, villages and clusters. Objective CDP 4.14 of the Plan relates to Areas of Special Control (including Areas under strong urban influence) and seeks to permit a new single house for the permanent occupation of an applicant who meets the necessary criteria. The Plan sets out the necessary criteria relating to CDP 4.14i under the headings of Economic Need and Social Need. The latter includes 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.
- 7.5.3. I note again that the appellant is employed in Ennis. She has no economic need to live in the area. It is acknowledged that she lives and, has lived, in the local rural area for a minimum of 10 years. The issue is whether she has a demonstrable 'social need' to live in the area. She has submitted in a letter with the planning application to the planning authority that her parents are elderly and she wishes to be able to help and care for them now and in the future. She further stated that this will not be possible if she is not living locally.
- 7.5.4. I submit to the Board that the applicant has not demonstrated a social need to live in this area. There is no information to show that there is a social 'need' to build a house at this time and at this location or that there is a need to have a house beside

her parents. There is no quantification of a social housing need in the application. There is clearly a desire for the applicant to reside near her parents but that in itself is not a social need.

7.6. Consultation with the Senior Planner

- 7.6.1. I note the appeal submission refers to a site meeting with the Council's Senior Planner and discussion on CDP 5.9 of the Clare County Development Plan. Section 5.2.9 of Clare County Development Plan relates to 'Sites for Independent Development'. Objective CDP 5.9 is as follows:

CDP5.9

It is an objective of the Development Plan:

- a) To support the development of housing schemes of 'sites for independent development' in the settlements of County Clare on lands that have been zoned for residential or low density residential development or sites that have been designated as Village Growth Areas;*
- b) To prepare a guidance document on the preparation of housing schemes of 'sites for independent development' during the lifetime of this Plan.*

- 7.6.2. The Plan states that sites for independent development allow applicants to design and build their own homes tailored to their specific needs within the towns and villages of the County and provide an alternative to single houses in rural areas.

- 7.6.3. The site of the proposed development is not in a town or village. It is in the countryside. These provisions of the Plan would not apply to the proposed development.

Screening for Appropriate Assessment

Background

I note that the site of the proposed development is located to the east of Regional Road R473. Killone Lough lies a short distance west of the regional road. This lake forms part of Newhall and Edenvale Complex Special Area of Conservation (Site Code: 002091). Its Qualifying Interests are Caves not open to the public and

Rhinolophus hipposideros (Lesser Horseshoe Bat). The site of the proposed development is some 230 metres east of this European site. It also lies some 2.3km west of the River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077) and south-west of the Lower River Shannon Special Area of Conservation (Site Code: 002165).

Conservation Submission

I note the submission to the planning authority from the Department of Housing, Local Government and Heritage. It is submitted that the proposed site is within the mapped 2.5km foraging habitat for the three main bat roosts in the Newhall and Edenvale Complex SAC. Concern is raised about lighting and loss of foraging habitat for the Lesser Horseshoe Bat and it is recommended that native trees and hedges are retained. The need to ensure that there would not be negative impact on the conservation objectives of the River Shannon and River Fergus Estuaries Special Protection Area and the Lower River Shannon Special Area of Conservation is also raised in the Department's submission.

Description of Development

The proposed development comprises the construction of a house and the installation of a wastewater treatment system.

European Sites

Newhall and Edenvale Complex Special Area of Conservation

The Qualifying Interests of this SAC are:

Rhinolophus hipposideros (Lesser Horseshoe Bat)

Caves not open to the public

The Conservation Objectives are:

"To maintain the favourable conservation condition of Lesser Horseshoe Bat in Newhall and Edenvale Complex SAC."

“Caves not open to the public is integrally linked to lesser horseshoe bat (*Rhinolophus hipposideros*) as part of the habitat for the species; therefore, a separate conservation objective has not been set for the habitat in Newhall and Edenvale Complex SAC.”

Identification of Likely Effects

- The proposed development is not directly connected with or necessary to the management of any European site.
- There is potential impact on foraging and commuting habitat for Lesser Horseshoe Bats arising from lighting at the proposed dwelling and the site and the loss of habitat due to potential tree and hedgerow removal.
- There is an extensive build-up of private effluent treatment systems discharging to groundwater at this location. The proposed development would intensify wastewater discharge to groundwater at this location. There is no understanding of potential pathways and links to European sites in the wider area and the potential for significant effects on the Qualifying Interests of these sites.

In-combination Effects

I am aware of the extent of developments dependent on private wastewater treatment systems discharging to groundwater at this location which is likely to require consideration for in-combination effects with the proposed wastewater treatment system.

Mitigation Measures

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

Screening Determination

The proposed development has been considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would be likely to give rise to significant effects on Newhall and Edenvale Complex Special Area of Conservation, in view of its Conservation Objectives, and Appropriate Assessment is therefore required.

This determination is based on the following:

- The nature and extent of the proposed development, the activities associated with the occupation of the proposed development, and the intensification of the build-up of housing in close proximity to the SAC, and
- The known foraging pathways between the site and the European site.

The Board will note that a report forming a Screening for Appropriate Assessment and a report to inform the planning authority in its undertaking of an Appropriate Assessment were not submitted by the applicant. In the event the Board was considering granting permission for the proposed development, I recommend that further information should be sought on the impact on Newhall and Edenvale Complex Special Area of Conservation.

8.0 Recommendation

8.1. I recommend that permission is refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the pattern of existing residential development and the siting of the proposed house to the rear of established residential properties, it is

considered that the proposed development would constitute a piecemeal, disorderly, haphazard form of backland development in a remote rural area, that would be likely to seriously injure the amenities and depreciate the value of adjoining residential properties and would create an undesirable precedent for development of a similar nature in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development is located in a rural area identified as a Rural Area under strong urban pressure in Clare County Development Plan 2023-2029, a rural area in close proximity to Ennis which is undergoing significant development pressure for one-off housing. The applicant has not demonstrated a rural generated housing need at this location in accordance with the requirements of Clare County Development Plan, and in particular Objective CDP 4.14 relating to Areas of Special Control. It is considered that the proposed development would exacerbate and contribute to the disorderly pattern of housing development in the area, would constitute haphazard one-off housing, would lead to demands for the uneconomic provision of further public services and communal facilities in the area, would interfere with the rural character of the area, would seriously injure the amenities of this rural area, and would conflict with Objective CDP 4.14 of the Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks and private effluent treatment systems in the area. The proposed development would, therefore, be prejudicial to public health.

Note: Reason No. 3 raises a new issue not referred to in the appeal submission.

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.

Kevin Moore
Senior Planning Inspector

15th May, 2024