



An  
Coimisiún  
Pleanála

## Inspector's Report ABP-319146-24

<b>Development</b>	Construction of a house and proprietary waste water treatment system along with ancillary site works.
<b>Location</b>	Site No. 8, Spanish Point, Leagard South, Miltown Malbay, Co. Clare.
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	23506
<b>Applicant(s)</b>	Callum Curtin
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Philip Ryan and others
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	31 <sup>st</sup> January 2025
<b>Inspector</b>	Ciara McGuinness

## 1.0 Site Location and Description

- 1.1. The site is located in Legard South within the settlement boundary of Spanish Point. The site is located on the south side of a private road that connects St Joseph's Secondary School to the west with the LP-2108 local primary road to the southeast. The lands to the north of the site have been split into 6 no. individual sites with dwellings having recently been constructed on Site No. 1 directly to the north of the subject site and Site No. 5 and No. 6 further to the east. Sites No. 2, 3 and 4 have not been developed. The subject site has a stated area of 0.18 hectares, and slopes away from the private road from which it is accessed. The site forms part of larger landholding c. 1.2 ha in area, which is roughly triangular in shape and is undeveloped.

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of a single storey dwelling. The proposed dwelling has a stated area of 178sqm. The external finishes proposed comprise painted plaster and timber cladding (burnt wood).
- 2.2. A Tertiary Treatment System and Infiltration area is proposed. The site will connect to the public mains and surface water will discharge to a proposed soakaway.
- 2.3. An existing stone wall is to be retained along the western boundary. A new stone wall is proposed to the north of the site and a new high wood panel wall is proposed along the eastern and southern boundary.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission on 31<sup>st</sup> January 2024, subject to 9 no. of conditions. Conditions were of a standard nature.

**Condition 2** requires the dwelling to be for permanent occupation only.

**Condition 3** requires the finished floor level to be as specified on the layout plan.

**Condition 4** relates to the installation and maintenance of the WWTS.

**Condition 5** requires the external finishes to be in accordance with those indicated on the plans and particulars received.

**Condition 6** requires cables to be located underground.

**Condition 7** requires surface water to be collected and disposed of within the site.

**Condition 8** requires boundary treatments to be submitted and approved by the Planning Authority and specifies the landscaping to be implemented at the site.

**Condition 9** relates to the financial contribution required.

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

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

The first Planner's Report (dated 15/11/2023) considers that it is not clear that the principle of development is acceptable on site until a number of issues are resolved (see further information request summary below). There is no objection to the proposed development on grounds of public health having regard to the report received from the Environment Section. Comments from the Environmental Officer in relation to Appropriate Assessment and the Water Framework Directive are noted. (refer to Section 3.2.2 below). There are no residential amenity issues in terms of overlooking or over shadowing.

Further Information was requested in relation to the following;

- Submit details for the landowner's development intentions for the remainder of the lands which are designated Village Growth Area
- Submit a series of cross sections in an east/west direction through the site which clearly distinguish between existing ground levels and proposed finished levels relative to existing ground levels outside the subject site to the east and west and relative to the road level to the north.
- Submit full detail of proposals to address storm water management

Further Information was received on 22<sup>nd</sup> December 2023. The second Planner's Report (dated 30/01/2024) considers that the development of 8 sites all relying on individual wastewater treatment systems, as per the masterplan submitted, would not constitute proper planning in terms of public health and residential amenity. It is

noted that no provision is made for communal open space or other facilities normally found within a housing development. It is stated that the granting of permission for one dwelling does not infer that the Planning Authority has accepted the master plan submitted. The submitted cross sections and surface water management proposals are considered acceptable. A grant of permission is recommended.

### 3.2.2. Other Technical Reports

Environment Section – Based on the information submitted the site meets the criteria for an onsite wastewater treatment system and the proposed domestic wastewater treatment system complies with the provisions of the 2021 EPA Code of Practices Domestic Wastewater Treatment Systems (P.E.<10). Condition in relation to the installation and management of the system is proposed for inclusion in the interest of human health and environmental protection.

West Clare MDO – No observations.

Environmental Assessment Officer Report - There is no direct hydrological link to either the Legard Stream to the north or to the Breaffy stream to the south that could lead to significant effects on any European site in terms of water quality and in particular the Carrowmore Point to Spanish Point and Islands SAC. The groundwater body in which the site is located is classified as being at 'good' status under the WFD with the chemical component also indicating 'Good' Status. There is no risk to groundwater which could lead to significant effects on the receiving surface water environment.

### 3.3. Prescribed Bodies

Department of Housing, Local Government and Heritage – The development area is approximately 400m from the European sites; Carrowmore Point to Spanish Point SAC (Site Code: 1201) and Mid Clare Coast SPA (Site Code 4182). Clare County Council must ensure it is satisfied that the development will not negatively impact the conservation objectives of the European Sites. Of particular concern is the potential impact on water quality in the European Sites. The council is advised to consult the conservation objectives for the site in full.

Irish Water – No objection

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

Submissions were received from Philip Ryan and Lorna Hutchinson, Vincent and Martina Jordan, Alesha Talty and Michael Duffy (the appellants), both on the original application and following receipt of Further Information, and generally reflect the issues raised in the appeal. Concerns were raised with regards to the management of surface water and wastewater and the sites designation as a Village Growth Area. Representations on file from Cllr Liam Grant and Cathal Crowe TD are noted.

### **4.0 Planning History**

PA Reg Ref 05/1279 – Permission was refused for the construction of 14 no. dwelling houses to be occupied as permanent residences or holiday homes, with sewage treatment plant, site works, landscaping, site signage and connections to public services.

PA Reg Ref 24/60082 – Permission was refused for the construction of a part single storey & part two storey dwelling house, wastewater treatment system, percolation area, detached garage, a new entrance to be shared with adjacent site and all ancillary site works at Site No. 14, Leagard South, Spanish Point. The 2 no. refusal reasons are outlined below;

1. The subject site is located in a designated village growth area which under the Clare County Development Plan 2023-2029, allows for the sustainable compact growth of small villages, providing opportunities for small scale cluster type housing, as well as for other uses appropriate to the function, size and scale of the settlement. The plan also makes provision under CDP 5.9 for Sites for Independent Development to be brought forward within Village Growth Areas.

The proposed development, in the context of the larger landholding from which the site is taken, constitutes haphazard piecemeal development devoid of any coherency or overall strategy for surface water management and hydrological assessment, its layout, boundary treatment, communal open space provision, associated infrastructure (comprising footpaths, lighting, roads, turning head provision, visitor parking, EV charging etc) and remedial

works to make good existing deficiencies in such infrastructure proposal for protection of public health – vis a vis waste water treatment and a design statement for house types. In the absence of all of the forgoing the proposed development, if permitted, would be contrary to the provisions of Development Plan Objectives including, CDP4.8, Small Villages, CDP 5.9 Sites for Independent Development, CDP 11.32 Waste Water Treatment Disposal, CDP 11. 28 Water Resources and CDP2.4 Storm Water Management. The proposed development would therefore be contrary to the proper planning and development of the area.

2. Based on the information received to date, and in the absence of full details in terms of the suitability of the site for wastewater disposal and treatment, and the absence of adequate proposals for surface water management, the Planning Authority is not satisfied that the proposed development, individually or in combination with other plans or projects, would not result in adverse effects on the integrity of nearby European sites (Carrowmore Point to Spanish Point and the Islands SAC and Mid Clare Coast SPA). The proposed development would therefore be contrary to Objective CDP15.3 of the Development Plan and would be contrary to the proper planning and development of the area.

PA Reg Ref 25/60249 – Live application to construct 3 no. detached houses with shared sewage treatment system, garages, open space and associated site works and services at Sites 9, 14 and 15, Leagard South. A time extension request for the making of the decision was made by the applicant. The Planning Authority have indicated that the appropriate period in accordance with Section 34(9) of the Planning and Development Act 2000 (as amended), is hereby extended up to and including the 30<sup>th</sup> September 2025.

## **5.0 Policy Context**

### **5.1. Clare County Development Plan 2023-2028**

- 5.1.1. The site is located within the settlement boundary of Spanish Point. The settlement plan for Spanish Point is set out in volume 3d of the Development Plan. Although the

site does not have a land use zoning, it is designated as being within Village Growth Area 4.

- 5.1.2. The settlement plan notes the following in relation to waste water;

*“There is currently no public wastewater treatment plant serving Spanish Point. In the event of future development proposals within the village the EPA Code of Practice for Wastewater Treatment Systems must be strictly adhered to in order to ensure that there are no significant long-term effects on the Annagh River which flows along the southern boundary of the settlement and is currently at ‘poor status’. Any future development including alterations to existing commercial or employment generating development, will require private wastewater treatment subject to suitable site-specific conditions and must ensure they comply with the EPA Code of Practice for On Site Wastewater Treatment Systems.”*

- 5.1.3. The settlement statements and land use plans for the small villages and the associated Village Growth Area (VGA) designations seek to achieve compact growth through brownfield redevelopment and the regeneration of underutilised sites, to address issues such as dereliction and vacancy, to promote the shift to sustainable transport modes and to enhance the connectivity to, and the viability of, local shops and services. The areas identified as village growth areas allow for the sustainable compact growth of small villages, providing opportunities for small scale cluster type housing, as well as for other uses appropriate to the function, size and scale of the settlement.

- 5.1.4. The following objectives are also considered relevant;

**CDP 4.8 Development Plan Objective: Small Villages** seeks to promote the consolidation of the existing small villages through brownfield reuse/redevelopment and through compact growth within the designated village growth areas.

**CDP5.9 Development Plan Objective: Sites for Independent Development** supports the development of housing schemes of ‘sites for independent development’ in the settlements, on lands that have been designated as Village Growth Areas and supports the preparation of a guidance document on the preparation of housing schemes of ‘sites for independent development’ during the lifetime of this Plan.

### **CDP 11.32 Development Plan Objective: Wastewater Treatment and Disposal**

The following criteria of the above policy are considered relevant;

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

(h) Where settlements have no public wastewater treatment infrastructure, and in settlements which have limited or insufficient capacity to facilitate development, to consider alternative developer led/provided shared use wastewater treatment infrastructure, including those incorporating nature-based solutions, to serve development where it can be clearly demonstrated that the system is in compliance with relevant EPA Guidelines on design standards and which will allow connection to a public system when it is provided.

k) To ensure that any private wastewater treatment system proposed complies with the environmental requirements of Objectives CDP 3.3 of this plan.

**CDP 11. 27 Water Resources** seeks to ensure that developments that would have an unacceptable impact on water resources, including surface water and groundwater quality and quantity, designated sources protection areas, estuarine, coastal transitional waters, river corridors and associated wetlands will not be permitted. In areas of potable groundwater resources or over vulnerable aquifer areas, to consider development proposals only if the applicant can clearly demonstrate that the proposed development will not pose a risk to the quality of the underlying groundwater.

**CDP2.11 Storm Water Management** seeks to ensure that adequate storm water infrastructure is in place to accommodate the planned level of growth in the Plan area and seeks to ensure the implementation of Sustainable Drainage Systems (SuDS) and in particular, to ensure that all storm water generated in a new development is disposed of on-site or is attenuated and treated prior to discharge to an approved storm water system.



## **5.2. Natural Heritage Designations**

Carrowmore Point to Spanish Point and Islands SAC – c. 0.4km to the southwest of the site

Carrowmore Point To Spanish Point And Islands pNHA - c. 0.4km to the southwest of the site

Special Protection Areas: Mid-Clare Coast SPA - c. 0.4km to the southwest of the site

## **5.3. EIA Screening**

The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The appeal is a third-party appeal on behalf of Philip Ryan & Lorna Hutchinson, Vincent & Martina Jordan, Alesha Talty and Michael Duffy against Clare County Council's decision to grant permission. The grounds of appeal can be summarised as follows;

- The AA Screening determination was premature until the actual situation regarding surface water connectivity to the SAC was assessed. The determination is further flawed as the box has been ticked for 'no likelihood of significant effects on a European Site', while in the following section the box is ticked for 'refuse planning permission'. No further screening was carried out following receipt of Further Information.

- Two of the appellants have already had significant issues with the ingress of groundwater and the ponding of effluent from their individual WWTS installed on sites 5 and 6. The site assessment for both these houses were carried out by the same assessor on behalf of the same developer.
- GSI classifies the groundwater vulnerability as extreme. The soil permeability is given to be low indicating heavy clays which is the experience on sites 5 and 6 resulting in ponding of the newly installed polishing filters.
- The further development of 8 dwellings on this parcel of land is unsustainable. There is a fundamental conflict between the stated policy of compact development and development with on-site wastewater treatment systems.
- Traditionally, on-site wastewater treatment requires sites to be a minimum of 0.2 ha or 0.5 acres. There was no assessment of the effects from in-combination or cumulative inputs of additional Phosphorous and Nitrogen.
- There was no assessment of the lack of any stormwater collection and disposal network.
- The ground water status is good by default as no local groundwater assessment or testing has been carried out as per the EPA water portal.
- Both the Leagard and Breaffy Streams are categorised as being at risk and as bad status.
- The proposed development needs to be considered having regard to;
  - The area has no municipal WWTP.
  - There are many unlicensed WWTS discharge volumes in excess of 5m<sup>3</sup>/day of untested effluent.
  - A dysfunctional WWTS in the adjacent Westpark Estate
  - A municipal WWTP for Miltown Malbay discharges to the Leagard Stream
  - A large hotel in the area has an unauthorised on-site WWTP
  - There are many disperse on-site treatment systems in the area.

- The subject lands were previously zoned as open space in the 2017-2023 Development Plan. The appellants bought their homes with the expectations that the site was designated amenity space for their houses.
- The development is developer-led and not plan-led.
- The development access road has been piecemeal and does not constitute a road which can be taken in charge given that there is no provision for attenuation or interceptors.
- There is no assessment of traffic implications arising. This is a material contravention of the Development Plan.
- The proposal for the entire site does not provide for amenity space.
- The last legitimate zoning on this land is Open Space, which makes this application a material contravention of the objectives in the CDP.
- The area office stated it had no observations on the FI response which is not an assessment or interrogation.
- Elected members opted to classify these lands as a Village Growth Area. Unlike other VGAs, there is no narrative in relation to these lands to guide planners on the approach to be taken to these lands.
- The minister issued a directive overturning some of the zonings including some amendments made by elected members. It is contended that the parcel was too small to be worthy of consideration in this regard.
- The CDP is being judicially reviewed on the grounds that residential zoning cannot be applied where there is no appropriate infrastructure.

## 6.2. Applicant Response

The applicant's response comprises a report prepared by MKO and a report prepared by EOB Management Services.

The MKO Report is summarised as follows;

*Appropriate Assessment*

- The report of the Environment Section found that ‘there is no direct hydrological link to either the Leagard Stream to the North or to the Breaffy Stream to the South that could lead to significant effects on any European Site in terms of water quality and in particular the Carrowmore Point to Spanish Point and Islands SAC’.
- The EPA classification for the Groundwater Body in proximity to the site is classed as ‘Good’. The report concludes that there is no risk to groundwater contamination which could lead to significant effects on the receiving surface water and the SAC.
- The Further Information was not deemed to have a significant impact on the determination of the AA Screening. The changes proposed did not result in a hydrological link to the SAC. It is therefore reasonable to accept the findings of the AA Screening Determination by the Planning Authority.

#### *Open Space Zoning*

- The appellant’s argument that the site is zoned ‘Open Space’ points to a lack of understanding of the process by which statutory development plans are made and adopted.

#### *Village Growth Designation*

- The Planner’s Report explains the purpose of the VGA designation in Small Villages. The matter is further addressed in the Planning Authority’s response to the appeal.
- The settlement boundary of Spanish Point defines the development boundary i.e. where in the village development should occur.
- The proposed development fits the scope for VGA type development. The site is on a newly upgraded roadway connecting the area to both Spanish point and neighbouring townlands. The site is in close proximity to key services, businesses and amenities via active transport.
- The proposed development is well placed to establish sustainable consolidation and development of Spanish Point within the development boundary of the village while respecting the existing character of the area.

- The proposed development aligns with the existing pattern of development directly opposite the site.

#### *Ministerial Direction*

- The ministerial direction in relation to Clare County Development Plan lacks any mention of the subject site or any of the four designated Village Growth Area within the Spanish Point Settlement.
- The exclusion of VGA 4 from the Ministerial Direction should not be construed as an oversight or error by the OPR or the minister.

#### *Waste Water*

- The appellants grounds of appeal in relation to wastewater are largely related to conditions at developments outside and removed from the proposed development.
- Refer to EOB Consulting Engineers response in relation to capacity for on-site treatment of wastewater.

#### *Surface water*

- The proposed development includes for a hardcore gravel sub-base with permeable tarmac finish on the driveway and pathways. The site will also include 3 no. soakaways in order to facilitate rainwater collection arising from the proposed development.
- A condition (Condition 7) has also been attached to the grant of permission which requires all surface water to be disposed of within the site and suggests that the Planning Authority are satisfied with the proposals.
- Compliance with CDP 2.11 is set out in tabular form.

#### *Compact Growth*

- The applicant has proposed development within the settlement of Spanish Point thus are in keeping with the principle of compact growth. Key services and amenities are within a 15-minute cycle.

- The development will support the social and economic viability of Spanish Point with the proposed development granted on the basis it is for use as a primary residence.

The EOB Management Services Report is summarised as follows;

- The assessment and site characterisation are carried out in a prescribed manner by qualified assessors. The report is a statement of factual findings on which an appropriate effluent disposal system is designed. There is no evidence to suggest it is defective.
- The construction of the system will be supervised and signed off by a suitably qualified individual who carries a professional indemnity insurance policy.
- There is no evidence to substantiate that sites 5 and 6 have problems and it is not clear if these problems relate to the disposal of stormwater or disposal of effluent on site.
- The applicant is obliged by condition to contain all stormwater runoff within the curtilage of his own site.
- There is no indication of what measures sites 5 and 6 have employed to dispose of stormwater. It is worth noting that unfinished landscaping such as is depicted in the photos will give rise to run off.

### 6.3. Planning Authority Response

The Planning Authority's response is summarised as follows;

#### *Appropriate Assessment*

- The Planning Authority is satisfied having regard to the reports received from the Environment Section and EAO, that there is no direct hydrological link to either the Leagard Stream to the North or to the Breaffy Stream to the South that could lead to significant effects on any European Site in terms of water quality and in particular the Carrowmore Point to Spanish Point and Islands SAC.
- The groundwater body within which the site is located is classified as being good status under the WFD with the chemical component also indicating good

status. It is considered that there is no risk to groundwater that could lead to significant effects on the receiving surface water environment.

#### *Waste Water*

- The Planning Authority determined the site was suitable for treatment and disposal of wastewater having regard to the report received from the Environment Section.

#### *Stormwater*

- A condition was attached to PA Reg Refs; 20/684 (Site 1), 17/940 (Site 3), 18/1068 (Site 4), 17/844 (Site 5) and 20/226 (Site 6) which requires all surface water within the site boundaries to be collected and disposed of within the site and that no surface water shall discharge into the wastewater treatment system, or the adjoining access road, public road or adjoining properties.
- It is the applicant's responsibility to ensure that the development carried out within the red line of the subject site is adequate to percolate and dispose of roof and surface water arising from the subject site.
- The issue of surface water management was raised in the FI. In response the applicant submitted proposals for the construction of 3 no. soakaways, which was referred to the West Clare MDO for observation. No further observations were received. Generally, the area office will not make further observations unless further information proposals received are deficient or not clear. In this instance the MDO advised that it had no further observations.

#### *Village Growth Area*

- The Planning Authorities comments regarding village growth area have already been set out in the second Planner's Report. The Planning Authority's argument has been misrepresented by the appellant in one respect. The Planning Authority agrees that VGA does not constitute a zoning. The Planning Authority has not stated that '*the site is the same as a site in the Countryside*'. The Planning Authority advised that Village Growth Area is a designation in the same way the countryside is a designation. Other examples include heritage area, settled landscape and architectural conservation areas. The point was made to illustrate the use of various designations within the

CDP and to demonstrate such designations exist to both inside and outside settlements.

#### **6.4. Observations**

None.

#### **6.5. Further Responses**

None.

### **7.0 Assessment**

7.1. Having examined the application details and all other documentation on file, including the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows;

- Principle of Development
- Wastewater
- Traffic

#### **7.2. Principle of development;**

7.2.1. The site forms part of a larger landbank of undeveloped lands which although are not zoned, are designated as a 'Village Growth Area' (VGA) under the Clare County Development Plan 2023-2029. Having regard to the appellant's grounds of appeal, I note that while the lands were previously zoned 'open space' in the 2017-2023 Development Plan, this previous zoning has been superseded by the provisions of the current plan. I would also note that there is no ministerial direction in relation to the lands. Village Growth Areas allow for the sustainable compact growth of small villages, providing opportunities for small scale cluster type housing, as well as for other uses appropriate to the function, size and scale of the settlement. Objective CDP 4.8 'Small Villages' seeks to promote the consolidation of the existing small villages through brownfield reuse/redevelopment and through compact growth within the designated village growth areas. The proposed development is for a typical



singular dwelling within a rectangular plot with defined boundaries with its own wastewater treatment system.

- 7.2.2. I note that the applicant was requested to submit further information in relation to the landowner's development intentions for the remainder of the lands which are designated Village Growth Area. A master plan strategy for the VGA lands was submitted, which showed the 1.2 ha piece of land accommodating 8 no. individual sites. It is stated in the further information submitted that a number of site suitability assessment for the establishment of treatment systems on the various sites has been carried out.
- 7.2.3. The Planning Authority in their assessment of the further information does not consider that a development of this intensity (8 sites) relying on individual wastewater treatment plants constitutes proper planning in terms of public health, residential amenity, etc. It is noted that no provision is made for communal open space or other facilities normally found within housing developments. The planning authority have specifically noted that the granting of permission for one dwelling does not infer that the Planning Authority has accepted the master plan submitted. In this regard, I consider that the Planning Authority in granting permission, has assessed the proposed development in isolation and without regard to its context.
- 7.2.4. I have concerns with regards to the haphazard nature of the proposal given the Village Growth Area designation on the lands. I consider that the proposal fails to provide a proper planned approach to the development of these lands. I agree with the Planning Authority in relation to the submitted masterplan, that the development of 8 no. sites relying on individual wastewater treatment plants does not constitute proper planning or sustainable development. However, in contrast to the Planning Authority I cannot separate the site from its context and I consider that the granting of this single dwelling may constrain the remaining lands designated as a Village Growth Area or lead to a sub-optimal layout/ strategy for the lands in its entirety.
- 7.2.5. I note subsequent application for a single dwelling on Site 14 has been refused under PA Reg Ref 24/60082. It was considered that the development constitutes '*haphazard piecemeal development*', with the full reason for refusal outlined in Section 4 above. There is currently a live application for 3 no dwellings with shared

sewage treatment system on sites 9, 14 and 15, under PA Reg Ref 25/60249. I note that the Planning Authority has granted an extension of time on this application.

- 7.2.6. I note the contents of Objective CDP 5.9 'Sites for Independent Development' which supports the development of housing schemes of 'sites for independent development' in the settlements, on lands that have been designated as Village Growth Areas. I do not consider that this site has been appropriately considered in the context of being part of a housing scheme. Section 5.2.9 notes that for such development infrastructure will be developed by the primary developer with house design, waste water treatment and on-site landscaping carried out by the individual purchaser. Section 5.2.9 also requires development proposals for sites for independent development housing schemes *"to be accompanied by a detailed design brief setting out the parameters for architectural form, plot ratios, external finishes and boundary treatments"*. It is the intention of the Council to prepare guidance on the preparation of housing schemes comprising sites for independent development within the lifetime of this Plan. This guidance would include issues such as placemaking, integration of the development into the existing settlement and order of work and preparation of a masterplan. In the context of the Village Growth Area designation, it is my opinion that the proposed development would not positively contribute to the public realm or place-making, would not provide integrated development.
- 7.2.7. I consider that an agreed overall layout plan for these and adjacent lands which would determine the need for and co-ordinate the provision of an appropriate range of house forms/finishes, public open spaces, access, wastewater and surface water infrastructure would ensure a more sustainable and attractive form of development. I note that the appellant has also made reference to the uncoordinated approach to the development of the lands and specifically notes the lack of overarching amenity space, wastewater and surface water proposals.
- 7.2.8. Overall, I consider that the proposed development is an isolated and piecemeal proposal in the context of the Village Growth Area Designation, fails to provide a proper planned approach to the development of these lands and would be contrary to CDP4.8 Small Villages and CDP 5.9 Sites for Independent Development. I recommend that permission be refused.

### 7.3. Wastewater

- 7.3.1. The settlement plan for Spanish Point notes *“There is currently no public wastewater treatment plant serving Spanish Point. In the event of future development proposals within the village the EPA Code of Practice for Wastewater Treatment Systems must be strictly adhered to in order to ensure that there are no significant long-term effects on the Annagh River which flows along the southern boundary of the settlement and is currently at ‘poor status.’*” A key consideration in relation to the development of the lands and the achievement of compact growth at this location is the wastewater treatment proposal for the lands. Concerns have also been raised by the appellants with regards to the sites capacity for an on-site wastewater treatment system.
- 7.3.2. The site is classified (GSI mapping tool) as having extreme vulnerability with a locally important aquifer. This gives a ground water protection response of R2<sup>1</sup>, acceptable subject to normal good practice, as reported in the Site Characterisation report (SCR). The Trial hole log was excavated to 1900mm deep with bedrock reported at this depth and with suitable soil to this depth. The percolation values as reported for subsurface were 52.85min/25mm. In accordance with the EPA Code of Practice (Table 6.4), it is proposed to install a Tertiary Soil polishing filter, with pumped discharge (Option 2, Section 10.1). It is noted that the site slopes to the south. The invert of the pipework from the treatment system will be at the existing ground level, giving 1.9m of permeable subsoil below to bedrock. The sloping ground where the proposed polishing filter is to be constructed will be graded using the indigenous top layer of soil. A 250sqm area is provided for the pumped area in accordance with Table 10.1, based on a 5-person household. I am satisfied that the design of the proposed WWTS is in accordance with the EPA Code of Practice. I am also satisfied that the WWTS achieves the required minimum separation distances to features as set out in Table 6.2 of the EPA Code of Practice.
- 7.3.3. I conclude, based on the material submitted with the application and my observations of the site, that the application site is suitable for the safe disposal of domestic effluent. In reaching this conclusion I have had regard to the site in isolation. As outlined above, having regard to the designation of the site as a Village Growth and the compact growth required on this site, I have concerns that the proposed development may constrain development on the wider zoned lands. The proposed development in and off itself would not create a serious risk of ground

water pollution and would not be prejudicial to public health and in this regard I do not consider a refusal reason is merited specifically in relation to wastewater.

7.3.4. However, in my opinion Compact Growth cannot be achieved on this land plot without a coordinated approach to wastewater management. The EPA (2021) code of practice states *‘Any potential impact of the proposed system due to the increased pathogen or nutrient loads on the groundwater quality in the area should be assessed in areas of high-density housing. Densities of domestic wastewater treatment systems greater than 6 per hectare in areas of extreme or high groundwater vulnerability may mean a negative effect on ground water quality particularly with respect to levels of Escherichia coli and nitrate.’* The EPA code of practice also notes that *“The site characterisation process outlined here is applicable to the development of single houses, or equivalent sized developments, only. More extensive site characterisation is required for cluster and large-scale developments.”* In this regard, I consider that regard should be had to EPA Guidelines; *“Wastewater Treatment Manuals Treatment Systems For Small Communities, Business, Leisure Centres And Hotels”*.

7.3.5. As outlined above, I consider that the proposal is an isolated proposal in the context of the Village Growth Area Designation, which provides a piecemeal, haphazard approach to the development of these lands. I consider that in the absence of a coordinated approach for these lands I cannot be satisfied that compact growth can be achieved on these lands whilst ensuring compliance with Objective CDP11.32 Waste Water Treatment Disposal and CDP 11.28 Water Resources.

#### **7.4. Traffic**

7.4.1. The appellant contends that there has been no assessment of traffic implications. The Planning Authority in their report have noted that the access road serving the site is a private road and has not been taken in charge by the Council. I note that the Municipal District Office had no observations to make on the proposed development. I note that the private road is relatively straight, and there were very few vehicle movements on it on the day of my site visit. I do not consider that the proposal is likely to result in a traffic hazard. I do not consider that the volume of traffic caused by a single residential development would result in a traffic hazard or have significant impact on the residential amenity of the adjoining properties.

## 8.0 AA Screening

See completed screening determination form in Appendix 3. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on the Carrowmore Point to Spanish Point and Islands SAC (Site Code: 002165) and Mid Clare Coast SPA (Site Code: 004182) in view of the conservation objectives of this sites and is therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- Nature of works
- Location-distance from nearest European site and lack of connections
- Taking into account the Screening Determination of the Planning Authority

## 9.0 Water Framework Directive

The subject site is located c. 220m to the south of the Legard Stream and c.350m to the north of the Breaffy Stream.

The proposed development comprises construction of a dwelling.

I have assessed the proposed dwelling and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

The reason for this conclusion is as follows:

- Nature of works e.g. small scale and nature of the development

- Location-distance from nearest Water bodies and lack of hydrological connections

Refer to Appendix 4 below for WFD Impact Assessment Stage 1: Screening.

## **Conclusion**

I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

## **10.0 Recommendation**

I recommend that planning permission be refused for the following reasons and considerations.

## **11.0 Reasons and Considerations**

Having regard to the nature of the proposed development and its location within a Village Growth Area and to the undeveloped nature of similarly designated adjoining lands, it is considered that in the absence of an agreed overall layout plan for these lands (which would determine the need for and co-ordinate the provision of an appropriate range of house forms/finishes, public open spaces, access, wastewater and surface water infrastructure), the proposed development would represent a piecemeal and haphazard approach to the sustainable development of the area and would, thereby, conflict with the provisions of Development Plan Objectives including, CDP4.8 Small Villages, CDP 5.9 Sites for Independent Development, CDP 11.32 Waste Water Treatment Disposal, and CDP 11.28 Water Resources. The proposed development would therefore be contrary to the proper planning and development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has

influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

---

Ciara McGuinness  
Planning Inspector

13<sup>th</sup> August 2025

## Appendix 1 - Form 1 - EIA Pre-Screening

<b>Case Reference</b>	319146-24
<b>Proposed Development Summary</b>	Construction of a house and proprietary waste water treatment system along with ancillary site works.
<b>Development Address</b>	Site No. 8, Spanish Point, Leagard South, Miltown Malbay, Co. Clare.
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	



<p>development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	<p><b>State the Class and state the relevant threshold</b></p> <ul style="list-style-type: none"> <li>- Class 10(b)(i) construction of more than 500 dwellings</li> <li>- The proposed development is for 1 dwelling and is therefore sub-threshold</li> <li>- Preliminary examination required (Form 2)</li> </ul>

<p><b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b></p>	
<p>Yes <input type="checkbox"/></p>	<p><b>Screening Determination required (Complete Form 3)</b></p>
<p>No <input checked="" type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b></p>

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

## Appendix 2 - Form 2 - EIA Preliminary Examination

<b>Case Reference</b>	319146-24
<b>Proposed Development Summary</b>	Construction of a house and proprietary waste water treatment system along with ancillary site works.
<b>Development Address</b>	Site No. 8, Spanish Point, Leagard South, Miltown Malbay, Co. Clare.
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<b>Characteristics of proposed development</b>  (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<b>Briefly comment on the key characteristics of the development, having regard to the criteria listed.</b>  The nature and size of the development (1 residential unit) is not exceptional in the context of the existing residential/village environment. The proposed development will not result in the productions of any significant waste, emissions or pollutants. Localised construction impacts will be temporary. The development, by virtue of its type(residential), does not pose a risk of major accident and/or disaster
<b>Location of development</b>  (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	<b>Briefly comment on the location of the development, having regard to the criteria listed</b>  The site is located in an area designated as 'Village Growth Area'. The site is c.400m to the Carrowmore Point to Spanish Point and Islands SAC and Mid Clare Coast SPA (refer to appendix 3). Given the nature of the development and the site/surroundings, it would not have the potential to significantly affect other significant environmental sensitivities in the area.
<b>Types and characteristics of potential impacts</b>  (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	<b>Having regard to the characteristics of the development and the sensitivity of its location, consider the potential for SIGNIFICANT effects, not just effects.</b>  There is no real likelihood of significant effects on the environment arising from the proposed development. There is no real likelihood of significant cumulative effects having regard to existing or permitted projects.
<b>Conclusion</b>	

Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.  ✕
<del>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</del>	<del>Schedule 7A Information required to enable a Screening Determination to be carried out.</del>
<del>There is a real likelihood of significant effects on the environment.</del>	EIAR required.

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

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

(only where Schedule 7A information or EIAR required)

## Appendix 3 – Screening for Appropriate Assessment

<b>Screening for Appropriate Assessment</b> <b>Test for likely significant effects</b>				
<b>Step 1: Description of the project and local site characteristics</b>				
<b>Brief description of project</b>	Construction of a single dwelling			
<b>Brief description of development site characteristics and potential impact mechanisms</b>	<p>The proposed development comprises the construction of a dwelling house. I have provided a detailed description of the development in my report (Section 2).</p> <p>A Tertiary Treatment System and Infiltration area is proposed. Surface water will discharge to a proposed soakaway.</p> <p>The site has a stated area of 0.18ha.</p> <p>There are no watercourse or other ecological features of note on the site that would connect it directly to European Sites in the wider area.</p> <p>There is a watercourse c. 220m to the north of the site and c.350m to the south of the site. (Refer to appendix 4)</p>			
<b>Screening report</b>	<p>No.</p> <p>Screening Determination by Clare County Council concludes that there is no potential for significant effects to European Sites.</p>			
<b>Natura Impact Statement</b>	No			
<b>Relevant submissions</b>	N/A			
<b>Step 2. Identification of relevant European sites using the Source-pathway-receptor model</b>				
European Site (code)	Qualifying interests <sup>1</sup> Link to conservation objectives (NPWS, date)	Distance from proposed development (km)	Ecological connections <sup>2</sup>	Consider further in screening <sup>3</sup> Y/N
Carrowmore Point to Spanish Point and Islands SAC	<a href="#">ConservationObjectives.rdl</a>	0.4km	<p>No direct connection –</p> <p>Possible indirect</p>	Y

Mid Clare Coast SPA	<a href="#">ConservationObjectives.rdl</a>	0.4km	No direct connection –  Possible indirect	Y
<b>Step 3. Describe the likely effects of the project (if any, alone <u>or</u> in combination) on European Sites</b>				
<b>AA Screening matrix</b>				
<b>Site name Qualifying interests</b>	<b>Possibility of significant effects (alone) in view of the conservation objectives of the site*</b>			
	<b>Impacts</b>	<b>Effects</b>		
<b>Site 1: Carrowmore Point to Spanish Point and Islands SAC (Site code 001021)</b>  Coastal lagoons [1150]  Reefs [1170]  Perennial vegetation of stony banks [1220]  Petrifying springs with tufa formation (Cratoneurion) [7220]	Direct: None  Indirect:  Negative impacts (temporary) on surface water/water quality due to construction related emissions including increased sedimentation and construction related pollution	The contained nature of the site (serviced, defined site boundaries, no direct ecological connections or pathways) and distance from receiving features connected to the SAC make it highly unlikely that the proposed development could generate impacts of a magnitude that could affect habitat quality within the SAC for the SCI listed.  Conservation objectives would not be undermined.		
	<b>Likelihood of significant effects from proposed development (alone): No</b>			
	<b>If No, is there likelihood of significant effects occurring in combination with other plans or projects? No</b>			
	<b>Possibility of significant effects (alone) in view of the conservation objectives of the site*</b>			
	<b>Impacts</b>	<b>Effects</b>		
<b>Site 2: Mid-Clare Coast SPA (Site code 004182)</b>  Cormorant (Phalacrocorax carbo) [A017]  Barnacle Goose (Branta leucopsis) [A045]  Ringed Plover (Charadrius hiaticula) [A137]	As above	The contained nature of the site (serviced, defined site boundaries, no direct ecological connections or pathways) and distance from receiving features connected to the SPA make it highly unlikely that the proposed development could generate impacts of a magnitude that could affect habitat quality		

Sanderling (Calidris alba) [A144]  Purple Sandpiper (Calidris maritima) [A148]  Dunlin (Calidris alpina) [A149]  Turnstone (Arenaria interpres) [A169]  Wetland and Waterbirds [A999]		within the SPA for the SCI listed.  Conservation objectives would not be undermined.
	<b>Likelihood of significant effects from proposed development (alone):</b> No	
	<b>If No, is there likelihood of significant effects occurring in combination with other plans or projects?</b> No	
<b>Step 4 Conclude if the proposed development could result in likely significant effects on a European site</b>		
<p>I conclude that the proposed development (alone) would not result in likely significant effects on Carrowmore Point to Spanish Point and Islands SAC (Site Code: 001021) and Mid-Clare Coast SPA (Site code; 004182). The proposed development would have no likely significant effect in combination with other plans and projects on any European site(s). No further assessment is required for the project.</p> <p>No mitigation measures are required to come to these conclusions.</p>		
<b>Screening Determination</b>  <b>Finding of no likely significant effects</b> In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on Carrowmore Point to Spanish Point and Islands SAC (Site Code: 001021) and Mid-Clare Coast SPA (Site code: 004182) in view of the conservation objectives of these sites and is therefore excluded from further consideration. Appropriate Assessment is not required.  This determination is based on: <ul style="list-style-type: none"><li>Nature of works</li><li>Location-distance from nearest European site and lack of connections</li><li>Taking into account the assessment of the Planning Authority</li></ul>		

## Appendix 4 – WFD Impact Assessment Stage 1: Screening

WFD IMPACT ASSESSMENT STAGE 1: SCREENING			
Step 1: Nature of the Project, the Site and Locality			
An Bord Pleanála ref. no.	319146-24	Townland, address	Site No. 8, Spanish Point, Leagard South, Miltown Malbay, Co. Clare.
Description of project		Construction of a house and proprietary waste water treatment system along with ancillary site works.	
Brief site description, relevant to WFD Screening,		Site is located in a rural coastal location, on a site which slopes from north to south, with poorly draining soil. There are no drainage ditches within the site. There is a watercourse c. 220m to the north of the site and c.350m to the south of the site.	
Proposed surface water details		Soakaway	
Proposed water supply source & available capacity		Group Water scheme	

Proposed wastewater treatment system & available capacity, other issues			A Tertiary Treatment System and Soil Polishing Filter			
Others?			Not applicable.			
Step 2: Identification of relevant water bodies and Step 3: S-P-R connection						
Identified water body	Distance to (m)	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g.at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater)
Coastal Waterbody	c.440m	Shannon Plume (Has 27;28) IE_SH_070_0000	High	Not at Risk	No pressures	Not hydrologically connected to coastal waterbody.
River waterbody	c. 220m to the north c.350m to the south	ANNAGH (CLARE)_010 IE_SH_28A030900	Bad	At Risk	For, DWTS	Not hydrologically connected to surface watercourse.
Groundwater waterbody	Underlying Site	Milltown Malbay IE_SH_G_167	Good	Not at risk	No pressures	No – poorly draining soils offer protection to groundwaters.



Step 4: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.							
CONSTRUCTION PHASE							
No.	Component	Water body receptor (EPA Code)	Pathway (existing and new)	Potential for impact/ what is the possible impact	Screening Stage Mitigation Measure*	Residual Risk (yes/no) Detail	Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2.
1.	Coastal	Shannon Plume (Has 27;28) IE_SH_070_000	None	None	None	No	Screened out
2.	Surface	ANNAGH (CLARE)_010 IE_SH_28A030900	None	None	None	No	Screened out
3.	Ground	Milltown Malbay IE_SH_G_167	Drainage	Hydrocarbon Spillages	Standard Construction Measures / Conditions	No	Screened out

OPERATIONAL PHASE							
4.	Coastal	Shannon Plume (Has 27;28) IE_SH_070_0 000	None	None	None	No	Screened out
5.	Surface	ANNAGH (CLARE)_010 IE_SH_28A03 0900	None	None	None	No	Screened out
6.	Ground	Milltown Malbay IE_SH_G_167	Drainage	None	None	No	Screened out
DECOMMISSIONING PHASE							
7.	N/A	N/A	N/A	N/A	N/A	N/A	N/A