



An
Coimisiún
Pleanála

Inspector's Report

ABP-322174-25

Development

RETENTION PERMISSION sought for an embankment as constructed and PLANNING PERMISSION is sought for the construction of a dwelling house, detached garage, wastewater treatment system and all associated site works.

Location

Heathmount, Cratloe, Co. Clare.

Planning Authority

Clare County Council.

Planning Authority Reg. Ref.

2460489.

Applicant(s)

Eimear Crowe.

Type of Application

Retention Permission and Planning Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party.

Appellant(s)

Matthew Broggy.

Observer(s)

Michael Nugent.

Date of Site Inspection

12th day of July, 2025.

Inspector

Patricia M. Young.

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1.0 Site Location and Description

- 1.1. The irregular rectangular shaped appeal site has a given area of 1.9h. It is located on the eastern side of local road (Gallows Hill Road) c700m to the south west of its junction with Gallows Hill monument, in the upland rural Townland of Heathmount, c3km by road to the north east of the centre of Cratloe, and c14km by road to the north west of centre of Limerick City, in south Co. Clare.
- 1.2. Gallows Hill Road is a restricted in width and undulating in horizontal as well as vertical alignment local road. The site's eastern side roadside boundary contains a vehicle sized opening onto this road with this boundary being densely covered by indigenous planting that in part covers a sod ditch. The main site area rises steeply from this roadside boundary, with the ground levels ranging from c155m OD at their lowest point where they adjoin Gallows Hill Road to c188m OD at the rear boundary of the site which is not demarcated. The site entrance provides a link to the main area of the site via an overgrown access road that in places shows evidence of stone outcropping.
- 1.3. The site is substantially overgrown throughout with furze, reeds, ferns, heathers as well as some native hedge and tree species. Alongside evidence of bedrock outcrops, bedrock rutting and the ground levels consist of heavy boggy in texture and form peat soil. Ground augmentation and alterations works are evident on the site. With this including the earthen embankment that runs alongside most of the northern boundary of this site.
- 1.4. Throughout the site there are localised through to sweeping panoramic views over the surrounding landscape setting. The local road network serving this site is characterised by meandering restricted in width and changing in horizontal as well as vertical alignment roads.
- 1.5. Photographs taken during my inspection of the site are attached.

2.0 Development Sought

- 2.1. The development sought under this planning application consists of:
 - Retention Permission for embankment as constructed. This is indicated to consist of one single embankment with a height of 2.7m to 3m in height placed between a contour of 165 OD at its lowest point and 183m OD along most of the eastern boundary

of the red line area of the site. This embankment is indicated as being planted with a mixture of white thorn, furze, birch saplings.

- Planning permission to construct a part single storey and part two storey detached 4-bedroom dwelling house (Note: 236.7m²) with a given maximum ridge height of 6.624m and a detached garage with a maximum ridge height of 5.074m with these two buildings indicated in the planning application to have a combined given total floor area of 261.5m². The dwelling is indicated to be positioned between 171m OD and 174m OD with the ground levels steeply falling in its setback of c58m from the local road to the north which would serve it via an entrance opening onto a point with a variable c155m OD to c157m OD vertical alignment. The main rear elevation of the dwelling is located c77m to the north of the red line rear boundary of the site as well as its roughly central position between the eastern (Note: lateral separation distance of c47m) and western (Note: lateral separation distance of c43m) boundaries of the site.

- Construction of an entrance and driveway to serve the proposed dwelling house onto the local road, provision of a wastewater treatment system, new connection to public water supply, surface water drainage to soakaway and all associated site works.

2.2. This application is accompanied by:

- Cover Letter from the Applicants Agent.
- Letter of Consent.
- Site Characterisation Form

2.3. Unsolicited information was provided by the applicant's agent on the 8th day of October, 2024. This indicates that the planning application form indicates in error connection to public mains water when instead it is proposed to serve the proposed dwelling by a new well on site.

2.4. The Planning Authority received the applicant's **further information response** on the 7th day of February, 2025, with this relating to providing clarification that the applicant had no other available alternative sites.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 6th day of March, 2025, the Planning Authority issued a notification to grant permission subject to 13 no. mainly standard in nature conditions. Including:

Condition No. 2:	(a) Occupancy Clause. (b) Restricting dwelling to permanent occupation.
Condition No. 3:	Finished Floor Levels.
Condition No. 4:	Entrance and roadside boundary treatments. With this including but not limited to requirements for sightlines and entrance levels.
Condition No. 5:	Landscaping.
Condition No. 6:	Requires written agreement of a level rest area provision midway along the proposed access roadway in the interest of traffic safety.
Condition No. 9:	Restricts construction of the dwelling house until such time as it is demonstrated that adequate potable water supply can be provided to serve the dwelling.
Condition No. 10:	Surface water to be collected and disposed of within the curtilage of the site.
Condition No. 11:	Sets out the waste water treatment requirements.
Condition No. 12:	Restricts use of garage.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **final Planning Officer's report** is the basis of the Planning Authority's decision. It includes the following comments:

- It is considered that the applicant is a local rural person, by way of social need, with a genuine requirement for a dwelling at this location.

- They are satisfied that the applicant has no alternative site.
- They are satisfied that the development is one that is compliant with the Development Plan requirements.
- Development is not exempt from the payment of Section 48 contributions.
- Concludes with a recommendation to grant permission subject to safeguards.

The **initial Planning Officer's report** concluded with a request for further information as follows:

"As per the provision of the Clare County Development Plan 2023-2029, the subject site is located in a rural area that is designated as a Rural Area Under Strong Generated Pressure for development and the local road by which the site is accessed is designated as a Scenic Route.

The subject application for planning permission is being assessed in accordance with the provision of CDP 4.11 'New Single Houses in the Countryside within the 'Areas of Special Control' of the County Development Plan.

In the assessment of this application, regard has also been had to the Landscape, Siting and Design Criteria as applies under CDP 4.14 of the County Development Plan and which states that :

"For proposed sites located in Heritage Landscapes and/or sites that are accessed from or abutting Scenic Routes the applicant will be required to demonstrate that no alternative sites are available in Settled Landscapes, the Shannon Estuary Working Landscape or the Western Corridor Working Landscape. The assessment of an application for a rural house shall have regard to environmental considerations, the viability of smaller towns and rural settlements and siting and design issues and the Clare Rural House Design Guide".

In this case, it has not been demonstrated that no alternative sites are available in Settled Landscapes, the Shannon Estuary Working Landscape or the Western Corridor Landscape.

Please submit clear details in order to address this matter and to demonstrate as to whether alternative sites off the Scenic Route are available".

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

- 3.3.1. **Uisce Éireann's:** Concludes with a recommendation for further information. I note they indicate that they do not have water/waste water infrastructure within the public road fronting the site. It is also indicated that at this time the provision of such infrastructure is not included in their Capital Investment Plan. It is therefore requested that they engage with them to determine the feasibility of connection.

3.4. Third Party Observations

- 3.4.1. Third Party to this appeal case submitted observations to the Planning Authority which raise the same substantive issues as those set out in their submissions to the Commission which I have summarised under Section 7 of this report below. Additionally, a representation was made by a local councillor to be kept informed of the outcome of this planning application.

4.0 Planning History

4.1. Site

- 4.1.1. **ABP-314676-22 (P.A. Ref. No. 22628):** Permission was **refused** for a development described as consisting of: (i) Chead Coinneála do chlaífort mar a tógadh é agus (ii) Chead chun teach cóaithe príobháideach, garáiste scoite, córas cóireála fuíolluisce agus na hoibreacha suímh go léir a bhaineann leis a thógáil. I note that this application was determined under the Clare County Development Plan, 2023-2029. The single stated reason and consideration reads:

“The Board had regard to the Clare County Development Plan 2023-2029, to the Inspector’s Report and Addendum, and to the totality of materials and submissions received. The proposed development is located in a Rural Area Under Strong Urban Influence and the site is accessed from and abuts a designated Scenic Route. Accordingly, the proposed development is in an area specifically identified as an ‘Area

of Special Control’ to which Objective CDP4.14 of the Clare County Development Plan 2023-2029 applies.

The Applicant has not demonstrated that he meets the necessary ‘Economic Need or Social Need’ criteria as provided for in the Development Plan nor has he demonstrated that no alternative sites are available in Settled Landscapes, the Shannon Estuary Working Landscape or the Western Corridor Working Landscape. Furthermore and based on the information submitted, the Board considers the Applicants ‘need’ to live in the local rural area could be met at property and lands in his ownership.

It is therefore considered that the proposed development would be contrary to Objective CDP 4.14 of the Clare County Development Plan 2023-2029 and as a result contrary to National Policy Objective 19 of the National Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

Decision date: 03.07.2024.

- **P.A. Ref. No. R22-22:** Section 5 Referral: The Planning Authority considered that the carrying out of pre-planning construction works at Heathmount, Cratloe, Co. Clare constitutes development and is not exempted development as defined under the Planning & Development Act, 2000, as amended, and associated Planning & Development Regulations, 2001, as amended.

Decision date: 13.05.2022.

5.0 Policy Context

5.1. Local

- 5.1.1. The Clare County Development Plan, 2023-2029, as varied, is applicable.
- 5.1.2. Section 4.2.6 deals with Single Houses in the Countryside and sets out ‘Rural Area Types’ as required by the NPF, the RSES and the 2005 SRHG. The site is identified as within an ‘Area of Special Control’ and within a ‘Rural area under Strong Urban Pressure’- (Note: Volume 2 Maps C & D).
- 5.1.3. The site forms part of the ‘Western Corridor Working Landscape’. In this regard Chapter 4 of the Development Plan is relevant. It states: *“for proposed sites located*

in Heritage Landscapes and/or sites that are accessed from or abutting Scenic Routes the applicant will be required to demonstrate that no alternative sites are available in Settled Landscapes, the Shannon Estuary Working Landscape or the Western Corridor Working Landscape. The assessment of an application for a rural house shall have regard to environmental considerations, the viability of smaller towns and rural settlements and siting and design issues and the Clare Rural House Design Guide”.

5.1.4. Chapter 14 of the Development Plan describes Western Corridor Working Landscape as containing: *“the highest concentrations of population and employment and the strongest transport links and connectivity. It includes a large part of the Limerick Shannon Metropolitan Area and the County Town/Key Town of Ennis. It is the economic driver of County Clare and an important area of the Mid-West and Southern Region”* and as containing: *“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”.*

5.1.5. Objective CDP14.3 of the Development Plan is relevant as the site forms part of the designated Western Corridor Working Landscape area.

5.1.6. Relevant Objectives include:

- Objective CDP 4.10: Indicates that the Council will seek to ensure that the countryside continues to play its role as a place to live, work, recreate and visit having careful regard to the viability of smaller towns and rural settlements, the carrying capacity of the countryside, siting and design issues and environmental sensitivities.
- Objective CDP 4.14: This objective relates to new single houses in the countryside within the 'Areas of Special Control' which the site and its setting forms part of. It states:

“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".

- Objective CDP14.7 is relevant as the site is accessed and visible from a protected Scenic Route:

"It is an objective of Clare County Council: a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community; b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact; and c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved".

- 5.1.7. The categories relevant to Objective 4.14, i.e. Areas of Special Control are set under Category A which deals with Economic Need and Category B which deals with Social Need alongside includes each of their criteria/considerations. Having regard to the details provided the applicant is applying under Category B (ii) which reads:

Category B – Social Need

"ii. Special consideration shall be given in limited cases for persons who need a dwelling for permanent occupation in a rural area for exceptional health reasons. Any application for permission in this category shall be accompanied by a report or recommendation (and other relevant supporting documentation) from a registered medical practitioner outlining the reasons why it is necessary for the Applicant to live in the rural area or to reside near family/carer support (or alternatively requires care support to live in close proximity to them). Where applicable the Applicant shall demonstrate why their existing home cannot be adapted to meet their needs and shall also demonstrate why their need for a house cannot be accommodated either in an existing settlement or in the countryside outside of the Areas of Special Control. In

instances where the house is proposed to accommodate the person that will provide care for a person already residing in the rural area (such as elderly persons who have resided in the area over 10 years, and/or persons who qualify due to exceptional health reasons) the new dwelling must be sited adjacent to the existing dwelling, which shall be taken to mean sites that are in close proximity to the dwelling of the person that will be cared for”.

5.1.8. Other relevant sections of the Development Plan include

- Chapter 5 – Section 5.2: Housing.
- Chapter 10 - Sustainable Communities.
- Chapter 11 - Physical Infrastructure. Including:
 - Section 11.2 Access and Movement
 - Section 11.3 Water Resources
 - Section 11.4 Water and Wastewater Services.
- Chapter 14 Landscape including:
 - Section 14.5 Views and Prospects
 - Section 14.6 Applications for Single Houses in the Countryside.
- Chapter 15 Biodiversity, Natural Heritage and Green Infrastructure.
- Chapter 17 Towns and Villages
 - Section 17.2 Town and Village Consolidation, Renewal and Regeneration.

5.2. **Regional**

- **Southern Region Regional Spatial and Economic Strategy, 2020-2032:** This strategy document under Section 3.1 seeks to restrict urban generated sprawl, strengthen the urban fabric and role of settlements servicing hinterlands, consolidate existing settlements, and protect the environment and resources of rural areas from haphazard, urban-generated housing patterns.

Section 3.7 – Sets out that the NPF and RSES make a distinction between areas under urban influence, i.e. those within the commuter catchment of cities and large towns

and centres of employment, and rural areas outside these catchments where a more flexible approach to rural housing will apply.

RPO 27 - Supports rural economies and rural communities through implementing a sustainable rural housing policy in the Region which provides a distinction between areas under urban influence and other rural areas through the implementation of National Policy Objective 19. It includes:

Have regard for the viability of smaller towns and rural settlements; Core Strategies shall identify areas under urban influence and set the appropriate sustainable rural housing policy response which facilitates the provision of single housing in the countryside based on the core consideration of demonstrable economic, social or local exceptional need to live in a rural area and siting, environmental and design criteria for rural housing in statutory guidelines and plans.

Have regard for the viability of smaller towns and rural settlements, in rural areas elsewhere, facilitate the sustainable provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans.

5.3. **National**

- **Project Ireland 2040 – National Planning Framework (2025):**

- National Policy Objective 19 makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence based on demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.
- National Policy Objective 28: sets out siting and design criteria for rural housing.

- **Sustainable Rural Housing Guidelines for Planning Authorities, 2005:** These guidelines make a distinction between Urban Generated Housing and Rural Generated Housing and directs urban generated housing to towns and cities and lands zoned for such development. Urban generated housing has been identified as development which is haphazard and piecemeal and gives rise to much greater public

infrastructure costs. Rural generated housing includes sons and daughters of families living in rural areas and having grown up in the area and perhaps seeking to build their first home near the family place of residence.

- **Sustainable Residential Development & Compact Settlements Guidelines for Planning Authorities, 2024:** Encourages residential development into appropriate serviced lands in settlements.
- **National Biodiversity Action Plan, 2023-2030:** This plan strives for a “whole of government, whole of society” approach to the governance and conservation of biodiversity. The aim is to ensure awareness of biodiversity, its importance, and of the implications of its loss to all while also understanding how to address the biodiversity emergency as part of a renewed national effort to “act for nature”. This plan continues to implement actions of its predecessor within the framework of five strategic objectives, while addressing new and emerging issues.
- **Climate Action Plans (2024 & 2025).**
- **EPA Code of Practice for Domestic Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10), 2021.**
- **Our Rural Future:** Rural Development Policy 2021-2025.

5.4. Natural Heritage Designations

- 5.4.1. This site lies c3.2km upland to the north east of Special Area of Conservation: Lower River Shannon SAC (Site Code: 002165). This overlaps with the Special Protection Areas: River Shannon and River Fergus Estuaries SPA (Site Code: 004077) c4.9km to the south west at its nearest point and proposed Natural Heritage Areas: Fergus Estuary and Inner Shannon, North Shore (Site Code: 002048).
- 5.4.2. The appeal site is located c1.2km to the west of Natural Heritage Areas: Woodcock Hill Bog NHA (Site Code: 002402) and is located c2.1km to the north of proposed Natural Heritage Areas: Garrannon Wood, respectively, at their nearest point as the bird would fly.

5.5. Built Heritage & Archaeological Features

- 5.5.1. The following Recorded Monuments and Place are in proximity to the site:
 - CL052-069 – Gallows: This is located c465m to the south west.

- CL051-061 – Church: This is located c554m to the north west.
- CL052-060 – Castle and Tower House: This is located c778m to the south west.
- CL052-081 – Bullaun Stone: This is located c1.5km to the east.

6.0 EIA Screening

- 6.1. See completed Form 2 on file in Appendix 2. Having regard to the nature, size and location of the development sought under this application 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 this development. EIA, or EIA determination, therefore, is not required.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. The grounds of this Third-Party appeal seek that the Commission overturns the Planning Authority's grant of permission. It can be summarised as follows:

Planning History

- Concern is raised that this development is very similar to that which was refused under appeal case ABP-314676 on the basis that the applicant had not demonstrated a need to live in this rural area. The only difference is the applicant.
- The Commission in its consideration of ABP-314676 considered that the applicant had not demonstrated alternative sites available in settled landscapes.

Site Setting

- This site is in a rural area under strong urban influence, and it borders a designated scenic route. It has limited capacity to absorb such developments.

Suitability of the Site for the Applicant

- The site is extremely steep and not one that is suitable for a disabled person, yet the applicant indicates that they suffer from severe disability.

- The applicant was requested during further information to clarify whether alternative sites are available to them. The response provided is not robust and relies on the site being gifted to them with no other site available to them.
- The applicant's family land includes an existing derelict building at Woodcock Hill which would be a more suitable location, and it would be 300m from where the applicant's brother is now proposing to live rather than 3km distance. This site has more level ground and is closer to neighbours and services. Whereas this site is remote, steep and far from services.

Occupancy Condition

- Condition No. 2 is a residency condition that includes the statement: "*will not affect the sale of the dwelling by a mortgagee in possession*". The inclusion of this is questioned on the basis that it effectively nullifies the requirements of an occupancy condition which in seeks that the planning process is not abused to facilitate a local rural person with a housing need.

Access

- The proposed access to serve the dwelling is more than recommended minimum gradients of 1:20 and the roadway has a significant length of 162m. The NRA standards recommend a gradient of no more than 1:50 at the entrance to a national road for a setback of 5m with a general gradient of no more than 1:20 thereafter. As such the vehicle access is not suitable to serve this development, including providing access to ambulant disabled persons. It also has the potential to give rise to a traffic hazard and endanger the road safety particularly in inclement weather conditions.
- Substantial excavations would be required to achieve sightlines.
- Concern raised that the Planning Authority in its determination did not seek further clarity on gradient concerns in terms of access.

Visual Impacts

- There is a significant level change from the finished floor level of the dwelling at 170.9 OD and at the roadway which is 155.78 OD.
- The level of excavation required would significantly change the landscape.
- The embankments are visually intrusive and inappropriate to their setting.

Ground Waters

- The design of the waste water treatment system in an area that is identified as extreme groundwater vulnerability in the EPA Groundwater Vulnerability Maps with the percolation area being at a steep gradient that does comply with current EPA Code of Practice for rural dwellings is a serious pollution and health concern.
- The site would require artificial levelling to reduce the gradient of the site and of concern the site has a shallow overlay of rock close to the surface.
- The site is near NHA Woodcock Hill Bog (Site Code: 002402) and the construction of a dwelling house so close to it is questioned.

7.2. Applicant Response

7.2.1. The First Party's response can be summarised as follows:

Validity of the Appeal

- This appeal is vexatious and should be dismissed on this basis.

Applicants Need

- The applicants need is acute as her parents are elderly and struggling to provide for her care needs.
- They desire independent living whilst being located close to those involved in meeting her care needs.
- The applicant has rights under The United Convention on the Rights of Persons with Disabilities, for independent living and inclusion in the community. Their need is a rural housing need, and they are compliant with the rural settlement strategy as set out in the Development Plan for a dwelling at this location.
- The proposed dwelling provides for live-in carers, with this designed into the previous application for a dwelling as lodged by their brother.
- The applicant will be gifted this site from her brother if planning permission is successful.
- The site forms part of a parcel of land that is not farmed and is the only such lands within their brother's rural landholdings.

- The applicant needs to live away from stimuli of farm animals and loud noise.

Building Regulations

- Compliance with Building Regulations is not a planning matter.

Access

- The site is served by an existing access with visibility splays of 90m available in both directions.
- The entrance is served by a rural road where speed limits are generally less than 50kmph and is lightly trafficked.
- The achievement of sightlines will not require the removal of any hedgerow.
- This development poses no traffic safety concerns.

Foul Drainage

- The polishing filter is to be located where there is a shallow slope with a gradient of 1:9.575 which complies with the EPA's Code of Practice for Wastewater Treatment Systems for Single Houses, 2021.

Woodcock Hill NHA & Natura 2000 sites

- The Woodcock Hill NHA is located over 1.5km from this site and is not hydrologically linked to it. Therefore, there is no scope for any potential impact from the development sought under this application on it.
- The site has no hydrological connection to any Natura 2000 site.

Derelict Building on the Landowners Other Lands

- The derelict building referred to by the Appellant is unsuitable for the applicant's needs.

Scenic Route

- The views from the scenic route are downwards to the north and west of the road over south Clare and along the Shannon Estuary.
- Views towards the east and south east are not scenic as are the views to the north and west.

- The site is located on a natural plateau and has been carefully designed to not be out of context with its setting.

7.3. Planning Authority Response

- 7.3.1. The Planning Authority's response indicates that they are satisfied that the applicant has sufficiently demonstrated a need to live at this location that accords with the Clare County Development Plan, 2023-2029, settlement strategy.

7.4. Observations

- 7.4.1. The Third-Party Observation seeks that the Commission overturns the development sought under this application on the basis that it is contrary to the proper planning and sustainable development of the area. It can be summarised as follows:

Planning History

- The owner of this land has made several attempts to secure planning on this site for the same development, with the current application being made in his sister's name. The last application was refused by the Commission under ABP-314676-22. It is considered that this application is just another attempt by the landowner to build a house on this site and should be similarly refused as outside of the different applicant name the development sought is the same.
- The landowner has carried out unauthorised development works on site.
- The Commission found in their determination of ABP-314676-22 that the landowner was not a qualifying farmer and that he had not demonstrated either an economic or social need for a rural dwelling house at this location.

Rural Need

- The County Development Plan only permits a new single house for permanent occupation at this location subject to strict criteria which the documentation provided with this application does not demonstrate compliance with.
- It is difficult to see if the applicant has the extensive health issues indicated that she now needs to reside in this remote, isolated, visually and environmentally vulnerable rural location. Alongside remote from family and supports.

- It is unclear as to why the applicant's exceptional health reason cannot be accommodated in an existing settlement or in the countryside outside of an area designated as an area of special control.
- It is the site owners wish to have a dwelling at this location.
- The applicant social need is manufactured and not genuine.
- The landowner indicates that it is their intention to refurbish/rebuild the derelict dwelling on his farm in Woodcock Hill for his own use and it is implied that this dwelling would not be available to the applicant. Yet in the previous case application made by them on this site for a dwelling they contended that this buildings use, and refurbishment was not possible.
- If it is accepted that the landowner is to refurbish the derelict structure in their farm at the townland of Woodcock, then the applicant of this application would be living with him at that location as opposed to by herself at this remote location unless another person lives with the applicant to support her ability to live at the proposed dwelling.

Visual Amenity

- The proposed dwelling would be visible in its wider setting.
- There are additional requirements for building on sites in this landscape area as well as for this type of development when accessed from Scenic Routes under the Development Plan which this development fails to demonstrate.
- The building of a dwelling house on a scenic route would not benefit the rural community.
- The proposed dwelling would break the skyline and would also require a degree of excavation given the gradients of the site.
- The site has been chosen not to avoid a visually prominent location but chosen for its visibility over a very long distance.
- The Development Plan requires avoidance of visually prominent locations.
- The embankments are visually intrusive insertions into its landscape setting and are not just visible from the public road but also for miles around including from Gallow's Hill Monument Site. It is also not accepted that they meet their stated aim

of hiding the intended house from view but instead it is considered that they have caused visual and environmental damage to their receiving landscape.

- Concerns are raised that the applicant's agent discounts upward views towards the site from its wider receiving environs.
- This development represents in an extension of ribbon development into one of the last remaining unspoilt sections of this scenic route and therefore a further intrusion on the visual amenity of the area.

Environmental

- The nearby blanket bog is a globally endangered peatland habitat that is protected nationally and at a European level. This application is a continued attack on this endangered habitat that is an environmentally rich hot spot.
- Ireland hosts some of the most unique active raised bog sites in the EU and Objective CDP15.18 of the Development Plan advocates for their protection and enhancement.
- This site consists of the same upland bog/heathland habitat as an extension of the adjacent Woodcock Hill Bog National Heritage Site and is one of the last examples of this habitat left along this Scenic Route.
- The site is located within an area considered to be of high ecological value which this development would destroy.
- Ideally in bogland conditions there are little or no trees, yet the indicated planting includes extensive tree planting including on the embankment for which retention is sought
- No environmental assessment of this or previous developments have been requested.
- This area is valuable nesting for the endangered Woodcock bird species.
- Large areas of the site's blanket bog have been destroyed to create two large embankments.
- The landscaping outcomes of this development would be contrary to the provisions of the Development Plan which provides protection and enhancement of natural

heritage and biodiversity. It would also completely alter the ecological balance of the site.

Visibility from Places/Features of Interest

- The site is visible from Gallows Hill which is of historical national significance.
- Woodcock Hill Bog is a National Heritage Site (S.I. No. 441).
- Cratloe Woods Recreational Park attracts many visitors to the wider area.

Design and Layout

- Concerns are raised in relation to the form, finishes and the overall nature of the proposed dwelling house which is considered would be visually intrusive.

Similar Developments

- Reference is made to what are considered to be similar decided applications.
- Where permissions have been granted for similar developments in the area they were granted under previous Development Plans, or they have been located in designated clusters through to in not as elevated or exposed positions visible from Scenic Routes or within their landscape setting.

Other Matters

- This application relates to the landowners continued attempts to build a house on this site under various guises.
- The Planning Authority in its determination of this application has misunderstood the interplay between new single houses in the countryside within areas of special controls. Alongside sites located in Heritage Landscapes and/or sites that abut Scenic Routes.
- There is limited information provided with this application on the unauthorised development that has been carried out at this site.
- Procedural concerns are raised in relation to the Planning Authority's handling of this application.
- Lack of adequate enforcement action taken by the Planning Authority to date in relation to works carried out on this site.

- A number of additional documents are attached the contents of which I have noted.

7.5. Further Responses

- 7.5.1. The Appellant's further response reiterates many of their issues raised in their submission to the Commission; however, I note the following comments:

Nature of the Appeal

- This appeal raises several planning matters of concern and is therefore not vexatious in its nature.

Development Sought

- Amendments to the driveway would dramatically change the access away and create a more significant impact on the landscape setting.

8.0 Assessment

8.1. Introduction

- 8.1.1. Having inspected the site, had regard to all documentation on file, including the submissions received in relation to this appeal case, through to having had regard to relevant local through to national planning policy provisions as well as guidance I consider that the key issues in this appeal case relate to the Planning Authority's grant of permission for the development set out under Section 2 above. In this regard, both the Third Party Appellant and Third Party Observer object for similar reasons that the development sought under this application fails to accord with the proper planning and sustainable development of the area for this type of development as provided for under the Clare County Development Plan, 2023-2029, in particular in terms of demonstrating a genuine rural need for a dwelling at a site and setting that they contend is highly sensitive to change and forms an extension of bogland/heath land habitat in this area which is critically endangered. Several other matters are also raised by these parties which also require consideration through to the First Party's contention that the appeal is one that is vexatious and therefore should be dismissed by the Commission. I propose to consider the key matters raised in the appeal case under separate broad headings as set out below *de novo*:

- Validity of the Appeal
- Procedural Matters
- Principle of the Development Sought & Planning History
- Compliance with Rural Settlement Policy
- Amenity Impacts
- Drainage
- Access
- Biodiversity
- Other Matters Arising

8.1.2. In addition to the above the matters of 'Appropriate Assessment' and Water Frameworks Directive assessments also require assessment. I therefore refer the Commission to Section 9 and 14 of this report respectively which deals specifically with these matters.

8.1.3. To this I note to the Commission that unsolicited information was provided by the applicant's agent to the Planning Authority on the 8th day of October, 2024. This indicates that reference was made in error to the dwelling being served by public mains water supply when it is instead to be served by the provision of new bord well on site.

8.1.4. Additionally, I note to the Commission that the Planning Authority received the applicant's further information response on the 7th day of February, 2025. This sought to provide clarity that the applicant has no alternative site available to them to meet their rural housing need. No changes were made to the nature, design through to layout of the development sought. My assessment below has had regard to both of these submissions.

8.2. **Validity of the Appeal**

8.2.1. The First Party seeks that the Commission dismiss this appeal under the provisions of Section 138 of the Planning & Development Act, 2000, as amended, on the basis that it is vexatious. The dismissal of this appeal would allow them to implement the Planning Authority's grant of permission, with the additional time burdens arising from this appeal adding significantly to the cost of carrying out this development.

- 8.2.2. The Appellant in their further response received by the Commission rejects that there is any basis to warrant the dismissal of what they counter argue is a validly made appeal that raises several key planning related concerns. They indicate that their appeal is not made with any vexatious and/or frivolous intent by them and they seek that the Commission assess the development sought under this application *de novo*. They also note that their appeal submission raises similar issues to those raised by the Third-Party Observer in their submission to the Commission.
- 8.2.3. Having reviewed the Third-Party appeal submission in detail I recommend that the Commission should not dismiss this appeal case under provisions Section 138 of the said Act, given that it clearly sets out a number of separate substantive planning related concerns in relation to the development sought under this application and the decision reached by the Planning Authority. These planning related concerns include but not limited to:
- Compliance with the Rural Settlement Strategy.
 - Visual Amenity Impact
 - Lack of Capacity of the site and it's setting to absorb this development.
 - Traffic hazard and road safety concerns.
 - Environmental.
 - Biodiversity, Natural Features and Ecological concerns.
 - Potential for the development to give rise to adverse impacts on ground waters.
- 8.2.4. These concerns are substantive planning concerns, and I do not find that there is any substantive basis for the Commission to dismiss this Third-Party appeal under the provisions of Section 138 of the said Act in this case on the basis of this appeal being vexatious in nature.
- 8.2.5. In relation to the other validity concerns that have been raised by Third Parties in this appeal case, I note that the Planning Authority did not raise any validation issues in relation to the subject planning application, site notices or otherwise. The validation of a planning application falls under the remit of the Planning Authority, and I am satisfied that there are no substantive validity issues arising in this subject planning application and that any deficiency in the information provided could be overcome by a request

for further information should the Commission deem this to be appropriate. The provision for this is provided for under Section 131 of the Planning and Development Act 2000 (as amended).

8.3. Procedural Matters

- 8.3.1. Concerns are raised by the Third Parties in this appeal case with regards to the Planning Authority's handling of this planning application. In relation to this concern as said above this appeal case is considered by the Commission *de novo*. That is to say that the Commission considers the proposal having regard to the same planning matters to which a Planning Authority is required to have regard when deciding on a planning application in the first instance. This includes consideration of all submissions on file, all documents on file together with the regard to relevant local through to national planning provisions and guidance, any relevant planning history relating to the site and its setting, and so forth. Further, as part of the preparation of this report I have conducted an inspection of the site and have attached photographs to aid the Commissioners in their determination of this appeal case. I also note for clarity that the Commission does not have an ombudsman role in relation to such concerns.

8.4. Principle of the Development Sought & Planning History

- 8.4.1. I refer the Commission to the planning history of this appeal site which I have set out under Section 4 of this report above. With this including a refusal of permission for a development that sought retention permission for the same earthen embankment and planning permission for the same dwelling house, detached garage and associated sundry works and services under appeal case ABP-314676-22 (P.A. Ref. No. 22628).
- 8.4.2. I therefore note firstly to the Commission that the proposal was considered under the same County Development Plan that is still applicable at the time this report has been prepared. I also note that the variations to it are not of particular relevance to the nature of the development sought under this application and that the only substantive change is the applicant together with changes to higher level planning policy provisions and guidance in the intervening time.

- 8.4.3. To this I note that the Commission in its refusal of permission for the development to which ABP-314676-22 appeal case related to noted that the site was in a Rural Area Under Strong Urban Influence and that it abuts a designated Scenic Route. They also considered that the applicant had not demonstrated an economic or social need for a dwelling house at this type of rural location as provided for under the County Development Plan. They were further not satisfied that the applicant had demonstrated that no alternative sites were available to them and they considered that their need to live in the local rural area could be met at property and/or on lands within their ownership. On this basis the Commission considered that the development would be contrary Objective CDP4.14 of the County Development Plan and in turn National Policy Objective 19 of the National Planning Framework (Note: I refer to Section 5 of this report above which sets out relevant planning context). The refusal concludes that the development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 8.4.4. Having regards to the principle of the development sought under this application I consider it is incumbent upon the applicant to demonstrate that she firstly meets the relevant requirements for a dwelling house at this rural highly sensitive to change rural location as provided for particularly under the County Development Plan.
- 8.4.5. I am also cognisant that since the Commission made its determination on appeal case ABP-314676-22 local, regional through to national planning policy provisions and guidance have evolved. With these changes in part seeking to achieve more climate resilient and sustainable development through to providing increased protection for biodiversity, environment, waterbodies and so forth particularly at national level. In terms of housing, particularly at regional and national level the changes also seek to limit rural housing to those with genuine economic and/or social need as well as strengthen the urban fabric and role of settlements servicing hinterlands, channelling housing needs to existing serviced settlements as part of their consolidation, the protection of the finite resources of resources of rural areas from haphazard through to car dependent housing patterns on unzoned unserviced rural locations to settlements that contain synergistic to residential development land uses, amenities, services and the like.
- 8.4.6. I therefore consider that the general principle of the development sought under this application is one that should be considered on its merits against relevant local through

to national planning provisions as well as guidance, with also regard had to the capacity of this landscape to absorb the nature of the development sought without any undue amenity or other adverse impacts. These matters are considered in more detail in the following sections of this assessment.

8.5. Compliance with Rural Settlement Policy

- 8.5.1. The Third Parties in this case raise concerns that the applicant does not have a genuine rural housing need for a dwelling house at this rural location in a manner that accords with the County Development Plans rural settlement strategy which they note seeks to strictly limit this type of development at this type of rural location. To this I note to the Commission that I have provided a summary of the development sought under this subject planning application under Section 2 of this report above. In summary it consists of a proposed construction of a detached dwelling house, garage together with all associated works retention permission for a raised and planted embankment.
- 8.5.2. The documentation provided with this file indicates the applicant has the consent of the landowner to the making of this application and that the landowner previously sought permission for the same development which was subject to ABP-314676-22. It is contended that the applicant will be gifted the site upon obtaining a grant of permission for the development sought under this application.
- 8.5.3. The documentation indicates that the does not have an economic need to reside in the rural locality of the site but rather her requirement for a dwelling house at this rural site is a social need by virtue of her health circumstances. It indicates that the applicant was raised, lives and has lived in the family home in the Townland of Meelick, which is given a distance by public road of c4.8km from the site. It is contended that this is her parents' home and that she has profound lifelong disabilities for which she requires care, with that care provided by her parents. It is contended that her parents are not in any position going forward to provide the care she requires due to their age and that she needs a home of her own with this dwelling being designed to be suitable to meet her medical needs as well as allow for live in carers. On the basis of her exceptional medical and health requirements it is indicated that she urgently requires a home for her own independent living.

- 8.5.4. The site is one that is identified as being a Rural Areas Under Strong Urban Influence under the County Development Plan and under the Sustainable Rural Housing Development Guidelines Section 3.2 describes areas such areas as exhibiting: *“characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network”*. Chapter 4 of the County Development Plan correlates with this description similar recognising proximity to large settlements through to major transport corridors.
- 8.5.5. This appeal site is located c3km to the centre of Cratloe and c14km by road to the north west of centre of Limerick City. It is also located just over c2km to the north of the N18 and c5km to the eastern outskirts of Shannon as the bird would fly. The site forms part of a rural unzoned and unserviced landscape that contains a proliferation of one-off dwelling houses as well as a few farmsteads connected by a network of mainly modest in nature and design substandard local roads.
- 8.5.6. I am satisfied that this rural site is one that forms part of a rural area that is under significant pressure for one-off dwellings given its proximity to larger settlements of Shannon, Limerick and its proximity to the N18 which also provides good connectivity to the surrounding region including but not limited to employment opportunities.
- 8.5.7. Chapter 4 sets out that in such areas that the key objectives of the Council are in such rural localities to: *“a) To facilitate the genuine housing requirements of persons with a demonstrable economic or social need to live in these rural areas” and “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”*.
- 8.5.8. This objective is further added to by the County Development Plan recognising that there is limited capacity to accommodate housing in sensitive scenic areas including of particular relevance to this site is that it is dependent upon access to the local road of Gallows Hill Road. This is a designated Scenic Route under the County Development Plan which also indicates that these routes must be afforded adequate

protection. The County Development Plan also indicates that in these areas the objective of the Council is to facilitate rural-generated housing subject to having regard to normal site suitability and technical requirements.

8.5.9. Against this context Objective CDP 4.14 of the County Development Plan is in my view a relevant consideration given that this objective is applicable to applications for a rural dwelling on lands that are designated as being under strong urban influence and accessed from a Scenic Route. As said, this is the circumstance of this appeal site. This objective sets out that the Council will permit a new single house for the permanent occupation of an applicant who meets the necessary criteria as set out in Category A or Category B.

8.5.10. In this regard Category A is not a relevant consideration on the basis that the documentation provided with this planning application indicate that the applicant is not one that could be defined as persons who by the nature of their work have a demonstrable economic need to reside permanently in the rural area close to their place of work. Instead, the documentation indicates that the applicant is compliant with Category B (ii).

8.5.11. Category B in general relates to 'social need' with subsection (ii) stating that: "*special consideration shall be given in limited cases for persons who need a dwelling for permanent occupation in a rural area for exceptional health reasons*".

8.5.12. The documentation indicates that the applicant suffers from a wide range of medical disabilities for which I have noted, and I refer the Commission to the supporting documentation provided on file. It is indicated that she desires independent living in a home close to her parents and siblings who are involved in meeting her care needs. Reference is made to the applicant's parents' home and to one sibling being involved directly as well as indirectly in her care with the level of support the applicant requires contended to be profound and wide ranging in its scope/care needs.

8.5.13. The documentation indicates that appeal site would be 4.8km by road from her parents' home. Google maps indicate that this shortest and quickest route would be a 12-minute journey by road. I additionally note that the quickest route but not the shortest route from the site to the applicant's sibling involved in her care is 16.2km and 24minutes by road. There are marginally shorter routes between the two destinations, however, the journey times according to google maps are longer. The journey times

appear to reflect that the main journey between applicants' parents' home and the sibling involved in her care are mainly via local roads which I observed in journeying to and from the site are not designed to cater for large volumes of car or journeys of any significant speed. I also note that recent changes to such roads have reduced their speed limits to 60kmph.

- 8.5.14. The documentation submitted with this application contends that the proposed house was designed to meet the accommodation needs of her carer at the time the previous application was made. At the time ABP-314676-22 was made it is indicated that the care was provided by the applicant's brother who is the owner of the site and the adjoining blue lined area to the rear of it.
- 8.5.15. The house though the same is now indicated to be designed as being for the sole and permanent residence of the applicant who suffers from profound wide-ranging disabilities with her being a service user of Rehab Day Care in Limerick, she attends occasional respite care, and she often stays overnight/weekends with her brother to give her parents a break. It is contended that it is designed to allow for carers of the applicant to live in.
- 8.5.16. It is contended in the accompanying documentation that this site is the only parcel of her brother's landholding that is not being farmed and as such it is suitable for the provision of a dwelling house. It is argued that if another site was to be chosen on the applicant's brother's landholding that this would set aside a significant portion of land from being farmed to make it suitable location to meet the applicants needs which indicated to include but not be limited to smell and noise sensitivities. On this point they indicate that this would sterilise a radius of 400meters from such a site being farmed which would in turn reduce her brother's productive area of farmland considerably. The justification of a 400meter radius is not provided or indeed any design measures that could be employed in the design of an independent dwelling for the applicant to attenuate noise and smells which may be a source of concern for managing the applicant's health.
- 8.5.17. The Planning Authority on foot of requesting clarity as to whether there was an alternative site available to the applicant was satisfied that the applicant was one that satisfied the requirements for a rural dwelling house under Category B(ii); however, I raise a number of concerns which I propose to now consider.

- 8.5.18. The information provided with this application and in response to this appeal appear to suggest that the applicant has significant health and care needs, with this including help to perform basic day to day tasks, mobility, memory, sensory issues and the like. The house is one that is designed as four-bedroom dwelling house with a snug/playroom that could be due to its dimensions cater as another two-bedspace room is one that is designed as part single and part two storey. It includes no significant adaptations that would appear to be informed by the applicant's health circumstances or indeed future proofing should her health further deteriorate. The two level dwelling is isolated, remote from family members and independent living appears to be dependent on carers. Its bathrooms do not appear to be designed for a person with mobility issues through to the most rooms outside of the combined living and kitchen space are accessible from standard in width doors.
- 8.5.19. Additionally access to the site is via a steep access road and the site itself is steeply sloping with the house sited at a point in its landscape setting where it is unclear what level of recontouring would be provided to provide useable safe outdoor space to meet the applicant and other occupants needs.
- 8.5.20. Furthermore, the site is remote from family members who are indicated to be involved in her care, it is remote from services that the applicant is indicated to require including day care. With access to the site via a steeply sloped gradient entrance and access driveway.
- 8.5.21. I do not accept that the site is one that is in proximity to the applicant's family even if her future care needs would involve a greater reliance on live in carers as opposed to the current care needs being met by her parents and sibling. It is also not a location that is close to the range of different services through to activities she is indicated to require and be involved in.
- 8.5.22. I am also not satisfied that the provision of a suitable independent living for the applicant is one that would require the sterilisation of farm land within 400m of it. This is not the case in location to her family home which forms part of a farmed landscape despite the strong proliferation of one-off dwellings in the immediate vicinity of it. There is also farm buildings within c165m to the north of this dwelling, with the land to the immediate rear of dwellings including the applicant's family home consisting of farmed land including keeping of animals through to forestry lands in the backdrop. Indeed,

the land to the north and south of the red line and blue line area of the site includes farmed land that is within c50m of the proposed dwelling with this land including pastureland that is outside of the applicant's ownership, the landowner of this site's and would appear to relate to Third Party lands not in family ownership land. As such the farming activities and/or works on these lands are outside of the applicant's control.

8.5.23. I do not accept on the basis of the information provided that the applicants need cannot be met on family lands or other suitable sites preferably serviced zoned sites that would be less remote to meet her day to day living requirements. I also note that there are many design measures that can be employed within the design of an independent living unit for persons who have particular medical and health needs.

8.5.24. I am cognisant that Objective CDP4.14 requires this social need to be an exceptional health circumstance which include demonstrating why their need for a house cannot be accommodated either in an existing settlement or in the countryside outside of the Areas of Special Control. I consider that the information provided with this application fails to demonstrate why the applicants need cannot be accommodated either in an existing settlement or on lands outside of an Area of Special Control. Further, the information provided with this planning application through to with the applicant's response to the grounds of this appeal do not provide any robust demonstration either as to why there is no alternative site available to them including a site that is one that is closer to family and her day to day living requirements including the day care she attends.

8.5.25. Conclusion:

I am not satisfied that it has been demonstrated that the applicant is compliant with Objective CDP 4.14 of the County Development Plan. Compliance with this objective is part of the requirement for a dwelling house on lands under strong urban influence and is sites access from scenic routes. This is particularly on the basis that the applicant has not demonstrated that their need for a house cannot be accommodated either in an existing settlement or in the countryside outside of the Areas of Special Control or that their need for a permanent occupation in this rural area is supported by their exceptional health circumstances. I also consider having regard to the policy objectives of the NPF and RSES that the social need to reside in a specific rural area must be demonstrable and, in this case, there is no demonstrable economic or social

need for the applicant to require a house for their permanent occupation in this rural area. In this context this development would militate against the protection of this rural locality in a manner that would be contrary to the proper planning and sustainable development of the area.

8.6. Amenity Impacts (Residential and Visual)

- 8.6.1. In relation to residential amenity impacts arising from the development sought under this application, I consider that the lateral separation distance between the proposed dwelling and the driveway serving it whilst resulting in a change in context for the adjoining property to the south would not be such that it would give rise to undue serious residential disamenity given the lateral separation distances involved. I also note that no substantive issues have been raised by Third Parties in relation to adverse residential amenity impacts on this property. It does however raise concerns that this development would generate additional unnecessary traffic movements onto a substandard local road served by a substandard access. A matter that is discussed separately in my assessment below.
- 8.6.2. My substantive concern in relation to this appeal case relates to the potential of the development sought to give rise to adverse visual impacts. This is based on the significantly elevated nature of the site relative to its surrounding setting together with the site's main area being exposed and visible from a significant distance.
- 8.6.3. In relation to the visual impact, it is of relevance to have regard to the fact that the site forms part of the Western Corridor Working Landscape. This is due to its proximity to the N18 and the fact that the immediate site and its environs are excluded from a specific designated Heritage Landscape.
- 8.6.4. To this I note that Section 4.2.6 of the County Development Plan indicates that rural dwellings in this landscape character area is firstly subject to the demonstration that no alternative sites are available in the Settled Landscapes. As concluded upon in the previous section of this assessment I am not satisfied based on the information before me that this has been demonstrated with any evidence based certainty.
- 8.6.5. To this I note that under Objective CDP14.3 of the County Development Plan, developments in this type of landscape area are sought to: a) sustain economic activity, 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. In this case the development sought while meeting a desire of the applicant for a rural dwelling at this location as opposed to a genuine need for a dwelling house at this rural location would not sustain economic activity of this rural locality. Arguably it would generate additional traffic on a local road network that due to its substandard nature has limited capacity to absorb additional traffic generating development. The site is also on one of the local roads providing a route to Gallows Hill lookout point and memorial.

8.6.6. I also note compliance concerns in relation to other subsections of Objective CDP14.3 County Development Plan which I propose to consider in turn as follows:

8.6.7. *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.*

The site one that is highly visible with the dwelling located within this site on elevated ground levels. This is firstly reflected in the significant difference in ground level between the roadside boundary which at its lowest point is given to be 155.33m OD and at its highest point 188m OD. I do raise it as a concern that the topography is noted to raise to higher m ODs in the previous application yet the site and the development for which permission is sought has remained unchanged. This is given to be based on a new topographical survey.

Based on the contours indicated with this current application the difference is 32.67m. In relation to the proposed embankment this is positioned along the north-eastern boundary of the site.

Its height is indicated as being 2.7m to 3m above the contours upon which its placed with the lowest contour being 165 OD at its lowest point and the highest contour being 183m OD and with a length of c73m.

Additionally, this embankment appears to be setback c25m from the roadside boundary and less than a meter from the rear boundary with the roadside boundaries appearing to have been augmented. In relation to the scenic route to the north of it, I observed that it undulates in its vertical alignment but at a distance of c100m to the north its revised contours are given as c165.57m OD. There are no comparative topographical levels given for the adjoining lands to the north, east and west of the site

however, this embankment is a significant uncharacteristic linear modification to the contours of the site in a manner that is in part visible from the scenic route, with this visibility added to by the uncharacteristic vegetation that has the appearance of a raised bogland site setting.

In relation to the dwelling house, it is proposed to site the dwelling at a point where it would be setback c58.8m from the roadside boundary between the contour lines of c171m OD and c174m OD (Note: finished floor level of c170 m OD). This dwelling would be accessed from a sweeping entrance onto the scenic route where at its lowest point it would meet the public road at c155.78m OD to c157m OD. This driveway would curve through the south western portion of the setback area until it reaches and runs alongside the northern side elevation of the dwelling alongside the proposed garage at c172m OD/c173m OD. A change in ground levels of c17m. It is of note the level of excavation required to provide safe access gradients onto the public road as well as in terms of the driveway itself are not indicated in the drawings provided with the driveway simply overlaid onto the contour levels.

To this the proposed dwelling house would have a maximum ridge height of c6.6m and garage structure would have a ridge height of c5.7m. To this I note that the dwelling would have a principal elevation with a length of c21.5m with the garage positioned to its northern side with a given 5m separation.

I note that the elevated nature of the site relative to that of the adjoining dwelling to the south is also not clearly indicated in the drawings submitted.

I am not satisfied that the development sought under this application whether in terms for what retention permission is sought or for which planning permission is proposed is one that seeks to minimise visual impact either in terms of the immediate site itself or in terms of the scenic route of Gallows Hill Road, from which these elements are and would be visible from.

Moreover, whilst being modest in its height the placement of a two-storey dwelling of this built form, garage, access road and embankment would result in undue visual intrusion on its visually sensitive to change setting in a manner that would be inconsistent with subsection b) of Objective CDP14.3 of the County Development Plan. With the site sections not seeking to make clear other aspects of views through the site from which the proposed dwelling, garage and embankment would not be sited

into a slope as observed particularly in a northerly and southerly direction towards the site.

8.6.8. *“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.”*

I refer the Commission to my previous comments in that I am not satisfied that the site is one that has been selected by the applicant to avoid visual prominence and that the placement of the dwelling on site is one that seeks to limit its visibility. Particular when viewed from the Scenic Route that would serve it and from features of merit, natural and built in its setting. As opposed to ensuring maximum views out over the wider landscape for the dwelling house and its sundry spaces around it.

Also, the provision of a driveway through this elevated site and the significant linear embankment are further visually unduly intrusive additions into this landscape setting. They add further concerns that this development is not one that seeks to reduce its visibility or limit its visual impact on its setting.

To this I also consider that the provision of a section from the roadside through the proposed dwelling to the rear of the site is not sufficient to demonstrate the high visibility of its placement relative to the lands to the north and south of the site. I also observed that the ground levels significantly fall away from the scenic route in a westerly direction.

Because of these considerations, I am not satisfied that the applicant has demonstrated compliance with subsection b) of Objective CDP14.3 of the County Development Plan.

- 8.6.9. The County Development Plan also indicates that applications for a rural house will have regard to the Clare Rural House Design Guide, under which I note that the site is in the landscape type 'The Shannon Estuary and Fergus Floodplains'.
- 8.6.10. Of concern it indicates that rural buildings within this landscape type would like traditional rural dwellings throughout the country rarely be located in an elevated and exposed location. It indicates that new houses should be designed to harmonise and work with existing contours avoiding dramatic cutting and filling into hills which can leave the landscape scarred.
- 8.6.11. Of concern the sections show that the siting of the dwelling and the garage would require excavation of ground levels between and below 170m OD to 170m OD to accommodate them and their foundations. They do not as said clarify the excavation associated with the driveway and at the roadside entrance. They also do not clarify those involved with providing the proprietary waste water treatment system, percolation or well to serve the proposed dwelling.
- 8.6.12. Of further concern the sections seek to show that the embankment has been provided as visual planted buffer to the north of the dwelling, its associated structures and spaces. There are no proposed changes to this embankment sought under this application to reduce its visual incongruity when observed in its setting.
- 8.6.13. The documentation provided also do not clarify any changes in ground levels for private amenity space to serve this dwelling or any other sundry green spaces that may be provided for use of future residents, including those that would be accessible to the applicant who is indicated to have amongst her disabilities limited mobility.
- 8.6.14. The siting concerns are further added to by the said Design Guide that advocates sheltered sites through to orientating the building to maximise shelter, direct sunlight and natural warmth. The placement and orientation of the dwelling does not seek to achieve this but due to its exposed location it is likely to achieve good direct sunlight into its interior space but if the private amenity space is limited to the area excavated to the rear this space may be one that is overshadowed for parts of the day.
- 8.6.15. In relation to the embankment, I also raise concerns that this is not consistent with the boundary treatments set out in the said Design Guide with these showing raised banks being common within Clare but that these often incorporate drainage, sod, including stone that provided shelter but not of such significant size, extent and nature. The

embankment as constructed is not one that has been designed to provide in tandem drainage or shelter but rather appears to be a visual augmentation of the site to visually buffer the proposed dwelling and its associated site. As a boundary treatment it is excessive and not visually sympathetic to traditional treatment of boundaries within its rural landscape setting. Nor is it sensitive to the natural shape and profile of the fall of grounds associated with the hillside of Woodcock Hill which it forms part of and its exposed bogland and heathland habitat where the shape and profile of this hill is visible from significant distances.

- 8.6.16. I am therefore not satisfied that the siting of this dwelling is one that accords with the said Design Guide for rural dwelling houses. Additionally, I am not satisfied that there is sufficient clarity provided on as said the entrance onto the local road, its associated detailing, the driveway through to the sundry green spaces within the remainder of the site. Furthermore, I also consider that the embankment is a feature that reflects the inappropriateness siting of the proposed dwelling on what is a highly elevated and visually sensitive landscape setting.
- 8.6.17. To this I note that the County Development Plan in relation to the Shannon Estuary landscape character area which under Objective CDP 14.4 similarly seeks that appropriate sites are selected in the first instance that seek to void visual prominence wherever feasible. This objective also seeks to reduce visibility from scenic route, that developments avoid being visually intrusive on scenic routes and on ridgelines and requires any works associated with a development to reduce visual impact. I therefore consider that the concerns raised in relation to compliance with Objective CDP 14.3 above are also relevant in terms of this developments lack of consistency with the requirements of Objective CDP 14.4 of the County Development Plan and do not need to be reiterated.
- 8.6.18. Conclusion: I am not satisfied that the retention of the embankment sought or the proposed dwelling together with its associated works is a development that has sought to reduce its visual impact in a manner that is consistent with Objective CDP 14.3 and Objective CDP 14.14 of the Development Plan. I am also not satisfied that the development sought under this application is one that would not be visually intrusive and detrimental to visual amenities of the area and if permitted could give rise to an undesirable precedent for other similar developments which cumulatively together with

the proliferation of one off dwellings would further erode the positive visual qualities, character and sense of place of this rural locality.

8.7. Drainage

- 8.7.1. The County Development Plan also requires regard to be had to environmental matters as part of the consideration for a rural house. Of concern the Site Characterisation Report indicates that the soil is Peat – Aughty Cutover and that the aquifer at this location is locally important as well as has its vulnerability is indicated as extreme. It also indicates that the site is located in a Groundwater Protection Scheme with a groundwater protection response of R2¹, with past experience of the areas described as free draining soils with good percolation in limited areas.
- 8.7.2. In further comments it indicates that there is no well proposed for the site and the potential target at risk is surface water as the soil type is peat which suggests poor draining with poor percolation. Otherwise, it indicates that there are no other restrictions and that subject to normal good practices with 1.2m of unsaturated, suitable soil beneath the invert of the percolation trench for a septic tank system or 0.9m for an advanced system.
- 8.7.3. In relation to the on-site assessment it is indicated that the site looks suitable for the treatment and disposal of wastewater in the percolation area that is positioned to the west of the proposed dwelling, with target at risk being ground water. It indicates in contradiction to what was set out in Section 2 that a well is proposed and that this would be located 62m away to the west and would be up-gradient from the percolation area. It also indicates a slope of 1:20 in terms of gradient, that groundwater flow direction is to the north, with no surface ponding and the ground condition being dry and firm in the percolation area, with Balliotlea Lough within 500m as well as a small stream within 200m. To this I note that the applicant's further information suggests that percolation would be provided at a gradient that would accord with the relevant current EPA Code of Practice (Note: 1.9.575).
- 8.7.4. Section 3.2 of the report indicates that a trial hole indicates suitable soil to the depth of 2m with the water table encountered in the trial hole. An average T:test of 16.94 was obtained. The comments indicate that the T:Test was carried out in the gravely sandy silt as this was the layer that would be used for the treatment of the wastewater.

- 8.7.5. This report concludes that the site is suitable for a secondary treatment system with discharge to ground water.
- 8.7.6. Of concern the final comments indicate that the percolation bed is designed to be compliance with EPA Guidelines, 2009, yet these have been superseded by the EPA Code of Practice for Domestic Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10), 2021, with these therefore setting out the applicable standards for such systems. It is therefore of relevance that Objective CDP 11.32 (g) of the County Development Plan indicates that single dwelling houses in an unserved areas will only be permitted where it is demonstrated to the satisfaction of the Planning Authority that the proposed wastewater treatment system is in accordance with the Code of Practice for Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), EPA (2021). I consider that the documentation provided with this application does not demonstrate this.
- 8.7.7. Of further concern the details indicate that: *“although the site is suitable for a septic tank system it is proposed to install a mechanical aeration units as the site is on sloping ground and the construction of a large percolation area required for a septic tank would be difficult to construct”*. It is also indicated that the percolation area is to be constructed where the ground conditions are poorer and as such the grounds will be levelled to 170.8m OD and a 500mm layer of 32mm clean stone laid over the entire percolation area with the percolation pipes incorporated in the layer and covered with a geotextile layer that would be covered with 300mm of soil. It would appear that the ground level differences is c171m OD on the western end and 173m OD on the northern end. The percolation area together with the mechanical aeration unit is only designed for a population equivalent of 6, yet the ground and first floor indicate that it would be 8 bed space dwelling house. With this excluding the concerns for the playroom/snug if this room was used as a bedroom.
- 8.7.8. I therefore have concerns in relation to the limited capacity of the proposed waste water treatment together with the lack of any indication that there are no specific measures to divert grey water from the proposed waste water treatment system as part of reducing its drainage loads for treatment on site that that is heavily sloped and with high ground and surface water vulnerability.

- 8.7.9. To this I also note that the site is one that contains stone outcropping, rutting/drainage routes within the site area, reeds and other water loving plants. Additionally, the embankment is one that has not been designed to incorporate a drainage ditch yet as a linear embankment it potentially diverts the natural flow of water which is given to have a northerly flow.
- 8.7.10. Of further concern at the time of inspection there was fast flowing water in the overgrown ditch. It is not clear if this is the small stream referred to and this is not apparent in the information provided. Moreover, the ground water at this location is designated as one that is at approved risk under the Water Framework Directive.
- 8.7.11. On this point I note that Objectives CDP 11.26 and CDP 12.5 of the County Development Plan indicates that the Council shall accord with the Water Framework Directive which in general seeks to protecting water based on natural geographical formations including groundwaters and to achieve a healthy state, or what's known as 'good ecological status' which includes but is not limited to preventing a further deterioration in water quality.
- 8.7.12. To this I also note that Section 11.3.3 of the County Development Plan indicates that County Clare Groundwater Protection Scheme classifies most Clare's ground waters as having 'Extreme Vulnerability'. This I note is indicated to be the case for this site and with Objective CDP 11.27 of the County Development Plan indicating 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.
- 8.7.13. I am not satisfied that the applicant has provided adequate information on the location of the waste water treatment system relative to the adjoining property to the south, in an area where there is no public potable water supply.
- 8.7.14. Further there are detached dwelling houses downslope of the site to the west of Gallows Hill Road which provides sole access to this site. I am also not satisfied that this overall proposal even though the location of the proposed dwelling is located uphill of the proposed water treatment is one that would not pose a risk to the quality of the underlying groundwater. I note Objective CDP 11.27 (d) of the County Development

Plan indicates that where this is not demonstrated development will not be considered and on the basis of the information provided.

8.7.15. Moreover, I consider that having inspected the site that the findings in the Site Characterisation Report are not reflective of the main characteristics of this site and that the ground conditions through to the water table levels are like to reflect much poorer ground conditions including a higher water table that is also reflective of this site's steep gradient. I therefore raise a concern given that the percolation area appears to be undersized for this dwelling's occupation alongside no climate resilient measures appears to be employed as said for reutilising grey water to reduce discharge treatment load.

8.7.16. Conclusion: On the basis of the above I am not satisfied on the information provided on file together with the vulnerability of the ground and surface water at this location to pollution arising from the provision of a waste water treatment system to serve this proposed dwelling which would be not only has the potential to be prejudicial to health in a locality with no public through to group scheme potable water supply but also at a location where ground waters are extremely vulnerable to pollution as well as identified as at WFD risk. Any pollution arising from this site treatment of foul waste water could prevent achieving the restoration of good ecological status of the aquifer at this location. For these reasons the development sought under this application would be contrary to County Development Plan provisions highlighted above. In particular Objective CDP 11.26, CDP 11.27 and CDP 12.5.

8.8. Access

8.8.1. I am not satisfied on the basis of the information that the applicant has demonstrated a safe access and egress onto the local road which is restricted in its width in the absence of more significant changes to the gradient and alignment of the roadside boundary above that indicated. To this I am also not satisfied that the applicant has provided a suitable gradient within the entrance for vehicles to dwell whilst checking their sightlines to the north and south of the entrance given the significant change in gradient.

8.8.2. Further, I am not satisfied on the basis of the information provided and having inspected the site that the information provided on the entrance treatment is sufficient

or that further loss of roadside boundary to achieve appropriate sightlines particularly in a southerly direction can be achieved. On this point I observed that sightlines in both directions were obstructed by the roadside boundary albeit the modest level of traffic journeying along this road during the time of inspection it is nonetheless substandard in width and any obstruction or conflict that could arise from vehicle movements could give rise to a road safety and traffic hazard issue for other road users.

- 8.8.3. Additionally the details of the new entrance treatment to serve the dwelling house proposed is not adequately detailed and as such whilst the drawings appear to suggest the retention of the roadside boundary on either side of the modified existing entrance it fails to demonstrate how it would accord with Clare's Rural Design Guide boundary and entrance details which is a design consideration for this type of development as set out under Section 4.2.6 of the County Development Plan.
- 8.8.4. In relation to the driveway, I share the gradient concerns raised by the Third Parties in the appeal case and I am not satisfied that additional recontouring of the ground would not be required to provide safe access and egress particularly of vehicles along it. I also consider that there is merit to this driveway being redesigned to include a rest level midway, with this provision also likely to require additional recontouring and/or regrading of this site's levels, shape and profile.
- 8.8.5. Should the Commission be minded to grant permission for the development sought under this application I recommend that it first seek further information under Section 131 provisions or include suitable conditions to deal with the concerns raised. In the absence of any amendments I am not satisfied that this development would not give rise to road safety and traffic hazard issues for road users through to that the design of the entrance and driveway provides safe access for the proposed dwelling sought under this application. To this I also consider that this development would be heavily car dependent and is a development for which it has not been demonstrated that there is any genuine requirement for a rural dwelling at this location. In these circumstances the development sought under this application would generate additional traffic on a substandard network of local roads, including Gallows Hill Road, which whilst modest during operational phase would notwithstanding undermine their efficiency through to their capacity to absorb developments with a genuine requirement to be located in this rural locality.

8.9. Biodiversity

- 8.9.1. The Appellant and Third-Party Observer in this appeal case raise a number of biodiversity concerns in relation to the development sought under this application. These concerns relate to the works that have been carried out on this site together with the potential impacts of the development sought under this application to give rise to additional loss of biodiversity from a site that they indicate forms part of an upland bog land and heath habitat, with this extending to Natural Heritage Areas: Woodcock Hill Bog NHA (Site Code: 002402).
- 8.9.2. The site is not subject to any specific protection for biodiversity in terms of its habitat or the species it contains. It is located at lateral separation distance of c1.2km to the west of Natural Heritage Area: Woodcock Hill Bog NHA (Site Code: 002402), and at further distance it is located c2.1km to the north of proposed Natural Heritage Areas: Garrannon Wood, respectively, with greater lateral separation distance between it and Natura 2000 sites. I consider that this is a significant lateral separation distance between the nearest Natura Heritage Sites; however, I note that the qualifying interest for Woodcock Hill Bog NHA is given as 'Peatlands' and the site forms part of a hillside slope of Woodcock Hill.
- 8.9.3. Additionally, I note that the site synopsis for this NHA indicates that it is an area of upland blanket bog and heath. It also indicates that it contains the rounded summit of Woodcock Hill and its south-western and south-eastern slopes as well as that it is a site of considerable conservation significance comprising upland blanket bog and wet heath. I acknowledge that blanket bog habitat is a globally scarce resource and its role as a carbon sink is becoming more widely acknowledged in a time of significant climate change concerns.
- 8.9.4. To this I note that on site there are examples of plant species through to peat ground conditions that correlate with that of this NHA though in a more degraded condition. Nonetheless in terms of species the sites peat, boggy through to stone outcrops with runnels supports a number of those similar to that found in the Woodcock Hill Bog NHA including sphagnum moses, cross-leaved heath and sharp flowered rushes. It therefore cannot be excluded in my view that the protected Woodcock bird species could not be found utilising this site for either feeding or roosting given the ground conditions, ground cover and relatively undisturbed from human activities with this

being a type of habitat associated with it. There is a lack of clarity in my view on the matter of whether that this site may be an *ex-situ* site for this red listed bird species that is recognised as being in decline. I did not observe any presence of this bird species or indeed any birds on this site during my inspection.

8.9.5. Should the Commission be minded to grant permission for the development sought under this application it could first seek as a precaution clarity on whether or not that this is an *ex-situ* feeding site and/or whether it is otherwise used by this bird species under the provisions set out under Section 131 of the Planning and Development Act, 2000, (as amended). Such clarity should in my considered opinion include clarification that the embankment works did not give rise to any undue adverse impact on this red listed protected bird and whether mitigation measures should be implemented during the construction and operational phases to ensure no undue impact arises to the local Woodcock bird population.

8.9.6. In relation to potential impact on other protected species having inspected the site I consider that there may be potential for bats to feed in this locality, but the site is such that it is unlikely to contain roosts with a number of semi-mature including more recently planted trees but no significant mature trees present. The development sought under this application could, given the changes that it proposes by way of the construction and operational phase, result in some diminishment to the local bat population feeding habitats in this locality. The extent of which is unclear on the basis of the information provided.

8.9.7. My final comment is that I did not observe any invasive species during my inspection of this site and that the main area of the site in which the dwelling is to be sited and to the rear as well as to the east has the characteristics of an upper bogland and heathland habitat with plant covering adapted to the limited ground cover, the raised and outcropping of bedrock through to the mainly saturated ground conditions throughout the year.

8.9.8. Conclusion:

While I accept that the development for which retention permission and planning permission is sought would significantly change this site in terms of its contribution to local biodiversity and ecology. With this in turn diminishing the contribution of this site as observed from the scenic route, including from heritage landscapes to the west and

within its landscape area as it positively contributes to the open, elevated nature and undeveloped by buildings rural setting. Notwithstanding, I do not consider that there is any substantive basis to refuse permission based on biodiversity, natural feature through to ecological potential impacts of the development sought under this application.

However, in saying this I do not consider this to be a sustainable and/or climate resilient location for a rural dwelling house at this unserviced highly sensitive to change location.

I also raise concerns that this car dependent development is one that is inconsistent with protecting the rural landscape and channelling dwellings to more sustainable serviced locations in a manner that is also consistent with local through to national planning provisions and guidance. With this including but not limited to the Climate Action Plan (2024 to 2025) and the National Biodiversity Action Plan, 2023-2030. With the design not seeking to settle and limit the level of change on site where the ground levels are lower, where the land is not as visually sensitive and to where there is less need for an extensive in length driveway required to serve the dwelling house, garage and its associated structures as well as spaces. By not doing so this proposal would in my considered opinion give rise to a greater destruction of biodiversity on this site.

In relation to the Climate Action Plan, I note that this deals with the transition to a climate resilient, biodiversity rich, environmentally sustainable and climate neutral economy. It also aligns with the legally binding economy-wide carbon budgets and sectoral emissions ceilings that were agreed by Government in July 2022. Additionally in relation to the National Biodiversity Action Plan, I note that it strives for a “whole of government, whole of society” approach to the governance and conservation of biodiversity. The aim is to ensure awareness of biodiversity, its importance, and of the implications of its loss to all while also understanding how to address the biodiversity emergency as part of a renewed national effort to “act for nature”. The remote location outside of settlement and services through to the heavy reliance on private car use by occupants living in this dwelling house does not align with these approaches to achieving a proper planning and sustainable climate resilient development outcome.

8.10. Other Matters Arising

8.10.1. **Unauthorised Development:** Third Parties in this appeal case raise concerns in relation to development that has been carried out on site which extend beyond that which appears to extend beyond that applied for under the development in relation to augmentation of ground levels that include the creation of another larger earthen embankment and the removal of upland blanket bog. In part these works were subject to a Section 5 Referral (Note: P.A. Ref. No. R22-22) with the question of pre-planning construction works at this site determined as constituting development and is not exempted development as defined under the Planning & Development Act, 2000, as amended, and associated Planning & Development Regulations, 2001, as amended.

The matter of any unauthorised works that have occurred on site and being works that are not included in the public notice description of the development are outside of the Commission's remit in its determination of this appeal case.

For clarity I note that the nature of the development sought under this application consists of the embankment along the eastern boundary of the site together with the ground works associated with the provision of the dwelling, garage, waste water treatment, soakaway, entrance, driveway landscaping and all associated sundry works as indicated in the accompanying documentation.

Consequently, the issues raised in the appeal submissions regarding the status of other embankment works through to modifications to the contours of the site and the like are not a matter for the Commission to consider in this appeal, with the only unauthorised works relating to the linear raised earthen and proposed to be planted embankment.

8.10.2. **Potable Water Supply:** The applicant has not demonstrated that this site can provide a safe and sustainable potable water supply to meet the needs of future occupants of this dwelling and that the Planning Authority considered that this could be overcome by way of condition. However, I note that Section 11.3.3 of the County Development Plan which deals with the matter of water resources states that: *"unpolluted water resources are essential to human health, reliable water supply and the protection of habitats and species of importance in the county"*. It further notes that: *"the County Clare Groundwater Protection Scheme classifies the majority of Clare's ground waters*

as having 'Extreme Vulnerability'. The Groundwater Protection Scheme has been incorporated into the River Basin Management Plan for Ireland".

Against this context I note that Objective CDP 11.27 subsection (d) sets out that the Council will seek: *"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".*

I consider that this has not been demonstrated by the applicant have they demonstrated that the site is suitable to achieve a safe and sustainable water supply given the extreme vulnerability of the aquifer upon which it would be dependent against a context where the groundwater at this location is deemed to be at risk.

I am not satisfied that the development sought under this application is one that would have access to a safe and sustainable potable water source or that the foul drainage provisions for the proposed dwelling are such that they would not give rise to any further deterioration of groundwater at this location when taken cumulatively together with farming activities and the proliferation of rural one-off dwellings.

8.10.3. **Access to the Lands Outlined in Blue (New Issue):** I note that the applicants site forms part of a larger rectangular parcel of land in the ownership of their brother which is outlined in blue. These lands appear to only be accessible via the red line site area of the site and there are no rights of way indicated to them that would provide access to them from Third Party lands in order to gain access to the public road network. The drawings provided with this application provide no clarity as to whether access to these lands would be via the proposed revised entrance onto the local road, the driveway and what is indicated as an existing path on site which is not suitable for the most part for vehicle or other access being that it is for the most part overgrown through to limited in width. Should the Commission be minded to grant permission it could deal with this particular concern by way of condition that limits the scope of the grant of permission to exclude any other development works not identified in the nature, scope and extent of development sought under this application.

8.10.4. **Archaeology (New Issue):** The site is located in an area that is rich in archaeology with the nearest Recorded Monument and Place located c465m to the south west (Note: CL052-069 – Gallows). The site characterisation report suggest part of this

site contain deeper covering of soil over bedrock and with the development not only having carried out extensive ground works to create the embankment for which retention is sought also proposing addition excavation to accommodate the dwelling house, the garage, the areas around these two buildings, the waste water treatment system and potentially there would be other excavations arising from driveway and sundry spaces. Though the site is not part of a zone of archaeological interest as a precaution I recommend that any grant of permission include a standard archaeological condition as part of any grant of permission.

8.10.5. **Gallows Hill:** The embankment and the proposed dwelling until such a time as any landscaping would be provided on site would be visible from features within the setting including Gallows Hill which includes a view point over the landscape which Gallows Hill Road, the Scenic Route that serves the site, provides access to. Within the wider visual setting towards the site, it forms part of an exposed raised landscape that stands apart from surrounding lands that have been modified for farming, and they form part of a landscape where raised bogland as well as exposed outcrops are visible as positive natural landscape features within a setting where there is a strong proliferation of one-off dwellings.

8.10.6. **Precedent Cases:** Reference is made to a number of determined cases for rural dwellings within the environs of the site. However, I consider that for the most part local through to national planning provisions and guidance have significant evolved and changed since they were determined alongside the site and its setting is one in which this development sought should be considered on its own individual merits, site-specific basis, through to having regard to current relevant planning considerations.

8.10.7. **Contributions:** The development sought under this application is not exempt from the payment of financial contributions under Clare County Councils Development Contribution Scheme, 2025-2029.

9.0 AA Screening

9.1. I have considered the development sought under this application in light of the requirements of S177U the Planning and Development Act 2000 as amended.

- 9.2. The subject site is located at Heathmount, Cratloe, in rural County Clare. The development sought seeks retention permission for an earthen embankment and planning permission for the construction of a detached dwelling, a detached garage, a wastewater treatment system, revised entrance onto the local road, internal driveway together with all associated works.
- 9.3. The site is not located within or immediately adjacent to a designated Natura 2000 site. The nearest such sites are:
- Special Area of Conservation: Lower River Shannon SAC (Site Code: 002165), which is located c3.2km upland to the north east as the bird would fly.
 - Special Protection Areas: River Shannon and River Fergus Estuaries SPA (Site Code: 004077) which is located c4.9km to the south west at its nearest point as the bird would fly. I note that this SPA overlapping with the proposed Natural Heritage Areas: Fergus Estuary and Inner Shannon, North Shore (Site Code: 002048).
- 9.4. No nature conservation concerns were raised in the planning appeal in relation to these particular Natura 2000 sites or any other similarly designated sites. Similarly, no concerns were raised by the Planning Authority and no issues raised by any prescribed bodies consulted by them.
- 9.5. However, I note that the Appellant and Third-Party observer raise biodiversity, habitat and species as a potential impact concern arising from this development on the site as well as its surrounding setting. These matters are considered in the main assessment of this report.
- 9.6. 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 Natura 2000 Site or Sites. The basis for this conclusion is as follows:
- The modest nature, scale and extent of the development sought for retention and for permission.
 - The location, distance and lack of meaningful connections with the nearest Natura 2000 sites, namely the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA. Other Natura 2000 sites are located at a much more significant lateral separation distance.
 - The screening report/determination carried out by the Planning Authority.

- 9.7. Conclusion: I conclude that based on objective information, that the development sought under this application would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

10.0 Recommendation

- 10.1. I recommend that permission is **refused** for the reasons and considerations set out under Section 11 below. Whilst my assessment above raises a number of other issues in relation to the development sought it is considered that these could be overcome by way of revisions to the development sought, clarification and/or condition. As such I consider that the two reasons and considerations set out in Section 11 below are sufficient to warrant a refusal of permission for the development sought.

11.0 Reasons and Considerations

1. Having regard to the location of the site within an area under strong urban influence as identified in the Clare County Development Plan, 2023-2029, and to the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005, which seek to manage the growth of areas that are under urban influence to avoid over-development and to ensure that the provision of single housing in such rural areas are provided based upon demonstratable economic or social need to live in a rural area, it is considered that it has not been satisfactorily demonstrated that the applicant comes within the scope of the housing need criteria as set out in the Development Plan for a house at this location.

In particular, the development sought under this application, due to it being accessed from a designated scenic route and when taken together with forming part of an area under strong urban influence is considered to be 'Areas of Special Control' under the said County Development Plan. It is therefore a requirement for applicants for a rural house at this type of rural location to demonstrate compliance with Objective CDP 4.14 of the County Development Plan.

Under this objective a new single house for the permanent occupation of an applicant will be required to demonstrate compliance with one of its specified categories and their criteria.

On the basis of the information provided the applicant has not demonstrated an identified locally based economic, social or in this case exceptional medical need for a rural dwelling house at this rural locality and that this requirement for a dwelling house can not be met at a less sensitive to change rural locality and/or in a settlement.

The development sought under this application would as a result contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The development sought under this application would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The site of the development sought under this application is located within an exposed upland area as identified by the Clare County Development Plan 2023-2029, as the 'Western Corridor Working Landscape'. It is also identified under the County Clare Rural House Design Guide as 'The Shannon Estuary and Fergus Floodplains' and under Objective CDP14.3 and CDP 14.4 of the said Development Plan are relevant considerations having regard to the nature of the development sought. These Development Plan objectives in a similar manner seek to ensure the selection of appropriate sites in the first instance for a rural dwelling within these landscapes together with requires consideration of details including siting through to design and that these are directed towards minimising visual impact, which include avoiding visually prominent sites, with Objective CDP14.3 of the said Development Plan also requiring that site layouts avail of existing topography to reduce visibility from scenic routes through requires site works seek to reduce the visual impact of this type of development.

It is considered that these Development Plan objectives are reasonable, and they align with Section 4.2.6 of the said Development Plan which sets out Landscape,

Siting & Design Criteria for rural locations as well as channelling dwellings to serviced lands within settlements.

It is further considered that they align with national policy as contained in National Policy Objective 19 and National Planning Objective 28 of the 'National Planning Framework' which seeks to ensure the provision of single housing in rural areas under urban influence based on demonstrable economic and social housing need to live at that particular rural location (NPO 19) alongside seeks to facilitate the provision 'based on siting and design criteria in statutory guidelines and plans' (NPO 28).

Having regard to the topography of the site, the elevated positioning of this development, the extensive driveway, the significant recontouring of the site to accommodate the embankment, dwelling house, garage, driveway and also the cumulative likely recontouring required for the entrance onto the Scenic Route from which access is dependent upon, it is considered that the development sought under this application would form a discordant and visually obtrusive insertions to the landscape at this location.

It is further considered that as a result it would seriously injure the visual amenities of the area, it would fail to be adequately absorbed and integrated into its setting and its wider landscape from which it would be visually apparent from significant distances, it would militate against the preservation of the rural environment and it would set an undesirable precedent for other such prominently located development in the vicinity.

It is therefore considered that the development sought under this application would, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Patricia M. Young
Planning Inspector

23rd day of July 2025

12.0 Form 1 - EIA Pre-Screening - No EIAR Submitted

Case Reference	ABP-322174-25
Proposed Development Summary	RETENTION PERMISSION sought for an embankment as constructed and PLANNING PERMISSION is sought for the construction of a dwelling house, detached garage, wastewater treatment system and all associated site works.
Development Address	Heathmount, Cratloe, Co. Clare.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (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.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	State the Class here
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
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?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed	N/A

<p>type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	N/A
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>Class 10(b)(i) of Part 2: threshold 500 dwelling units – development includes a rural single dwelling house which is significantly below the stated threshold.</p> <p>Class 1(a) of Part 2 (rural restructuring / hedgerow removal) – development includes restructuring of the appeal site which consists of a linear embankment, modifications to hedgerow and re-contouring however is below 5ha and does not relate to farming related activities.</p> <p>Class 10 (dd) of Part 2 relating to private roads in the form of driveways - development includes a driveway amounts to c80m in length which is significantly below the 2,000 metres threshold.</p>

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)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____

Date: 23rd day of July 2025

13.0 Form 2 - EIA Preliminary Examination

Case Reference	ABP-322174-25
Proposed Development Summary	RETENTION PERMISSION sought for an embankment as constructed and PLANNING PERMISSION is sought for the construction of a dwelling house, detached garage, wastewater treatment system and all associated site works.
Development Address	Heathmount, Cratloe, Co. Clare.
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (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).	Briefly comment on the key characteristics of the development, having regard to the criteria listed. Development includes the proposed construction of a single house, garage, waste water treatment system, soakaway, private well, driveway, entrance onto local road, recontouring of the site to accommodate these proposed works and their sundry works. The nature and size of the proposed dwelling and garage is not considered exceptional in the context of neighbouring houses alongside the provision of associated infrastructure and services in this rural unserved area. Additionally, the nature and size of the proposed dwelling and the garage structure is not considered exceptional in the context of rural dwellings within the wider setting houses through to there are examples of varying in size driveways through to recontouring of elevated sites within this rural locality to accommodate this form of development. I do not consider that the level of waste generated would be significant in the local, regional or national context. No significant waste, emissions or pollutants would arise during the construction or operational phase due to the nature of the proposed use. The development does not involve any demolition works. The works in the creation of the embankment has already been undertaken and appears to have been created from mainly peat excavated from the site.

	<p>Subject to safeguards and compliance with required standards it is considered that there should be no environmental implications regarding the size, design, cumulation with existing/proposed development, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health.</p>
<p>Location of development</p> <p>(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).</p>	<p>Briefly comment on the location of the development, having regard to the criteria listed</p> <p>This site lies c3.2km upland to the north east of Special Area of Conservation: Lower River Shannon SAC (Site Code: 002165). This overlaps with the Special Protection Areas: River Shannon and River Fergus Estuaries SPA (Site Code: 004077) c4.9km to the south west at its nearest point and proposed Natural Heritage Areas: Fergus Estuary and Inner Shannon, North Shore (Site Code: 002048).</p> <p>The site is not recorded on flood maps.ie (accessed 5/6/2025) as being subject to flooding.</p> <p>The main component of the development sought under this application relates to the construction of a detached dwelling house, its associated structures, infrastructure, services and associated ancillary works.</p> <p>There are no meaningful hydrological connections to the Natura 2000 sites cited above or any others located at further distance. I have concluded in my AA Screening that that the development sought under this application would not likely have a significant effect on any such site.</p> <p>The subject site is not located within or adjoins any other environmentally sensitive sites or protected sites of ecological importance, or any sites known for cultural or historical significance. There are a number of Recorded Monuments and Places within the immediate setting, however, the site does not form part of any zone of archaeological constraint.</p> <p>The site is within the visual setting of Gallows Hill, which is of cultural through to historical interest but in this context the development is not exceptional given the proliferation of one of dwellings within its setting and the loss of upland bogland to agricultural activities. Within this context there are also examples of ground level re-contouring, loss of hedgerows through to natural habitat. Notwithstanding, the creation of a long linear embankment altering the</p>

	<p>profile of the site's contours, its slope and profile is at odds with the character of its landscape setting. However, it is located over half kilometre away and the planting over of indigenous mainly hedging and tree species buffers its visual apartness within its landscape setting.</p> <p>Subject to standard safeguards including in relation to the provision of the wastewater treatment system, potable water through to a precautionary archaeological condition in the event of a grant of permission I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the surrounding area.</p>
<p>Types and characteristics of potential impacts</p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>Having regard to the characteristics of the development and the sensitivity of its location, consider the potential for SIGNIFICANT effects, not just effects.</p> <p>Having regard to the nature, extent and scale associated with the development sought under this application, its location removed from any sensitive habitats / features, the likely limited magnitude and spatial extent of effects, and the absence of in combination effects, there is no potential for significant effects on the environment.</p>
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.

Inspector: _____ **Date:** 23rd day of July 2025.

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)

14.0 Appendix 2 Water Framework Directive Screening

WFD IMPACT ASSESSMENT STAGE 1: SCREENING		
Step 1: Nature of the Project, the Site and Locality		
An Bord Pleanála ref. no.	ABP-322174-25	Townland, address: Heathmount, Cratloe, Co. Clare.
Description of project	RETENTION PERMISSION sought for an embankment as constructed and PLANNING PERMISSION is sought for the construction of a dwelling house, detached garage, wastewater treatment system and all associated site works.	
Brief site description, relevant to WFD Screening,	<p>Site significantly slopes from its roadside boundary to the rear of the site. The ground levels change from c155m OD along the roadside boundary to c188m OD at the rear of the proposed subdivision with ground levels rising steeply to the east. The dwellings finished floor level is c170m OD as is its percolation area. The site at its deepest being c198m (southern boundary) and c94m (northern boundary) overlaid with shallow peat, stone outcrops evident.</p> <p>The epa maps indicate bedrock at or close to the surface and the site characterisation report indicating at the trial hole gravelly sand silt with cobbles overlaid by peat loam. This however does not appear to be characteristic of the overall site area, with the site characterisation report indicating poor conditions to the east.</p> <p>The epa maps also indicate that the ground waterbody at this site is Tulla-Newmarket on Fergus Site Code: IE_SH_G_229, poorly productive bedrock and forming part of the Lower Shannon (25C & 25D) as well as Shannon Estuary North Catchments.</p> <p>Evidence of rushes, mosses and other water loving plants on the site.</p> <p>Groundwater and surface water vulnerability high at the site as well as generally in this locality.</p> <p>Documents indicate a site slope of 1:20 in terms of gradient with Balliotlea Lough within 500m as well as a small stream within 200m.</p>	
Proposed surface water details	Development will be drained to a soak pit and discharged to groundwater. Water level at 2m bgl.	
Proposed water supply source & available capacity	Installation of a private well for potable water supply. Safe and sustainable capacity has not been demonstrated.	

Proposed wastewater treatment system & available capacity, other issues				Waste water treatment system (WWTS) and raised percolation area down slope of dwelling. Capacity is based on a PE of 6 yet the dwelling house is designed for a capacity of PE 8 as indicated in the drawings. Design is one that has flexibility to add additional bed spaces should that be required in time. Concern under sized in terms of capacity WWTS proposed alongside no measures indicated to limit overburdening the under sized system in terms of re-use of grey water and the like.			
Others?				No provision made to intercept pollutants from the driveway, in particular those arising from vehicles, yet a fast-flowing drainage ditch on the opposite side of the road and waterbodies downslopes (drainage ditches, lake, loughs etc) in the near vicinity of the site. Lack of Soakaway details provided.			
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)	
River Waterbody	108m	Tributary of OWENOGA RNEY_060 IE_SH_270 011200	Under REVIEW due to their unassigned status	To be determined.	Yes	Surface and ground water runoff.	
Groundwater waterbody	Underlying site	Tulla-Newmarket on Fergus IE_SH_G_2 29	Good	Not at risk	Yes	Poorly productive bedrock	
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.	Surface	Tributary of OWENOGARNEY_060 IE_SH_27001120 0	Drainage	Hydro-carbons Pollutants from under sized WWTS	Standard Construction Measures / Conditions	No	Screened out

2.	Ground	Tulla-Newmarket on Fergus IE_SH_G_229	Drainage	Hydrocarbon Spillages Pollutants from WWTS	Standard Construction Measures / Conditions	No	Screened out
OPERATIONAL PHASE							
3.	Surface	Tributary of OWENOGARNEY _060 IE_SH_27001120 0	None	None	Standard compliance conditions for surface water managemen t (Storm, foul and surface)	No	Screened out
4.	Ground	Tulla-Newmarket on Fergus IE_SH_G_229	None	None	Standard compliance conditions for surface water managemen t (Storm, foul and surface)	No	Screened out
DECOMMISSIONING PHASE							
5.	NA						

Inspector: _____ Date: 23rd day of July, 2025.