



An  
Bord  
Pleanála

## Inspector's Report ABP-305490-19

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<b>Development</b>	Storey and a half dwelling house, detached domestic garage, waste water treatment system, entrance, and all ancillary site works.
<b>Location</b>	Faha Demense, Patrickswell, Co. Limerick
<b>Planning Authority</b>	Limerick City & County Council
<b>Planning Authority Reg. Ref.</b>	19/661
<b>Applicant(s)</b>	Chris O'Grady & Theresa Kelly
<b>Type of Application</b>	Outline permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party -v- Decision
<b>Appellant(s)</b>	Chris O'Grady & Theresa Kelly
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	5 <sup>th</sup> December 2019
<b>Inspector</b>	Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located to the SW of Limerick City in a position 1.7 km to the west of Junction 4 on the M20 (with the R526) and 1.4 km to WNW of the village centre of Patrickswell. This site lies on the western side of a minor local road, which forms a 1.1 km cul-de-sac off a major local road (50 kmph) to the west of the village. It lies within farmland that is punctuated by one-off dwelling houses along the length of the said cul-de-sac.
- 1.2. The site itself is of regular shape and it extends over an area of 0.183 hectares. This site comprises a portion of a more extensive field, which is down to grass. The site is bound to the SE and NW by fencing and hedgerows. The remaining boundaries are undefined "on the ground".

## 2.0 Proposed Development

- 2.1. The application seeks outline planning permission for a one-and-a-half storey dwelling house, which would be sited centrally within the site. This dwelling house would be served by a freestanding domestic garage, which would be sited in a recessed position off the northernmost corner of the dwelling house. A new access would be formed in the southernmost corner of the site off the local road and a driveway would link this access with the dwelling house and garage. Sightlines to accompany the access would necessitate the removal of hedgerows from a long the front boundary of the site and from on either side of this boundary along the roadside to the NE and the SW.
- 2.2. The proposed dwelling house would be served by the existing public water mains. Foul water would be handled by means of the Tri-Cel Bio waste water treatment system and surface water would be handled by means of a soakpit.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was refused for the following reasons:

1. *The road network serving the site of the proposed development is considered sub-standard in width, alignment, surface condition and has insufficient capacity to accommodate the additional traffic likely to result from the development. The proposed development would therefore materially contravene Objective IN 09: Sub-standard Roads, as set out in the County Development Plan 2010 – 2016 and would be contrary to the proper planning and sustainable development of the area.*
2. *The proposed development would constitute undesirable ribbon development on a rural area and would be likely to give rise to demands for the provision of urban type services which would be both uneconomic and inappropriate to provide and would, therefore, be contrary to the proper planning and sustainable development of the area.*
3. *Having regard to the Objectives EH06 of the County Development Plan 2010 – 2016, in addition to the Design Guidelines for Residential Development in Rural Areas as set out in Table 10.2 of the Limerick County Development Plan, 2010 – 2016, it is considered that the requirement to remove an extensive stretch of roadside boundary hedgerow to provide for sight lines at this location would alter the character and seriously injure the visual amenities of the area, would be contrary to the provisions of the both the Limerick County Development Plan and the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and would, therefore, be contrary to the proper planning and sustainable development of the area.*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

See reasons for refusal.

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

- Irish Water: No objection, standard observations.
- Limerick City & County Council (LCCC):
  - Environmental Engineer: Conditions requested.

## 4.0 Planning History

### Site

- 08/814: Elaine O’Grady applied for a house, garage, treatment system with polishing filter, entrance, solar panels, and associated works: Permission refused at appeal PL13.230045 for the following reason:

*The house is served by a minor road which already serves a significant number of one-off houses and which is seriously sub-standard in terms of width, alignment and surface condition, which would render that part of the network unsuitable to carry the increased traffic likely to result from the proposed development. The proposed development, by itself and by the precedent which the grant of permission for it would set for other similar developments would, therefore, be contrary to the proper planning and sustainable development of the area.*

The accompanying direction stated the following:

*The Board noted that the site is in an area under strong urban influence and pressure for development of one-off houses, where it is the policy of the Planning Authority to restrict development to that necessary to meet local rural generated housing need. The Board was not satisfied that the applicant had demonstrated compliance with the criteria for housing need. However, the Board did not pursue this issue having regard to the substantive reason for refusal.*

- 18/978: Chris O’Grady & Theresa Kelly applied for a two-storey dwelling house, detached domestic garage, WWTS, entrance and all ancillary works: Permission was refused for the same reasons as the Planning Authority has given for refusing the current application.

## 5.0 Policy and Context

### 5.1. Development Plan

Under the Limerick County Development Plan 2010 – 2016 (CDP), the site is shown as lying within a rural area, which for the purpose of assessing one-off dwelling house proposals, is one of strong urban influence. Objective RS 01 sets out the criteria for assessing local need in this area.

Objective IN 09 of the CDP addresses sub-standard roads, Objective EH 06 addresses landscaping and development, including the removal of roadside boundaries, and Objective EH 021 addresses WWTS.

## 5.2. **Natural Heritage Designations**

- Lower River Shannon SAC (002165)
- River Shannon and River Fergus SPA (004407)
- Tory Hill SAC and pNHA (000439)

## 5.3. **EIA Screening**

Under Items 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2018, where more than 500 dwelling units would be constructed, the need for a mandatory EIA arises. The proposal is for the development of a single dwelling house. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall so far below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

## 6.0 **The Appeal**

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

The applicants have reviewed the planning history of the road (2003 – to the present) upon which their site is located. They have examined 11 applications and they allege that the Planning Authority's approach to decision making on comparable proposals has been inconsistent, to their disadvantage.

Ribbon development

- The applicant's sister (Elaine O'Grady) was refused planning permission (08/0814) by the Planning Authority for a dwelling house on the current site on the grounds of ribbon development. Nevertheless, 6 other applicants were

granted permission in comparable circumstances, i.e. more than 4 or more than 5 dwelling houses on a single side of road over 250m.

- Particular attention is drawn to application 19/0050, where permission was granted against the backdrop of 2 previous refusals on the same site on the grounds of ribbon development (05/3537 & 06/2347)

#### Hedgerow

- The applicants contend that other applicants were afforded the opportunity to address the question of hedgerow loss by the Planning Authority and yet they were not. Furthermore, the applicants have received written consent from adjoining landowners with respect to setting back, rather than removing, hedgerows in conjunction with the provision of sightlines.
- Photographic evidence is submitted of extensive hedgerow removal in conjunction with residential developments along the road in question.

#### Sub-standard road

- Objective IN 09 of the CDP is cited, which states that development will only be considered on sub-standard roads in exceptional circumstances, e.g. family members and long-term landowners, where no alternative site is available. The applicant, Chris O'Grady fits into this example as a family member with no other site. Nevertheless, the Planning Authority relied on supplementary criteria, i.e. one or more of the following criteria must be met: an applicant must have been either born on the road or have lived on the road for at least 10 years or be a long-term landowner, i.e. of at least 10 hectares for more than 15 years. These supplementary criteria are contested, as they have not been used in conjunction with the other applicants on the road and it does not appear in the CDP.
- The applicants look at 9 successful applicants and they conclude that 4 met the said exceptional circumstances in the same way as Chris O'Grady does, i.e. family members rather than landowners. They also contend that, unlike him, 2 other applicants had alternative sites available to them.

## Housing need

- By way of response to the case planner's view that the applicants have not demonstrated a specific need to live at this location, attention is drawn to the documentation submitted in support of this application. Reference is also made to their reliance on family at present for accommodation and their changing domestic circumstances.
- The aforementioned documentation provides ample evidence that Chris O'Grady is a local rural person, e.g. his family of origin's home is 2.5 km away from the site, other relations live within a 5 km radius, he went to school 7 km away, and he has lived in this area all his life.

## Exceptional circumstances

- The Planning Authority relied on exceptional circumstances to justify the grant of permission to other applicants on the road in question, circumstances that should have been relied upon in the applicants' case, too.

## 6.2. Planning Authority Response

Notwithstanding a Section 132 request, the Planning Authority has not responded to the applicants' grounds of appeal.

## 6.3. Observations

None

## 6.4. Further Responses

None

## 7.0 Assessment

- 7.1. The application was the subject of an oral hearing request made by the applicant. The Board declined this requested and endorsed the recommendation that a Section 132 request be made to the Planning Authority to respond to the applicants' grounds of appeal. This request has, regrettably, not been complied with.

7.2. I have reviewed the proposal under national planning guidelines, the CDP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Rural Settlement Policy,
- (ii) Ribbon development,
- (iii) Traffic and access,
- (iv) Visual amenity,
- (v) Water, and
- (vi) Stage 1 Screening for Appropriate Assessment.

**(i) Rural Settlement Policy**

7.3. Under the CDP, the site lies within a rural area that is deemed to be under strong urban influence. Thus, the applicants for the proposed dwelling house on this site must be able to demonstrate that they have a local need under Objective RS 01 of this Plan. The relevant criteria are thus as follows:

- (a) The application is being made by a long-term landowner or his/her son or daughter, or*
- (b) The applicant is engaged in working the family farm and the house is for that persons own use, or*
- (c) The applicant is working in essential rural activities and for this reason needs to be accommodated near their place of work, or*
- (d) The application is being made by a local rural person(s) who for family and/or work reasons wish to live in the local rural area in which they spent a substantial period of their lives (minimum 10 years).*

7.4. National planning guidelines address the question of candidature for a new rural dwelling house most recently under National Policy Objective (NPO) 19 of the National Planning Framework (NPF), which states the following:

*Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment and elsewhere: In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core*

*consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.*

- 7.5. The applicants have completed a supplementary application form in which they have stated that Chris O'Grady resided in Killeen, Patrickswell, Co. Limerick between 1988 – 2019, a residential property 3.55 km away from the site. His grand uncle originally owned this site and adjoining land (total area of 6.7 hectares). He died in 1995. It is now owned by Chris' father.
- 7.6. Due to the divorce of Chris' parents, the aforementioned residential property has been sold. He is now residing temporarily with his fiancé and her parents. He presently works in the Shannon Free Zone and his fiancé in Foynes.
- 7.7. Both applicants have submitted copies of documents that bear the addresses of their previous and current places of residence.
- 7.8. The applicants have not stated under which criterion of Objective RS 01 they have made their application. *Prima facie* criterion (a) may be applicable. However, under Section 3.9.3 of the CDP, a long-term landowner is defined as "a person who has owned a minimum of 10 hectares in the rural area for a minimum period of 15 consecutive years." Chris states that his father owns 0.5 acres (c. 0.2 hectares) and so he does not come within this definition.
- 7.9. Furthermore, Objective NPO 19 of the NPF "raises the bar" by requiring that there be a demonstrable social need to live in a rural area. I consider that this test is not reflected in the provisions of the aforementioned criterion and, as it is set out in the NPF, it takes precedence over the CDP.
- 7.10. While I acknowledge that the applicants have a pressing housing need, they have not demonstrated that they have either a social or an economic need to reside on the site.
- 7.11. I, therefore, conclude that the applicants are not candidates for a dwelling house on the site.

#### **(ii) Ribbon development**

- 7.12. Ribbon development is discussed under Appendix 4 of the Sustainable Rural Housing Guidelines. This phenomenon is deemed to occur where, for example, 5 or

more dwelling houses exist on any one side of a given 250m stretch of road frontage.

- 7.13. The site fronts onto a minor local road, which is 1.1 km long. Over the initial 0.7 km this road runs on a roughly N/S axis, while over the subsequent 0.4 km it runs on a roughly NE/SW axis. Over this initial stretch, one-off dwelling houses are sited almost exclusively on the western side of the road, while over this subsequent stretch, they are sited on both sides of it. The subject site is sited on the NW side of the subsequent stretch. It is accompanied by 2 existing dwelling houses to the SW. If the above cited measurement of 250m is applied, then these 2 dwelling houses would come within it, as would a further 2 existing dwelling houses on the western side of the initial stretch of the local road, i.e. at the northern end of this stretch, just prior to the corner in this road. Accordingly, the development of the site, as proposed, would entail the addition of a fifth dwelling house and so it would represent ribbon development.
- 7.14. The Planning Authority's second reason for its draft refusal reflects the above assessment that the proposal would represent ribbon development. The applicants take exception to this reason on the basis that along the road in question there are examples of dwelling houses that have been granted planning permission and yet they represent ribbon development. They thus allege that the Planning Authority has been inconsistent in their approach in this respect.
- 7.15. During my site visit, I observed that there are examples of ribbon development in-situ along the minor local road, which serves the site. The applicants draw particular attention to the recent grant of 19/0050, a site at the end of a row of 7 existing dwelling houses. In the light of this and other examples, it would have been of value to have received a commentary from the Planning Authority. This, however, has not been forthcoming.
- 7.16. In the light of the above, I understand the applicants to be, in effect, inviting the Board to set aside the second reason for refusal. The opportunity to do so can arise. Thus, under Section 37(2)(b)(iv) of the Planning and Development Act, 2000 – 2019, the Board may overturn a reason for refusal that would materially contravene the CDP if "permission for the proposed development should be granted having regard

to the pattern of development, and permissions granted, in the area since the making of the development plan.”

7.17. In the case of the second reason, it was not stated to entail a material contravention. Furthermore, the issue of ribbon development originates in the said national planning guidelines and so it is, in effect, national policy rather than simply a local one, which is cited in the Planning Authority’s “Rural Advice for Individual Houses in the Countryside”. In these circumstances, I do not consider that the above Section is applicable, and I do not consider that the Board can set aside national policy on the basis that it may have been inconsistently applied at a local level.

7.18. I conclude that the proposal would represent ribbon development.

**(iii) Traffic and access**

7.19. The proposal would generate an increase in traffic along the minor local road that serves the site. This road is critiqued under the Planning Authority’s first reason for its draft refusal. Thus, it is described as being sub-standard in width, alignment, and surface condition and the Authority concludes that it would have insufficient capacity to accommodate the additional traffic in prospect.

7.20. The aforementioned first reason cites the material contravention of the CDP’s Objective IN 09, which states the following:

*It is an objective of the Council to ensure that on roads that are sub-standard, either in terms of their width, (less than 3m), alignment, surface condition or junction with the nearest main road, development will only be considered in exceptional circumstances. A presumption in favour of family members and long-term landowners will be considered in exceptional circumstances, where no alternative site is available, or where the only alternative access available is onto a strategic regional road as designated in the County Development Plan.*

7.21. The applicants do not contest the applicability of Objective IN 09 to the road in question. However, they state that the “exceptional circumstances” cited are applicable to them, as Chris is a family member of a long-term landowner and they have no alternative site to develop.

7.22. The phrase “family members and long-term landowners” is discussed by the case planner who cites criteria in this respect, i.e. “born on the land or lived on the road for

a minimum of 10 years or a long-term landowner as defined in the CDP: 10 hectares or more for 15 years.”

- 7.23. The applicants question the use of the above criteria as the first two criterion do not appear in the CDP. They also question its use, as they claim that it has not been applied to other comparable applicants to themselves.
- 7.24. I consider that the phrase in question is, as it stands, difficult to decipher. In the light of Objective RS 01(a) cited under the first heading of my assessment, I would have expected the “family members” to be those of the “long-term landowners”. However, that is not what the phrase says, hence, presumably, the use of the two criterions that the applicants are contesting.
- 7.25. I agree with the applicants that the use of criterion that do not appear in the CDP is unsatisfactory and I am concerned over their finding that these criterions do not appear to have been used in the cases of comparable applicants. Nevertheless, I am conscious that the Board has previously refused a comparable proposal on the subject site (PL13.230045) and another comparable proposal on an adjoining site (PL13.210046) on the grounds that the road in question is sub-standard. I am not aware of any material change in planning circumstances “on the ground” in the intervening period of time that would prompt a different approach now. Thus, precedence exists at Board level for reason 1 and so, in these circumstances, I consider that it would be difficult to apply the above cited Section 37(2)(b)(iv) of the Planning and Development Act, 2000 – 2019, to reason 2.
- 7.26. The minor local road, which would afford access to the site, would be of sub-standard form and so the introduction of additional traffic would be contrary to the principle of good traffic management.

**(iv) Visual amenity**

- 7.27. The proposal would entail the provision of an access to the site from the adjoining minor local road. This access would be provided in the southern most corner of the site at a point on the road where it presents as being slightly concave. Accordingly, the submitted site layout plan shows accompanying sightlines (2.4m x 90m, i.e. a design speed of 60 kmph is assumed) that would entail hedgerow loss along a length of 80m, i.e. the sites frontage and adjoining stretches of field frontage on either side.

7.28. The Planning Authority's third reason for its draft refusal sites Objective EH 06(c) of the CDP, which states the following:

*Resist the removal of substantial lengths of roadside boundaries. Where an alternative, suitable site is available for the development, applicants should consider such an alternative on the basis that avoids the necessity for widespread boundary removal. Only in exceptional circumstances should roadside boundaries be removed.*

7.29. The applicants have responded to this reason by drawing attention to the widespread loss of hedgerows on foot of other comparable developments along the minor local road, which would serve their site. During my site visit, I observed that, indeed, walls and timber post and rail fences appear to have either replaced and/or been constructed/erected instead of compensatory hedgerows.

7.30. I note that the re-siting of the proposed access elsewhere on the frontage to the site boundary would be unlikely to lessen the extent of hedgerow that would be affected and that a possible reduction in the y distance to 70m would likewise make no appreciable difference. I note, too, that the applicants have no other land upon which they could develop. Accordingly, if the applicants were candidates for a rural dwelling house, if such a dwelling house did not represent ribbon development, and if the minor local road was not sub-standard, then I consider that it would be reasonable to conclude that "exceptional circumstances" existed and so the requirements of Objective EH 06(c) could be set to one side. However, as these pre-conditions do not apply, relaxation would be inappropriate.

7.31. I conclude that, under the proposal, the hedgerow loss that would result, and the associated erosion of visual amenity, would not be justified in the light of my other conclusions set out above.

#### **(v) Water**

7.32. The proposed dwelling house would be served by the public water mains. Irish Water raises no objection to the application.

7.33. With respect to foul water, the applicant has submitted the completed site characterisation form that accompanied the previous application (08/814) for and appeal (PL13.230045) on the site. Although this form concluded that the site would be appropriate for a septic tank, in view of the concentration of development in the

surrounding area, the assessor recommended that a waste water treatment system be installed, i.e. the Tri-Cel Bio WWTS.

7.34. I note that the completed site characterisation form is dated March 2008 and so a considerable period of time has elapsed since it was undertaken. I note, too, that, there does not appear to have been any significant additional building within the immediate vicinity of the site since then, and so the continuing applicability of the exercise undertaken and the ensuing recommendation would *prime facie* appear to be reasonable.

7.35. With respect to surface water, soakaways would be installed.

7.36. Under the OPW's flood maps, the site is not shown as being the subject of any identified flood risk.

7.37. I conclude that the proposal raises no water issues.

#### **(vi) Stage 1 Screening for Appropriate Assessment**

7.38. The site does not lie in or near to any Natura 2000 site. While there are such sites in the wider area, I am not aware of any source/pathway/receptor routes between the subject site and these sites.

7.39. Having regard to the nature and scale of the proposal and the nature of the receiving environment, no Appropriate Assessment issues arise, and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

8.1. That permission be refused.

## 9.0 Reasons and Considerations

1. The site of the proposal is located within an “Area Under Strong Urban Influence” as set out in the Sustainable Rural Housing Guidelines. In addition, under National Policy Objective 19 of the National Planning Framework, it is national policy to facilitate the provision of single housing in the countryside, in areas under urban influence, based on the core consideration of demonstrable economic or social need to live in a rural area and having regard to siting and design criteria and the viability of smaller towns and rural settlements.

Having regard to the location of the subject site, within the catchment of Limerick City and proximate to smaller settlements, and also having regard to the documentation submitted with the application, specifically, concerning (a) the applicants’ work, which is not an agricultural based activity, and their places of employment in Shannon and Foynes, and (b) the social circumstances of the applicants and their families, the Board is not satisfied that the applicants have demonstrated an economic and social need to live at this specific rural location, or that the applicants’ housing needs could not be satisfactorily met in a smaller town or settlement.

Accordingly, to permit this proposal, in these circumstances, would contravene National Policy Objective 19 of the National Planning Framework and so be contrary to the proper planning and sustainable development of the area.

2. The proposed development would constitute undesirable ribbon development in a rural area outside lands zoned for residential development and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The site is located on a minor road which is seriously substandard in terms of width and alignment. The traffic generated by the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users.

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Hugh D. Morrison  
Planning Inspector

9<sup>th</sup> January 2020