



An
Bord
Pleanála

Inspector's Report ABP-305735-19

| | |
|-------------------------------------|--|
| Development | Construction of a single storey dwelling house, detached garage, entrance, driveway, waste water treatment unit, polishing filter, and all ancillary site works. |
| Location | Meenoline North, Templeglantine, Co. Limerick |
| Planning Authority | Limerick City & County Council |
| Planning Authority Reg. Ref. | 19/619 |
| Applicant(s) | Anthony Murphy |
| Type of Application | Permission |
| Planning Authority Decision | Grant, subject to 17 conditions |
| Type of Appeal | Third Party -v- Decision |
| Appellant(s) | Pauline Curtin |
| Observer(s) | None |
| Date of Site Inspection | 5 th December 2019 |
| Inspector | Hugh D. Morrison |

Contents

| | |
|--|-------------------------------------|
| 1.0 Site Location and Description | 3 |
| 2.0 Proposed Development | 3 |
| 3.0 Planning Authority Decision | 4 |
| 3.1. Decision | 4 |
| 3.2. Planning Authority Reports..... | 4 |
| 4.0 Planning History..... | 5 |
| 5.0 Policy and Context..... | 5 |
| 5.1. Development Plan..... | 5 |
| 5.2. Natural Heritage Designations | 5 |
| 5.3. EIA Screening | 5 |
| 6.0 The Appeal | 6 |
| 6.1. Grounds of Appeal | 6 |
| 6.2. Applicant Response | 7 |
| 6.3. Planning Authority Response | 7 |
| 6.4. Observations | 7 |
| 6.5. Further Responses..... | 7 |
| 7.0 Assessment..... | 7 |
| 8.0 Recommendation..... | 13 |
| 9.0 Reasons and Considerations..... | 13 |
| 10.0 Conditions | Error! Bookmark not defined. |

1.0 Site Location and Description

- 1.1. The site is located in an elevated position on the south facing slopes comprised in the townland of Meenylane North, 2.2 km to the north of the village of Inchabaun on the stretch of the N21 between Newcastle West and Abbeyfeale. This site lies on the northern side of the L-7063, which is subject to an 80 kmph speed limit, and it is accessed from this local road, which rises at a gentle gradient from east to west as it passes the site. The applicant's parents' bungalow lies to the west of the site and the appellant's cottage, which is sited in a perpendicular position in relation to the local road, lies to the east. These dwellings are accompanied at a short remove by a cluster of other bungalows/cottages further to the west. Farmland and woodlands predominate in the surrounding area.
- 1.2. The site itself is of regular shape and it extends over an area of 0.21 hectares. This site rises through gentle gradients from its southernmost corner to its northernmost corner. At present the site is vacant, although a vehicular track along its western boundary links the gated access in the south western corner of the site to a shed and a container to the rear of the aforementioned bungalow.
- 1.3. The site is bound by an earthen mound to the front, which is accompanied by a ditch on either side. A similar earthen mound with a ditch on the site side denotes the common boundary to the east with the appellant's residential property, while to the west an evergreen hedgerow denotes the common boundary with the applicant's parents' residential property. The remaining northern boundary is denoted by an earthen mound, too.

2.0 Proposed Development

- 2.1. The proposal would entail the construction of a three-bed "L" shaped bungalow (174.6 sqm) in the centre of the site, i.e. in a recessed position in relation to the adjacent bungalow and cottage. This bungalow would face the local road and it would be served by the existing site access, which would be formally laid out as a domestic entrance. This access would connect to a driveway, which would serve the bungalow and a garage (41.5 sqm), which would be sited in the northernmost corner of the site.

2.2. The proposed bungalow would be served by a new connection to the public water mains. Foul water would be handled by means of a packaged waste water treatment system and polishing filter, i.e. the Tricel P6 Mechanical Aeration Unit with a pumped rising main to a raised 90 sqm soil polishing filter. Surface water from the rear roof planes of the bungalow and the roof of the garage would drain to soakaways. The front roof plane and the accompanying driveway would drain to a land drain along the eastern boundary of the site. The site entrance would have an interceptor drain installed across it and the ditches on the inside of the earthen mounds along the front of the site and returning along the initial portion of the eastern boundary would be fitted with pipes, which would discharge to a culvert under the local road.

3.0 **Planning Authority Decision**

3.1. **Decision**

Following receipt of further information, permission was granted subject to 17 conditions, including one denoted as 2, which requires the following revisions in the interest of residential amenity:

- The dwelling house shall be centrally located with equal distances on either side to site boundaries,
- The larger window in the eastern side elevation shall be reduced in size to match the other windows in this elevation. (An additional window can be inserted in the rear elevation to compensate), and
- The ridge shall be a maximum height of 5.8m.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The following further information was requested:

- The re-siting of the dwelling house in a more central position and the rearrangements of specified windows,
- Landscaping scheme,

- Surface water drainage scheme, and
- Responses to observations on file.

3.2.2. Other Technical Reports

- Irish Water: No objection, standard advice.
- Limerick City & County Council:
 - Engineering: No objection, standard advice on sightlines and surface water.

4.0 Planning History

Adjacent site

- 88/28361: Bungalow, entrance, and septic tank: Permitted.

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 structurally weak area for the purposes of the Rural Settlement Strategy. Objectives EH06 & 21 address landscaping and development and septic tank proprietary systems and relevant information is contained in the Rural Design Advice Guide for Individual Houses.

5.2. Natural Heritage Designations

Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161)

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 appellant's residential property adjoins the site to the SE. Documentary evidence confirming her residence therein is submitted, to counter the applicant's assertion to the contrary.

Attention is drawn to the proposed polishing filter, which would be installed 3.2m away from an open drain. Additionally, there is a similar drain to the east in the appellant's property, which is not shown on the submitted plans.

The appellant has superimposed upon a copy of the site layout plan lines of sight between the existing windows in the eastern elevation of the appellant's dwelling house and windows in the front elevation of the proposed dwelling house. She has also indicated where 8 submitted photographs were taken from and provided a commentary on the same.

The appellants grounds of appeal are as follows:

- Attention is drawn to Section 10.5.4 and Table 10.2 of the CDP, which set out design guidelines for residential developments in rural areas. The proposal fails to address these guidelines and compliance would not be achievable.
- The set back siting of the proposed dwelling house would cause it to overlook the appellant's dwelling house. Screening along the common boundary to mitigate such overlooking would reduce evening sunlight to the appellant's garden and adjacent dining room window, in particular, which, as it is, is poorly lit.
- Condition 2 attached to the draft permission would not ease the aforementioned amenity concerns.

- Attention is drawn to the proximity of the proposed polishing filter to the appellant's lower lying property and the risk that would arise to this property and its open surface water drain should this filter malfunction.

The separation distance between the proposed polishing filter and an open surface water drain within the site would be only 3.2m, whereas the relevant EPA Code of Practice stipulates a minimum of 10m. In this respect, the applicant's proposal to pipe this drain would be inadequate, in the event of a leak from the polishing filter.

The revised position of the dwelling house would encroach within 10m of the siting of the proposed polishing filter leading to another infringement of the Code of Practice.

Concern is expressed at the presence of shale at a higher level than that described as bedrock in the trial hole.

6.2. **Applicant Response**

The applicant's response was received after the relevant statutory period had expired.

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

- 7.1. I have reviewed the proposal in the light of 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) Amenity,
- (iii) Access,
- (iv) Water, and
- (v) Stage 1 Screening for Appropriate Assessment.

(i) Rural Settlement Policy

- 7.2. National mapping of rural area types, which was undertaken as part of the original National Spatial Strategy, shows the site as lying within a structurally weak area. The CDP, likewise, shows the site as lying within such an area. Under Objective RS 03 of this Plan, any demand for permanent residential development should, in principle, be accommodated within this area.
- 7.3. The applicant states that he owns the site and that the tenure of the proposed bungalow would be that of owner occupation. His proposal would thus comply with the said Objective.
- 7.4. I conclude that there is no in-principle objection to the proposal.

(ii) Amenity

- 7.5. The rear elevation of the appellant's cottage faces WNW over the front/southern portion of the subject site. The distance between this elevation and the earthen mound that forms the common boundary between the curtilage of the cottage and this site ranges between 4.5 and 5m. While trees feature along this boundary further to the north, they are absent from beside the rear elevation, which contains two habitable room windows that thus overlook the said portion of the site.
- 7.6. The proposed bungalow would be sited in the central portion of the site. Under the Planning Authority's draft condition 2(a), this bungalow would be re-sited slightly to the west to ensure that it would be equi-distant from each of the site's side boundaries. The separation distance between the nearest corner of this bungalow and the nearest corner of the appellant's cottage would be c. 10m on almost a N/S axis. (Under the said condition this distance would increase slightly). The front

elevation of the bungalow would contain two bedroom windows nearest to the common boundary and then a porch, beyond which would be two living room windows and two dining room windows.

- 7.7. The appellant has submitted a copy of the site layout plan on which she has superimposed lines of sight between her two windows and the aforementioned six windows. These lines are at acute angles that become more acute as their lengths shorten, i.e. from 26 to 12m.
- 7.8. The proposed bungalow would have a FFL of 100.75m, which would be c. 0.7m higher than the FFL of the appellant's cottage (cf. applicant's continuous elevation drawing no. 207). I thus anticipate that the aforementioned lines of sight would clear the earthen mound along the common boundary. The applicant proposes to plant a new hedgerow along at least part of the said boundary. The appellant expresses concern that, while such a hedgerow could in time screen the adjacent dwellings, by the same token it would reduce lighting to her cottage.
- 7.9. During my site visit, I noted the open relationship that pertains between the front/southern portion of the site and the appellant's cottage. From the submitted site layout plan, I note the extensive nature of the driveway that would serve the proposed bungalow. If this driveway were to be curtailed over its eastern end, then the opportunity would arise to plant trees and shrubs forward of the two bedroom windows. Such planting would, in time, provide the required screening, while being setback from the common boundary sufficiently to limit any appreciable overshadowing of the cottage. If the provisions of draft condition 2(a) were to be reiterated, i.e. the re-siting of the proposed bungalow slightly further west, then the scope for these mitigating measures would be enhanced.
- 7.10. I conclude that, provided screen planting is introduced in a position set back from the eastern boundary of the site, the proposal would be compatible with the residential amenities of the area.

(iii) Access

- 7.11. The proposal would entail the introduction of an additional dwelling taking access off the L-7063. Insofar as the applicant's address at present appears to be that of his parent's bungalow to the west of the site, the proposal would not necessarily lead to an increase in traffic along the local road, beyond the construction period.

- 7.12. The proposal would entail the re-utilisation of an existing access point in the south western corner of the site. This access point would be formally laid out as a domestic entrance with splayed walls enclosing a vehicle refuge forward of a pair of gates.
- 7.13. The L-7063 is subject to an 80 kmph speed limit. As it passes the site, this local road rises from east to west and it curves gently away from this site. Available sightlines extend 87m to the east and 74m to the west. Normally these y distances should be a minimum of 90m.
- 7.14. The Area Engineer agreed to a relaxation in the y distance in view of the location of the access point on the outside of the curve in the local road and in view of the light trafficking of this road.
- 7.15. I acknowledge that the access point already exists and that, under the proposal, it would be improved by being formally laid out with a vehicle refuge and on-site parking and turning space would ensure that forward gear movements would be undertaken by drivers accessing and egressing the site. I acknowledge, too, that the proposal would not necessarily generate a permanent increase in traffic movements. In these circumstances, I concur with the Area Engineer's advice.
- 7.16. I conclude that the proposal would be capable of being satisfactorily accessed.

(iv) Water

- 7.17. The proposal would be served by a new connection to the existing public water mains.
- 7.18. The applicant has submitted a completed Site Characterisation Form (SCF), which reports on a 2.2m deep trial hole that was dug in the southern portion of the site. This hole revealed that the topsoil is peaty and the sub-soil layers comprise firm clay, between 0.2m and 1m, and pencil shale (c. 30%) and clay interspersed thereafter. The water table occurs at a depth of 1.9m.
- 7.19. The SCF also reports on the "T" tests that were undertaken. Thus, in holes 1.1m below the ground surface, an average of 27.36 minutes/25mm was calculated. (No "P" tests were undertaken, presumably, because the firm clay layer was deemed to be relatively impermeable). This result indicates that, *ceteris paribus*, the site is suitable for discharge to the ground.

- 7.20. The SCF recommends the installation of a packaged wastewater treatment system and polishing filter, i.e. the Tricel P6 Mechanical Aeration Unit with a pumped rising main to a raised 90 sqm soil polishing filter. The submitted longitudinal section of this system shows that, due to the fall in the site, the discharge from it to the soil polishing filter would need to be pumped and the filter itself would be partially above and partially below the existing ground level. Sections of this filter show that it would be accompanied by the substitution of the aforementioned clay layer by “imported soil of suitable permeability”.
- 7.21. The appellant expresses concern over the proximity of the siting of proposed soil polishing filter to her property (4.9m) and to surface water drains (3.2m). While she acknowledges the applicant’s proposal to pipe these drains, she also expresses concern that in the event of any malfunction leading to leakage the surface water environment is such that her property would be at risk of pollution.
- 7.22. Under Table 6.1 of the EPA’s Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses, minimum separation distances are cited between soil polishing filters and (a) site boundaries, i.e. 3m, and (b) open drains, i.e. 10m.
- 7.23. During my site visit, I observed that the lowest point of the site is the south eastern corner beside the appellant’s residential property and so it is at this point where the existing wet ditches along the southern/front boundary and the eastern boundary of the site converge. Both these ditches are on the inside of earthen mounds that denote the said boundaries. (In the case of the front mound there is also a roadside wet ditch on the outside of this mound). I also observed that a higher incidence of rushes on the site exists than that reported by the SCF.
- 7.24. I note that the proposal would incur a risk of malfunction and leakage, due to the following site-specific factors:
- The soil polishing filter would be underlain by imported sub-soil, which would be more permeable than that which pertains at present. Such importation is less satisfactory than if the indigenous sub-soil were sufficiently permeable.
 - The fall in the site would necessitate pumping the discharge from the Tricel P6 Mechanical Aeration Unit to this soil polishing filter, thereby occurring an additional risk of mechanical failure over that inherent in the specification of such a Unit.

- The applicant would rely upon the laying of pipes in the two wet ditches to allay the interface that would exist between them and the soil polishing filter. Such pipes would be unlikely to capture surface water to the same degree as the existing ditches.
- The roadside wet ditch would remain insitu and it would be within the prohibited 10m distance.

7.25. I note, too, that a comparison of the submitted plans indicates that the site would be cut and filled to prepare a level surface for the proposed bungalow and yet these plans do not reconcile how these measures would interface with the works required to install the proposed raised soil polishing filter.

7.26. The OPW's flood maps do not show the site as being the subject of any identified flood risk.

7.27. In the light of the foregoing factors, I conclude that the applicant's proposals for the handling of foul water would pose an unacceptable risk of malfunction, which would result in leakage. Foul water would thus either pond or contaminate surface water causing pollution and a possible threat to public health.

(v) Stage 1 Screening for Appropriate Assessment

7.28. While the site does not lie within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161), it is effectively surrounded by lands that are within this SPA. The pattern of designation is such that the site and neighbouring lands on either side appear to have been intentional excluded.

7.29. The Special Conservation Interest attendant upon the aforementioned SPA is that of the Hen Harrier and the accompanying Objective is to maintain or restore the favourable conservation condition of this bird species.

7.30. A source/pathway/receptor route between the site would appear to exist insofar as, if the proposed packaged wastewater treatment system and soil polishing filter were to malfunction leading to leakage, then discharge from the same would contaminate surface water in adjacent wet ditches, which drain to a road culvert that conveys such water into lands comprised in the SPA.

7.31. The question thus arises as to whether such contamination would be likely, i.e. possible, and whether it would be a significant effect, i.e. not trivial or

inconsequential. In the light of my discussion of water under the (iv) heading of my assessment, such contamination would be possible. However, in the absence of in combination effects, as an individual effect, it would not be a significant one upon the above cited Conservation Objective for the SPA, i.e. any water contamination would be inconsequential for the habitat of the Hen Harrier.

- 7.32. Having regard to the nature and scale of the proposed development, no Appropriate Assessment issues arise, and it is not considered that the proposed development 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

It is considered that, due to the topography of the site, the presence of firm relatively impermeable clay near its surface, the wet conditions that prevail across it, including wet boundary ditches, and its proximity to an adjacent dwelling at a lower level, it is inherently unsuited to the installation of a waste water treatment system and soil polishing filter. While the proposal would entail site specific measures to address these characteristics, they would pose individually and jointly an unwarranted risk of failure that would result in leakage and the contamination of surface water with pollutants. The proposal would thus be prejudicial to public health and, as such, contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

3rd February 2020