



Planning and Development Acts 2000 to 2021

Planning Authority: Clare County Council

Planning Register Reference Number: 211395

Appeal by Florence and Albert Murphy of Racket Hall, Ballynacally, County Clare against the decision made on the 23rd day of February, 2022 by Clare County Council to grant permission subject to conditions to Sandra Murphy care of Pdraig Hogan of Newhall, Tiermaclane, Ennis, County Clare in accordance with plans and particulars lodged with the said Council.

Proposed Development: Construction of a new dwellinghouse with a carport, complete with a new entrance, sewage treatment system and ancillary works at Lavally South, Ballynacally, Ennis, County Clare.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to the information submitted with the application and the nature and scale of the proposed development, including its siting and design, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, would not unduly impact upon the setting or character of Racket Hall (a Protected Structure), would not create a traffic hazard and would not endanger public health. The proposed development site is located within an area identified as a rural area under strong urban influence by reference to Map Ref: H7 within Volume 2-Maps of the Clare County Development Plan 2023-2029. Having examined the information on file, including the documentation submitted by the applicant, the Board was satisfied that the proposed development would comply with the relevant Development Plan Objective CDP 4.14 with respect to such areas, on the basis of the applicant meeting the necessary criteria set out in Category B (Social Need). Accordingly, the Board was satisfied that the proposed development would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under Section 47 of the Planning and Development Act, 2000, as amended, to this effect.
- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation. This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need. In the interest of the proper planning and sustainable development of the area.

3. The roadside boundary shall be setback in accordance with the submitted site layout plan. The proposed front boundary shall consist of a sod/stone wall to match the removed boundary. The area between the new set-back boundary and the edge of the carriageway shall be graded to the level of the existing road and shall be finished to match the existing road surface, at the expense of the applicant. The details of this work shall be submitted to, and agreed in writing with the planning authority, prior to the first occupation of the dwelling.

Reason: In the interests of visual amenity and traffic safety.

4. Details of the materials, colours and textures of all the external finishes to the proposed house shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site,
and
- (ii) the impact of the proposed development on such
archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements, (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

6. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

7. (a) All surface water generated within the site boundaries shall be collected and disposed of within the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road.
- (b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage. Surface water shall be discharged to soakways and/or sustainable urban drainage methods within the site. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of traffic safety and to prevent pollution of watercourses.

8. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

9. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document "Code of Practice for Domestic Wastewater Treatment Systems (Population Equivalent ≤ 10)" published by the Environmental Protection Agency in 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

- (b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (d) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

- 10. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential and visual amenity.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Patricia Calleary

Patricia Calleary

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.



Dated this *05* day of *May* 2023.