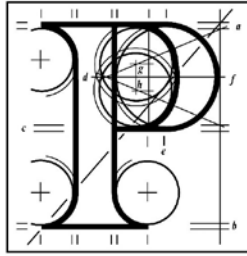


An Bord Pleanála



Inspector's Report

Development: Construction of a dwelling house, entrance and wastewater treatment system, including ancillary site works, at Caherscooby, Newmarket-on-Fergus, Co. Clare.

Application

Planning authority: Clare County Council
Planning application reg. no. P15/409
Applicants: Richard & Martina Conroy
Type of application: Permission
Planning authority's decision: Grant, subject to 12 conditions

Appeal

Appellants: Jayne E. Shanahan & Michael Clancy
Type of appeal: Third party -v- Decision
Observer: An Taisce
Date of site inspection: 5th November 2015

Inspector: Hugh D. Morrison

Site

The site is located 3.18 km to the north east of Newmarket-on-Fergus in an area of undulating countryside that includes within it lakes and woods. This site is accessed off the eastern side of a local third class road, which, as it passes the site, parallels the Limerick/Galway railway line to the west. On the adjoining land to the north and south of the site there is a bungalow and further to the south there are two farmsteads and further dwelling houses.

The site itself is rectangular in shape and it is subject to mild to moderate gradients that rise in an easterly direction. This site has an area of 0.2 hectares and it is presently in use as a field for grazing. The western, roadside, boundary is denoted partially by a wall/mound and partially by an overgrown hedgerow. The side boundaries to the north and south are denoted by means of timber post and wire fences. The eastern boundary is not denoted "on the ground", although there are some mature bushes within its vicinity.

Proposal

The proposal would entail the siting of a bungalow just within the eastern half of the site. This bungalow would provide two-bed (three-person) accommodation over a floorspace of 115 sq m. Its western facing principal elevation would have a centrally placed projecting element within it, which would be finished in local natural sandstone and which would have a bay window on its right hand side. Elsewhere the bungalow would be finished in smooth render. The main roof would be fully hipped at either end and the ancillary roof to this projecting element would, likewise, be fully hipped.

The site would be accessed via a new entrance, which would be sited on the right hand side of its frontage with the aforementioned local road. A driveway would link this entrance to the proposed bungalow. This bungalow would be connected to the Caherkine Group Water Scheme and it would be served by an on-site waste water treatment system and percolation area, which would be sited forward of the bungalow in the front garden.

Planning authority's decision

Permission granted subject to 12 conditions.

Technical reports

None

Grounds of appeal

Objective CDP 3.11 is not considered to be relevant.

- Objective CDP 3.13 refers to infill sites within groupings of dispersed rural dwelling houses. The dwelling houses to the north and south of the site are not considered to be such a grouping.
- The items cited under Section 3.2.6 of the CDP with respect to site suitability are discussed below.

Siting

- The site is only 27m wide and it is one of 7 such plots. If the proposal is permitted, then an adverse precedent for the similar development of the other plots would be established, leading to ribbon development along a narrow country road.
- The proposed dwelling house would be sited in a position close to the dwelling houses on either side, i.e. 3.35m from the common boundary with the one to the north and 7.62m from the common boundary with the one to the south. Windows in this dwelling house and the driveway to it would overlook these neighbouring dwelling houses, thus eroding their privacy.

Environment

- The proposal would have an environmental impact. Section 17.3.10 of the CDP promotes the protection of biodiversity and wildlife corridors. The site forms part of such a corridor and observation of the same over the last 13 years has led to the identification of a wide diversity of species.
- The proposal would entail the loss of a hedgerow from the frontage of the site and of pasture land from within it. Such loss would adversely affect the many species of local birds.

Traffic considerations

- The road, at 2.74m width, is too narrow and winding to accommodate additional traffic safely. (Existing traffic is generated by local residents and farmers and other drivers who use it as a short cut between Quin and Newmarket on Fergus).
- The railway bridge to the north of the site is both low and narrow and so it would be at risk of being damaged by construction traffic.
- Attention is drawn to application reg. no. 05/121 for a dwelling house on the first of the 7 house plots, i.e. the one to the north of Michael Clancy's. This application was refused on the basis of a deficient southerly sightline and the sub-standard horizontal alignment of the local road. The sightlines at the

proposed access point to the appeal site would be deficient in both directions.

Heritage/archaeological

- Attention is drawn to Mooghaun Hillfort less than 1.6 km to the west of the site and Caher Scoubae, a smaller fort, which is located 0.8 km to the north east. An example of a smaller Bronze Age farm lies 61m to the rear of the site. Consequently, the site should be the subject of an archaeological assessment.

Responses

The planning authority has responded to the above grounds of appeal as follows:

- The site is considered to be an infill one and so it was assessed under Objective CDP 3.13. Additionally, the personal circumstances of the applicant (Martina Conroy) were taken into account.
- Traffic volumes on the local road are low.
- There are no recorded monuments or European sites in or on the site.
- The design of the proposal would be in keeping with existing dwelling houses in the area.

The applicants have responded to the above grounds of appeal.

- They begin by alleging that the appeal is “vexatious, frivolous and without substance or foundation” and that it has been made with the sole intention of delaying the development. They question whether two separate objectors, at the application stage, are entitled to make a joint appeal. They also allege that the appellants would have been aware, when they purchased their house plots, that further ones would be likely to be developed.
- The proposal falls to be assessed under Objective 3.13 of the CDP.
- The proposed dwelling house would have a total floorspace of 115 sq m and so it would be proportionate to the site which is 0.2 hectare.
- The proposed dwelling house would be sited c. 6m off its side boundaries, which is typical for rural dwelling houses. Its roof would be hipped thereby lessening the impact on neighbours.
- Siting: The dwelling house has been designed to ensure that the neighbouring dwelling houses on either side would not be overlooked.

- Environment: The appellants' points under this heading would have applied equally to the construction of their own dwelling houses. Nevertheless, the applicants undertake to retain the wild foliage to the rear of the site.
- Traffic considerations
 - The sightlines to the proposed entrance would comparably with the appellants' ones on either side.
 - The setting back of the frontage would facilitate vehicles passing one another.
 - The applicants challenge the appellants' shortcut claim on the basis that there are multiple routes between the two settlements cited.
- The previous refusal is not relevant as it pertains to a non-infill site.
- Ribbon development would not arise and any future proposals would be the subject of planning control.
- If no archaeological remains were discovered in the development of the appellants' sites, then there is unlikely to be any in the appeal site which lies between them.

Observer

The third party appeal is supported and the following points are made:

- The proposal would exacerbate ribbon development and establish a precedent for further such development.
- The proposal would add to the erosion of the rural character of the surrounding countryside.
- The local road is sub-standard and so not fit to accommodate additional traffic.
- Information with respect to local archaeology is deficient, including any that may exist within the site.

Planning history

Site

- None

Site to north

- P03/2756: Applicant – Michael Clancy: Construction of dwelling house, garage, septic tank, percolation area and entrance: Permitted.

Site to south

- P02/516: Applicant – Jayne Shanahan: Construction of dwelling house and septic tank: Permitted.

Development Plan

The site is shown in the Clare County Development Plan 2011 – 2017 (CDP) as lying in a rural area under strong urban pressure. Under Objective 3.11, this area is an area of special control for single houses in the countryside.

Appendix A1.2.1 addresses rural residential development and it refers to the County Clare Rural House Design Guide.

Objective 3.13 addresses new single houses on infill sites in the countryside. It states that “where there is a grouping of dispersed rural houses, the development of an infill site as a dwelling for permanent occupation of the applicant amongst the existing developed sites will be acceptable in principle, subject to the infill gap not being greater than 50m and subject to other normal site suitability considerations.” The Objective goes on to state that “In such circumstances where these sites occur in “Areas of Special Control” the provisions of Objective CDP 3.11 (i.e. local need requirement) will not apply.”

National planning guidelines

Sustainable Rural Housing

Assessment

I have reviewed the proposal in the light of national planning guidelines, the CDP, relevant planning history, and the submissions of the parties and the observer. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) The site and rural housing policy,
- (iii) Amenity,
- (iv) Archaeology and conservation,
- (v) Traffic and access,
- (vi) Drainage, and

(ii) AA.

(i) Legalities

1.1 The applicants question whether it is appropriate for separate objectors at the application stage to make a single combined appeal now, they allege that this appeal is “vexatious, frivolous and without substance or foundation”, and they maintain that the appellants would have known about the prospect of further house plot developments when they purchased their sites on either side of the appeal site.

1.2 With respect to the first of the applicants’ points, there does not appear to be any procedural or legal difficulty with two separate objectors making a single combined appeal. With respect to the second, the grounds of appeal cited do include material planning considerations and so I do not consider that it would be appropriate for the Board to dismiss this appeal under Section 138 of the Planning and Development Act, 2000 – 2014. With respect to the third, I am not in a position to assess the chronology referred to.

1.3 I conclude that there are no legal impediments to the Board proceeding to assess the proposal in the normal manner.

(ii) The site and rural housing policy

2.1 The site is shown in the Clare County Development Plan 2011 – 2017 (CDP) as lying in a rural area under strong urban pressure. Under Objective 3.11, this area is an area of special control for single houses in the countryside. Ordinarily, the applicants would be required to demonstrate that they have a rural, as distinct from, urban generated housing need. However, in this case, the planning authority has taken the view that the site in question is an infill one and so under Objective 3.13 the need to establish the said rural generated housing need does not arise.

2.2 The Sustainable Rural Housing Guidelines refer to infill development in connection with their discussion of Ribbon Development under Appendix 4. Thus, whether a proposal would exacerbate ribbon development or could be entertained is dependent upon a number of factors, including whether the proposal might be considered to be infill development, the implication being that as such development would not extend an area of ribbon development it should be distinguished from proposals that would do so.

2.3 The aforementioned discussion in the Guidelines does not serve to waive the need for applicants to establish that they have a rural generated housing need. The approach of the CDP is, thus, difficult to reconcile with these Guidelines. In this respect, I note that Section 37(2) of the Planning and Development Act, 2000

– 2014, empowers the Board to materially contravene CDPs, but only where the Board is minded to grant planning permission. I, therefore, take the view that, notwithstanding the aforementioned difficulty, Objective 3.13, as part of the relevant adopted statutory CDP, is applicable to the assessment of the proposal. I note, too, that, whereas neither applicant either resides in or is from a rural area, the case planner's report does take cognisance of one of the applicant's medical circumstances as outlined in a letter received by the planning authority on 29th July 2015.

2.4 The site lies between an adjoining house plot to the north and to the south, both of which have been developed to provide a bungalow on each. Objective 3.11 states that infill sites occur where the gap between adjoining sites on either side is no greater than 50m. In this case the said gap would be 27m and so the site would be an infill one.

2.5 The appellants and the observer express the concern that to accede to the current proposal would establish an adverse precedent for further similar proposals, resulting in ribbon development. The applicants have responded by stating that such proposals would be subject to planning control, too.

2.6 The aforementioned Appendix 4 describes ribbon development as occurring where five or more dwelling houses exist on one side of a road over a given 250m frontage. If the appeal site were to be developed as proposed, then three dwelling houses would occur over a combined frontage of c. 90m. The development of further lands to the north and to the south would not constitute infill development and so it would be distinguishable from the current proposal. Furthermore, such development would be subject to planning control that is informed by the said provisions of Appendix 4.

2.7 I conclude that, under Objective 3.13, the proposal would constitute infill development and that this being so, under the CDP, the need for the applicants to demonstrate that they have a rural generated housing need does not therefore arise.

(iii) Amenity

3.1 Appendix A1.2.1 of the CDP states that rural residential development sites should normally have a minimum frontage of 30m. Exceptions can however be made where it can be demonstrated that there would be no visual or residential impacts. The width of the site's frontage is 27m and so the presence of such impacts falls to be assessed.

3.2 The appellants express concern over the siting of the proposed bungalow and its resulting proximity to the common boundaries with their respective residential properties to the north and to the south. They state that the clearance distance

in the former case would be 3.35m and in the latter case 7.62m. Views from windows and the driveway to this bungalow would overlook their properties and erode their privacy.

3.3 The applicants have responded by stating that the said clearance distances would be c. 6m. They also draw attention to the modest size of the proposed bungalow, at 115 sq m, and to its design, which would incorporate fully hipped gables to the main roof, thereby lessening the scale and mass and the resulting impact of its presence upon neighbours.

3.4 I note that the local road, which serves the site and the appellants' properties, is the subject of a slightly curved horizontal alignment and that the siting/orientation of the existing bungalows reflect this curve. The proposed bungalow would likewise reflect it and so this bungalow would be sited in a slightly offset position in relation to the side boundaries of the site. These boundaries are denoted at present by means of timber post and wire fences. I note, too, that the applicants' stated clearance distances coincide with those cited on the submitted site layout plan.

3.5 The northern elevation of the proposed bungalow would be blank and the separation distance between this elevation and the corresponding southern one in the bungalow to the north would range between 10m, to the front, and 9m, to the rear. Towards the front of the existing elevation there is a single window, which functions as a secondary window to the habitable room that it serves.

3.6 The southern elevation of the proposed bungalow would contain a pair of French windows and the corners to this elevation would contain corner windows to a dining room and a kitchen. The separation distance between it and the corresponding northern elevation in the bungalow to the south would range between 14.5m, to the front, and 13.5m, to the rear. The existing elevation has a single window, which probably serves a kitchen, and a glazed door, which probably serves a utility room, both of which are towards the rear of this elevation.

3.7 During my site visit, I noted that those portions of the side boundaries to the house plot to the north of the site, which enclose the front and side gardens, have been planted with a beech hedge. Once these hedges become established, they will screen these gardens. If similar hedge planting was to be undertaken to the side boundaries of the site, then it, too, would in time be screened. Until such planting becomes established some interim boundary treatments may be needed. Neighbour privacy would thereby be safeguarded. A landscaping condition would be capable of addressing these matters.

3.8 I conclude that, notwithstanding the width of the site, the proposed bungalow would be appropriately sited in a manner that would, subject to boundary treatments, be compatible with the visual and residential amenities of the area.

(iv) Archaeology and conservation

4.1 The appellants draw attention to sites of archaeological interest that exist within the locality of the appeal site. They thus state that this site should be the subject of an archaeological assessment.

4.2 The applicants have responded by stating that the appellants' own sites, which adjoin theirs to the north and to the south, when developed did not lead to any archaeological remains being found. As the current appeal site lies between these two sites, it is unlikely to contain such remains.

4.3 I note the above exchanges between the parties. The likelihood of archaeological remains within the site appears remote and so I do not consider that it would be reasonable to require that the applicants undertake an archaeological assessment.

4.4 The appellants draw attention to the loss of vegetation that would be entailed in the development of the site. Such vegetation provides a habitat and corridor for native mammal and bird species and its loss would damage biodiversity in the area.

4.5 The applicants have responded by stating that the said loss would be similar to that entailed in the development of the adjoining house plots by the appellants. Nevertheless, they undertake to retain insitu the substantial bushes beside the rear boundary to the site.

4.6 I consider that the applicants' undertaking is one to be welcomed. The aforementioned landscaping condition would provide a vehicle for ensuring that this undertaking is reflected in any permission.

4.7 I conclude that, subject to appropriate condition, the proposal would be compatible with biodiversity.

(v) Traffic and access

5.1 The appellants draw attention to the local third class road that runs past the site. This road is less than 4m in width and so it has a single carriageway. It is of variable horizontal and vertical alignment and it crosses a narrow railway bridge to the north of the site. Existing traffic is both locally generated and through traffic passing between Quin and Newmarket-on-Fergus. Given the aforementioned description of the road, it would be inherently unsuited to

carrying the additional traffic that would be generated by the construction and operational phases of the proposal.

- 5.2 The applicants have responded by questioning the extent of through traffic identified by the appellants. Furthermore, I consider that the additional traffic in question would not be significant, in terms of overall traffic levels on the local road, and so it would, notwithstanding the character of this road, be unreasonable to objection to the current proposal on the basis of increased traffic generation.
- 5.3 The appellants also draw attention to the sightlines that would be available at the proposed entrance to the site. They consider that these would be sub-standard and, in this respect, they refer to application reg. no. 05/121 for a dwelling house on an undeveloped house plot beyond the house plot that adjoins the site to the north. This application was refused on the grounds of road safety.
- 5.4 During my site visit, I observed that the site of the aforementioned application is close to a railway bridge, which is incorporated within a double bend in the local road. Given the proximity of this site to this section of the road, available sightlines at any entrance to it would be inherently restricted and so they are not comparable with those that would be available at the proposed entrance to the current appeal site. I also observed that, if the existing overgrown hedge along the frontage of the site is removed, then there would be scope to provide adequate sightlines in either direction.
- 5.5 I, therefore, conclude that the proposal would be capable of being served by the local road and that potentially available sightlines at the proposed entrance would be adequate to ensure good visibility from and of vehicles accessing/egressing the same.

(vi) Drainage

- 6.1 The proposed bungalow would be connected to the Caherkine Group Water Scheme. The appellants have not indicated that their bungalows rely upon wells for their water supply and so, I assume that they, too, are connected to this Group Water Scheme.
- 6.2 The applicants propose to install a packaged waste water treatment system and a soil polishing filter in the front garden to the bungalow. In this regard, they have undertaken a site characterisation exercise. A trial hole to a depth of 2m was dug. No bedrock or water table was encountered within the same and a T value of 16.75 minutes/25mm was returned. The exercise concluded that the site would be suitable for the installation of a soil polishing filter without any site improvement works.

6.3 The site layout plan shows the installation of a soil polishing filter composed of 4 trenches, each of which would be 9m long. I note that the proposed bungalow would be a two-bed/three-person one and so a further 2 trenches of the stated length would be needed to ensure that the minimum length in this respect can be achieved. This enlarged soil polishing filter may require that the proposed entrance and/or driveway is moved slightly northward on the site.

6.4 I conclude that the proposed bungalow would be capable of being satisfactorily drained, provided the size of the proposed soil polishing filter is increased to reflect the number of bedspaces that would be available.

(vii) AA

7.1 The site does not lie within a Natura 2000 site. The nearest such sites are the Lough Gash Turlough SAC (site code 000051) and the Lower Shannon SAC (site code 002165), which are, variously, 3.25 km away and 2.7 km away. I am not aware of any source/pathway/receptor routes between either of these sites and the appeal site.

7.2 Having regard to the nature and scale of the proposed development and the nature of the receiving environment and the proximity to the nearest European site, 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.

Recommendation

In the light of my assessment, I recommend that the construction of a dwelling house, entrance and wastewater treatment system, including ancillary site works, at Caherscooby, Newmarket-on-Fergus, Co. Clare, be permitted.

Reasons and considerations

Having regard to Objective 3.13 of the Clare County Development Plan 2011 – 2017, the proposal would constitute infill development and so, subject to conditions, it would be appropriate, in principle, upon the site. The siting and design of the proposal would, in conjunction with appropriate boundary treatments, be compatible with the visual and residential amenities of the area. The traffic generated by the proposal would be capable of being accommodated on the local road and the proposed site entrance would be capable of providing adequate sightlines. The proposal would, subject to an increase in the size of the proposed soil polishing filter, be capable of being satisfactorily drained. No Appropriate Assessment issues arise. The proposal would thus accord 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. The proposed development shall be amended as follows:
 - (a) The proposed soil polishing filter shall be extended to achieve trenches with a total length of 54m.
 - (b) Any consequential changes for the siting of the site entrance and/or the route of the driveway shall be shown.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health.

3.
 - (a) The site entrance to the proposed bungalow shall be set back not less than four metres and not more than six metres from the edge of the public road. Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees and shall not exceed one metre in height.
 - (b) The proposed front boundary wall shall consist of natural local stone, the exact height and location of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety.

4.
 - (a) The carriageway of the public road shall not be raised, lowered or otherwise altered at its junction with the access driveway to the proposed dwelling.
 - (b) The gradient of the access driveway shall not exceed 3% for the first seven metres adjacent to the carriageway of the public road.

Reason: In the interest of traffic safety.

5. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

(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.

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

6. The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

7. The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity.

8. 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.

9. (a) A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the planning authority. Details of the system to be used, and arrangements in relation to the ongoing maintenance of the system, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) 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.

Reason: In the interest of public health.

10. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) The retention of the bushes towards the rear of the site.

(b) The establishment of a hedgerow along all side and rear boundaries of the site,

(c) The provision of temporary screen fencing along the side boundaries to remain insitu until the hedgerows become established and reach a height of 1.5m, and

(d) The planting of trees at 3 metre intervals along the western boundary of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

11. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

12. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 – 2013, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the bungalow, without a prior grant of planning permission.

Reason: In order to afford the planning authority control over such development, in the interest of the amenities of the area.

13. The developer shall pay to the planning authority a financial contribution of €2022 (two thousand and twenty-two euro) 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 – 2014. 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 – 2014 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.

Hugh D. Morrison

Inspector

10th December 2015