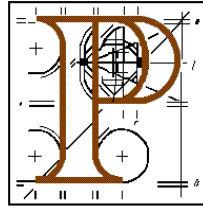


## An Bord Pleanála



### Inspector's Report

**Reference:** PL19.245440

**P.A. Reference:** 15/166

**Title:** House

**Location:** Clonaderg, Ballynahown, County Offaly.

**Applicant:** Colm & Caroline Farrell

**Appellants:** Colm & Caroline Farrell

**Observers:** None

**PA:** Offaly County Council

**Type of Appeal:** First party against refusal

**Decision:** Outline Planning permission refused

**Date of Site Visit:** 16<sup>th</sup> December 2015

**Inspector:** Philip Davis

## 1. Introduction

This appeal is by the applicants against the decision of the planning authority to refuse outline planning permission for a dwelling in a rural area in north Offaly – the reasons for refusal relate to material contravention of settlement policy.

## 2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

### **Clonaderg, Ballynahown, County Offaly**

Clonaderg townland is located in a rural area in north-west Offaly, close to the border with Westmeath. It is 1-km south-west of the small village of Ballynahown. The gently rolling landscape is generally low-lying, but just above the floodplain of the Shannon to the west and some raised bogs to the east. The area is characterised by large grazing fields bounded by ditches and low hedges, with occasional areas of raised bog, and some demesne lands to the east and north near the village. A single third class road runs south-west through the townland along what seems to be an esker from Ballynahown, eventually linking with the R544. The third class road is surrounded on both sides with a near constant ribbon of housing development, with further houses on farm tracks running in either direction. The N62 Athlone to Birr Road runs through Ballynahown and east of the townland.

### **The site and environs**

The appeal site, with a site area given as 0.3 hectares, is a rectangular shaped grazing field on the north-east side of a farm lane running south-east from the road running through Clonaderg. It is approximately 150 metres from the public road. It is part of a larger grazing field, which drops slightly in level from south to north. It is bounded to the south-east and south-west by ditches and hedges, open on other sides.

**North-west** of the site is a grazing field – about 50 metres beyond this is the rear of a bungalow dwelling facing the main road.

**South-west** of the site is the access track, a narrow, straight road which serves a large farmhouse in addition to another modern dwelling. This dwelling is across the road from the appeal site.

**South-east** of the site are open fields.

**North-east** of the site are open fields – about 100 metres further north is a cul-de-sac road serving a significant number of dwellings, and terminating at what appears to have been a clachán style rural cluster.

### 3. **Proposal**

The proposed development is described on the site notice as follows:

*Proposed dwelling with wastewater treatment system.*

### 4. **Technical Reports and other planning file correspondence**

#### Planning application

The planning application, with plans and supporting documentation including a site suitability report and details of family background was submitted to the planning authority on the 16<sup>th</sup> June 2015.

#### Internal and External reports and correspondence.

**Irish Water:** No objection.

**Water Services:** No objection subject to conditions.

**Area Engineer:** No objection.

**Planners report:** It states that the site is in what is considered a 'pressure area' in an Area of High Amenity as defined under Chapter 1, Map 1.4 of the CDP. The relevant policies objectives are SSP-18 and SSP-19 with regards to housing. It is considered that while the applicants are from Ballynahown originally – their parents own the land – it is not considered that they satisfy SSP 19 as they have alternative sites available outside an area of special control. Refusal recommended.

### 5. **Decision**

The planning authority decided to refuse permission for the following two reasons:

*The subject site is located in open countryside within an area of the county that is designated as a Pressure Area in the Offaly County Development Plan 2014-1020. In such pressure areas, it is Development Plan policy that certain categories of applicants which are defined in policy SSP-18 of the County Development Plan will be given a positive presumption for the development of a permanent rural home. The Council is not satisfied that the applicants comply with the above policy as the*

*applicants have not submitted evidence that they are one of the defined categories of applicants and accordingly the proposed development would materially contravene the 2014-2020 Offaly County Development Plan and would be contrary to the proper planning and sustainable development of the area.*

*The proposed site is located with an Area of High Amenity, namely an Esker, where under the provisions of Policy SSP 19 of the Offaly County Development Plan 2014-2020 it is council policy to consider a single dwelling for the permanent occupation of an applicant in Areas of Special Control where all of the following can be demonstrated:*

- Applicant must meet the criteria of one or more of the 3 categories of Policy SSP-18 and,*
- Applicant has a functional need to reside in their particular rural area,*
- No alternative site is available outside the areas of special control and,*
- Applicant does not already own or has owned a house in a rural area.*

*The Council considers that the applicants do not comply with the above policy as they are purchasing the subject site and subsequently do have alternative sites available outside the Area of Special Control and accordingly the proposed development would materially contravene the 2014 -2020 Offaly County Development Plan and would be contrary to the proper planning and sustainable development of the area.*

## **6. Planning Context**

### Planning permissions – appeal site

None relevant on file.

### Planning permissions – adjoining areas

None relevant on file.

### Development Plan

The site is in open countryside in an area identified as one of ‘special control’ on the basis of it being within An Area of Special Amenity. For rural housing in these areas, policy objectives SSP-18 and SSP-19 apply.

Relevant extracts from the 2014 Offaly County Development Plan are attached in the appendix to this report.

## 7. Grounds of Appeal

- The family background of the applicant is outlined – both are from the local area, live in Athlone, but have many direct family members in the vicinity of the site (map attached, plus correspondence indicating the applicant's links with the community).
- It is submitted that the applicant is entirely in conformity with SSP18 as the applicant was raised in the area and live within 8 km of the site and have never owned a house in a rural area.
- It is argued that the applicant meets the functional needs criteria in SSP 19 and has a strong family need to live in the immediate area.

## 8. Planning Authority's Comments

The planning authority states that they are of the opinion that as the applicants are not landowners, and therefore do not have alternative sites available to them, they do not qualify under SSP-18, and furthermore they are not considered to have a 'functional need' under SSP-19. The Board is requested to uphold the decision of the planning authority.

## 9. Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- **Material contravention**
- **Principle of development**
- **Other issues**
- **Appropriate Assessment and EIA**

### **Material contravention**

I note that the reason for refusal represents a material contravention of Policies SSP-18 and SSP-19 of the 2014 Development Plan. In such circumstances, Section 37(2) of the 2000 Act as amended states that:

- (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.*
- (b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—*

*(i) the proposed development is of strategic or national importance,*

*(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*

*(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*

*(iv) 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.*

*(c) Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan.*

While I will address the specific issues raised by the appeal further below, I would state with regard to (i) to (iv) above that:

- i. The proposed development is not of strategic or national importance.
- ii. I do not consider that there are any conflicting objectives in the development plan with regard to the stated reason for refusal, or that the policy objective is not clearly stated.
- iii. The reason for refusal appears to be fully in line with regional and national guidance and other stated policies, in particular the Sustainable Rural Housing Guidelines 2005.
- iv. While given the very large number of dwellings which seem to have been built in the area (including a number under construction), and it would seem that there has been a history of permissions for one-off housing, the development plan is quite recent and it is unclear as to whether any have been granted under similar circumstances to the current appeal.

I would therefore conclude that pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, the Board is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case

## **Principle of Development**

The appeal site is in a rural area next to the border with Westmeath. It has been extensively settled with numerous dwellings along the main road, almost to the point of it being a sprawling village in its own right – although it lacks any of the usual facilities that would be associated with an established settlement. It would seem that the easy road proximity to the town of Athlone and other towns in the vicinity has encouraged strong urban pressures in the vicinity. The general area is attractive – the attractive little village of Ballynahown, while very small, seems a significant tourist spot, probably associated with visitors going to Clonmacnoise. I would therefore consider the planning authority's identification of the area as of High Amenity and under Strong Urban Pressure to be reasonable.

Chapter 1 of the 2014-2020 County Development Plan sets out broad policy for settlement in rural areas. The general policy provisions follow the Sustainable Rural Housing Guidelines 2005. The development plan recognises all the northern part of the County, including the area south of Ballynahown, as an area under Strong Urban Influence (Map 1.3). In the Rural Housing Policy Map (Map 1.4) the site is identified as being within a pressure area and within an Area of High Amenity.

This is the most restrictive rural zoning within the plan (apart from areas with designated Natura 2000 habitats). In this case, the restriction is related to the special amenity qualities of the area. The reasons for this designation are not clearly set out, but seem to be related to the esker landscape and the proximity to the Shannon – the road is also a key route to Clonmacnoise. I would consider this policy to be in accordance with the objectives of the Sustainable Rural Housing Guidelines and related national policy.

The applicant is not accepted by the planning authority to be a 'local person' in the context of SSP-18. To satisfy SSP-18, the applicant must be a 'local rural person' and the site must be within their 'local rural area' and the applicant must have a 'local rural housing need'. While it would seem the applicant falls within the first two of these criteria, there has been no 'local housing need' demonstrated to the satisfaction of the planning authority, and I would concur with this – it is not clear that there is any economic or other reason for the applicant to live in this area as opposed to another less sensitive rural area or a local town/village.

In addition to the above, there are additional restrictions with regard to Areas of Special Control. The restrictions in SSP-19 include having to demonstrate a functional need to reside in the area. The applicant comes from the area, and has many family members within the area, but currently works in Athlone. I would accept that the applicant has strong ties to the area, but by any reasonable definition, I do not consider that this comes within what is emphasised as 'exceptional

circumstances' as set out in policy SSP-19. I therefore concur with the planning authority in their reason for refusal.

### **Other issues**

A site characterisation form was provided with the outline planning application. The site is apparently very well drained with a low T-value (i.e. very permeable subsoil), and is over a locally aquifer of moderate vulnerability. While I would be very concerned with the proliferation of septic tanks in the area, the site would appear suitable in principle.

The site is accessed via a private road. This road enters the highway between two houses – due to the setback of both houses, sight lines on either side would be generally acceptable as the road here is long and straight.

There is no evidence from information on file or other sources that the site is prone to flooding.

There are no recorded ancient monuments or buildings on the NIAH on or near the site.

If granted permission, the site would be subject to a standard development contribution under the adopted Scheme. No other development contributions appear to apply to this area.

### **Appropriate Assessment and EIA**

The planning authority did not appear to carry out an AA Screening of the proposed development.

The River Shannon Callows SAC and SPA (site codes 004096 and 00216) are the only Natura 2000 sites in the vicinity. The SAC/SPA is about 4 km west of the site and within the catchment – the nearest watercourse seems to be several hundred metres to the north, a stream flowing through Ballynahown. There are no obvious pathways for pollution between the site and the two designated areas – both designated for importance for a variety of freshwater species of birds, fish and invertebrates. I therefore consider that it is reasonable to conclude on the basis of the information on the file, which I would consider adequate in order to issue a screening determination, that the proposed development, either in itself or in combination with other works in the area, would not be likely to have a significant effect on European Site No. 004096 or 00216, or any other European Site, and a Stage 2 AA is not therefore required.

As the proposed development does not fall within any category of development within the Regulations for EIA, and there are no specific environmental sensitivities involved, there is no requirement for EIA.



## **10. Conclusions and Recommendations**

I conclude that the provisions of Section 37(2)(b) of the Act apply – the Board is precluded from granting permission as none of the provisions of S.37(2)(b)(i) to (iv) apply. Notwithstanding this, I conclude that the applicant does not fall under the ‘exceptional circumstances’ to demonstrate a functional need to reside in this area of special control, and as such it represents a material contravention of the CDP, specifically policies SSP-18 and SSP-19.

I recommend therefore that outline planning permission be refused for the reasons and considerations set out below.

### **REASONS AND CONSIDERATIONS**

1. The planning authority has stated that they consider the proposed development to be in material contravention of Policies SSP-18 and SSP-19 of the current Offaly County Development Plan. The Board pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site is located within an Area of Special Control where policies SSP-18 and SSP-19 of the Offaly County Development Plan 2014-2020 states that a single dwelling for permanent occupation will only be considered where a number of criteria can be demonstrated, including that the applicant has demonstrated a functional need to reside in the area. It is not considered that the applicant has demonstrated the exceptional circumstances required, with particular regard to the functional need to reside in this particular area. The proposed development is therefore in material contravention of policy objectives SSP-18 and SSP-19 and would thus be contrary to the proper planning and sustainable development of the area.

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**Philip Davis,**  
**Inspectorate.**  
**21<sup>st</sup> January 2016**