

An Bord Pleanála



Inspector's Report

Development: Construction of a house and associated works and services.

Location: Caldrough, Carrick on Shannon, County Leitrim.

Planning Application

Planning Authority: Leitrim County Council
Planning Authority Reg. Ref.: 16/2
Applicant: Sheila Deane
Type of Application: Permission
Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant: Sheila Deane

Type of Appeals: 1st v Refusal
Date of Site Inspection: 7th June 2016
Inspector: Dolores McCague

1 SITE LOCATION AND DESCRIPTION

- 1.1 The site is situated at Caldragh, Carrick on Shannon.
- 1.2 The site is located on a private access road which is an extension of a minor local road running along the River Shannon north of Carrick on Shannon. The land is elevated near the road and falls towards the river. The site does not extend as far as the river but is visible from and slopes towards the river.
- 1.3 The site area is given as 1.1ha.

2 PROPOSED DEVELOPMENT

- 2.1 The proposed development comprises the construction of a two-storey dwelling, domestic garage and associated site works. The proposed dwelling is 17.6m long x 12.5m deep x 9m high to ridge level. The floor area is given as 330.64m².
- 2.2 The proposed garage is 10.2m x 6.3m x 5.6m high.
- 2.3 Effluent disposal is via an effluent treatment system

3 PLANNING AUTHORITY DECISION

- 3.1 The planning application was lodged on the 7th January 2016.

Prescribed Bodies

- 3.2 An Taisce – 12/1/2016 the proposal would exacerbate an unsuitable pattern of ribbon development on minor road parallel to the River Shannon.

Technical Reports

- 3.3 Planning Report 17/2/16 – The site is located within an area of high visual amenity. The site is located in an area identified as an area of low capacity/low availability in terms of accommodating one off housing within the countryside.
- 3.4 An Appropriate Assessment Screening Report has not been submitted in respect of the proposed development.
- 3.5 The site enjoys views of the River Shannon to the north west.
- 3.6 There is an existing occupied dwelling on the adjoining site to the north east. Caldragh House is located to the south west. There are a number of other dwellings in the immediate vicinity of the site. The plot of land between the site and Caldragh House is within the applicant's landholding and is the subject of a current planning application in the name of the applicant's son, Christopher Deane.
- 3.7 The planning history of the area is outlined.
- 3.8 The applicant states that her current place of residence is in Naas, Co Kildare and that her current place of work is in Blessington, Co Wicklow. The applicant states that her husband is originally from another part of Co Leitrim and has family elsewhere in Leitrim. The applicant formerly owned a house in Leitrim and spent summers there. The applicant has indicated her willingness to enter into a S27 agreement restricting the development of the land but not restricting occupancy of the dwelling. The overall landholding comprises the subject site and the site to the south west which is also the subject of a current planning application. On the basis of the foregoing, it is considered that the applicant cannot satisfy the requirements of Policy 17 which relates to Low Capacity areas and is set out in Section 3.2.2.14 of the County Development Plan for the following reasons:
- The applicant is not currently living in the low capacity area or in the immediate vicinity of the site.
- The applicant is not originally native to the low capacity area.
- The applicant is not willing to enter into an occupancy condition.
- 3.9 The site is located in a sensitive landscape overlooking the River Shannon. The house design is very large and typical of a suburban type house. It is almost identical to that proposed on the

adjoining site to the south west. Contrary to policy 101, a very high standard of site specific design has not been achieved.

- 3.10 The long planning history associated with this and other sites in the immediate vicinity is set out. While it is noted that permission was granted on this site in 2004, this permission has since lapsed (31/8/2009) and the previous permission was granted under the superceded 2003-2009 CDP. There have been significant changes in planning and environmental policy since the grant of permission. The area is located in an area under pressure from one-off houses and requires that further housing development be strictly controlled.
- 3.11 Ground conditions – the site is within 230m of the R Shannon and slopes steeply towards the river. A site characterisation form indicated trial hole, t- test and p-test results. The site suitability assessment indicates that a modified T value of 70.43 and P test result of 27.64 was achieved. On the date of inspection it was noted that the test holes were dug out along the south western boundary of the site associated with the adjoining application, and not adjacent to the proposed percolation area. Furthermore the location appeared to be selected as it was the driest part of the field. Notwithstanding this, at the time of site inspection, the ground conditions on the site were very wet underfoot and all test holes were full with water. Photographs of the test holes are attached to the report.
- 3.12 There are a number of existing dwellings in the immediate vicinity of the site and this general area is under significant pressure for one off housing. To permit a development which cannot satisfy policy would set an undesirable precedent.
- 3.13 The planning authority – 26/2/2016 - decided to refuse permission for 5 reasons:
- 1 Contrary to policy 17 - criteria governing development in areas with low capacity/ low availability.
 - 2 Sensitive location in an area designated as high visual amenity.
 - 3 Poor ground conditions and topographical characteristics which indicate that notwithstanding the use of an effluent treatment system and a polishing

filter the planning authority is not satisfied that the site can be drained satisfactorily.

- 4 Contrary to section 4.1.2 of the development management requirements of the CDP which seek to encourage development to locate in existing towns and villages where services can be economically provided and the social and urban structure can be consolidated.
- 5 Undesirable precedent.

3.14 The decision was in accordance with the planning recommendation.

4 PLANNING HISTORY

The planning history of the subject site, the adjoining site to the south and lands in the vicinity, is set out in the planning report on the file.

This site:

P01/697 – outline permission (OP) Niamh & Deirdre O’Connell – withdrawn.

P03/361 – OP for a single storey dwelling, Gerry & Sheila Deane, - granted 16/7/03.

P04/606 – permission for a two storey dwelling, Gerry & Sheila Deane, - granted 01/9/04.

P08/501 – permission for a change of house design, Gerry & Sheila Deane, - granted 20/8/08.

5 GROUNDS OF APPEAL

5.1 David Mulcahy Planning Consultants Ltd, have submitted an appeal against the refusal of permission, on behalf of the first party.

5.2 The grounds can be summarised as follows:

The site is well screened by existing mature trees and hedgerow

Dwellings have been permitted either side of the site.

The site setback is a significant distance from the R Shannon and tributaries.

The Council have previously permitted a dwelling on the site. The applicant was strongly advised by the planning authority to seek permission for a two storey house.

5.3 The site is in a structurally weak area per NSS. The sustainable rural housing guidelines note that:

'In structurally weaker rural areas, the NSS emphasised the importance of accommodating any demand for permanent residential development, while acknowledging the importance of supporting the urban structure of such areas as well.'

The County Development Plan supports the NSS and Rural Housing Guidelines.

5.4 Regarding refusal reason No 2. The reason does not refer to material contravention of the development plan and the Board are not restricted to the criteria under which a grant of permission can issue. Reference to material contravention is incorrect.

- 5.5 Policy 17 is quoted. The Council previously permitted a dwelling on this site. The applicant is willing to enter into a S47 agreement restricting the development of both the land and occupancy of the dwelling.
- 5.6 Policy 101 is quoted. The amenity map in the Development Plan is particularly difficult to read and the scale makes it difficult to identify any site.

Areas of high visual amenity are identified by means of a yellow line, yet the legend does not include any reference to a yellow line. The site appears to be on the edge of the area of high visual amenity or just outside it.

The Council have previously accepted a two storey dwelling at this location, and advised the applicant to apply for a two storey house. It seems remarkable that the Council now consider this a fundamental issue from a visual perspective.

Policy 101 allows for houses to be located in areas of high visual amenity where a very high standard of site selection, site layout and design is provided. The house has been designed to harmonise with the size, scale, mass, design and height of the established dwellings on the adjoining site and therefore cannot reasonably be considered to be out of scale or character. The dwelling is not located on a sensitive route within the county and the existing mature trees and hedgerow boundary will provide significant screening. The applicant is willing to accept a condition to agree a landscape scheme with the Council prior to commencement of development.

- 5.7 Risk of Pollution – there was extraordinary rainfall in the period after the trial holes were dug and therefore it would not be reasonable to base any assessment of the suitability of the site on such evidence. The site passed the relevant tests and this should form the primary basis of assessment.

The site was attributed an R1 rating. The proposed packaged wastewater treatment system and polishing filter provide accepted

engineering solutions to ensure that there is no material risk to ground water. The site assessor's response to the reason is:

The decision on the site assessment should not be based on a visual inspection of a trial pit which is in excess of 8 months old.

The trial pit when excavated would have a degree of smearing on the base and lower side walls caused by the digging action of the bucket of the excavator. This smearing would inhibit the rate of soakage through the trial pit over time when it is left open. In the event where there is a prolonged spell of wet weather the trial pit will fill with water, however after a period of time the water level will reduce again to the seasonal water table level.

- 5.8 This is particularly true of soils with slow percolation characteristics.

There is an acceptable slow rate of percolation in the subsoil to allow a septic system to be installed.

Any decision on the suitability of the site should not be based on a one-off visit after extreme rainfall but on the independent trained expert.

- 5.9 Reasons 4 and 5 are linked to reason 1. There are in fact only 5 dwellings registered on Geodirectory, within 0.5km radius of the site. Caldragh / Corhownagh townlands are not heavily populated.

6 RESPONSES

- 6.1 The Planning Authority has responded to the grounds of appeal. The response includes photographs taken on the date of inspection showing water logged test holes. An aerial photograph to illustrate the extent of one off housing in the area and map extracts. There are two map extracts from the Council's ArcGIS, the first of which shows the Low Capacity Area which extends throughout the area, and the second which shows the High Visual Amenity Area associated with the River Shannon which is a strip

of land along the river. The previous permission was granted under the now superceded 2003-2009 CDP.

- 6.2 Notwithstanding the applicant's willingness now to enter into a S47 occupancy agreement it is considered that the applicant cannot satisfy the requirements of policy 17 which relates to Low Capacity areas set out in Section 4.2.2.14 of the CDP, for the reasons: the applicant is not *currently living in the low capacity area or in the immediate vicinity of the site*, the applicant is not *originally native to the low capacity area*.
- 6.3 Responding to the response to policy 101 the area of High Visual Amenity Area, the CDP at 4.8.7 states that '*the Council will preserve and enhance these areas, as far as practicable, by careful management and by the operation of special controls over development in these areas.*' It is the policy to permit development in areas of High Visual Amenity Area only where the applicant has demonstrated a very high standard of site selection, site layout and design and where the planning authority is satisfied that the development could not be accommodated in a less sensitive location. The proposed large 9m high dwellings are suburban type. A very high standard of site specific design has not been achieved.
- 6.4 The site is located approx. 208m from the R Shannon and within 125m of a stream that feeds into the R Shannon. Ground levels slope in the direction of the river.

A site characterisation form (COP 2009) was submitted indicating trial hole, t- test and p-test results. The site suitability assessment indicates that a modified T value of 70.43 and P test result of 27.64 was achieved. As alluded to in the appeal submission '*facts as presented by an independent and trained expert*' are generally relied upon when designing an appropriate effluent treatment system for each individual site. In this instance the planning authority has concerns regarding the validity of the site assessment report for the following reasons:

- It was noted on the date of inspection that the test holes were dug out along the south western boundary of the site associated with the adjoining application P16/3, and not

adjacent to the proposed percolation area of the subject application (section 2.3 EPA Code of Practice).

- In Section 3.3(b) of the site characterisation form, it has been stated that an 'average t100' of 45.00 was obtained, which requires the assessor to proceed to Step 4 (standard method), whereas in this case the assessor proceeded to step 5 (modified method).
- In addition the location of the test holes appeared to be selected as it was the driest part of the field. Notwithstanding this, at the time of site inspection, the ground conditions on the site were very wet underfoot and all test holes were full with water.

6.5 It should be noted that there has been no grant of planning permission in the immediate vicinity of the subject site since the introduction of the EPA Code of Practice in 2009.

6.6 Responding to section 3.5 of the grounds, the planning authority reiterates that the area is, has been, and continues to be under pressure from one-off housing and its capacity to absorb further housing is limited. Applicant cannot satisfy policy 17. The proposal would be contrary to 5.1.1 of the CDP and such new development will be encouraged to locate in existing towns and villages.

6.7 **First Party**

6.8 The first party has responded to the planning authority response to the grounds of appeal. The response includes:

6.9 The Guidelines take precedence over the County Development Plan. They state that in structurally weak areas, applicants for permanent dwellings should be accommodated. The Leitrim Development Plan reflects this in noting that first time migrants into the rural area will be accommodated.

- 6.10 From the map submitted by the Council it appears that the boundary of the high amenity area runs through the site. A two storey dwelling was previously permitted.

7 OBSERVATIONS

- 7.1 An Taisce have made an observation on this appeal requesting the Board to uphold the Council's decision. They submit that the subject proposal would exacerbate an unsustainable pattern of ribbon development on a minor road parallel to the R Shannon.

8 POLICY CONTEXT

- 8.1 **The Leitrim County Development Plan 2015 – 2021** is the operative plan.

- 8.2 Relevant provisions include:

Section 4.2.1 and policy 6 - to promote the viability of towns and villages by encouraging new residential development to locate within existing towns, villages and other centres where services are available.

4.2.2.11 - the significant change undergone during the previous Development Plan is noted with regard to areas under pressure from one-off housing development and a high level of residential vacancy.

4.2.2.14 - Low Capacity/ Low Availability areas – are areas clearly under pressure from residential development, which also tend to be associated with areas of high level residential vacancy. There is a need to ensure that the capacity of these areas to serve the residential needs of the local community is not compromised by development that could be more appropriately accommodated elsewhere.

4.8.7 and policy 101 - Areas of Outstanding Natural Beauty and High Visual Amenity – the capacity of the landscape to absorb development will depend, amongst other things, on the local topography, vegetation and the nature and extent of existing development. The Council's policy is to permit development only where the applicant has demonstrated a very high standard of site selection, site layout and design and where the planning authority is satisfied that the development could not be accommodated in a less-sensitive location.

9 ASSESSMENT

9.1 The main issues which arise in relation to this development are Development Plan Policies, visual amenity, site suitability for the treatment and disposal of effluent, and appropriate assessment and the following assessment is addressed under these headings.

9.2 Development Plan Policies

9.3 Reasons 1, 2 and 4 refer to County Development Plan policies which would strictly control housing development in this rural area along the banks of the River Shannon.

9.4 Reason 1 refers to policy 17, which refers to areas of Low Capacity, identified on Map 4.5 of the plan, see copy attached as appendix 2, which includes the area in which the subject site is located. Policy 17 states:

It is the policy of the Council to consider one-off housing acceptable within areas of Low Capacity subject to normal planning requirements and where applicants demonstrate compliance with the following requirements:

1) They are currently living in the Low Capacity area, in the immediate vicinity of the proposed site and can demonstrate a need to continue living in the area, other than in their current residence, with their proposed dwelling, as their permanent place of residence;

2) Can demonstrate that they are originally native to the Low Capacity Area and wish to return to this area for family or social reasons and wish to live there, with their proposed dwelling as their permanent place of residence.

and

3) Are willing to enter into an occupancy agreement, in relation to the future occupancy of the proposed dwelling, with the Planning Authority under Section 47 of the Planning & Development Act 2000, as amended.

9.5 The applicant declined in the planning application form to consent to enter into a Section 47 occupancy agreement, but in the grounds of appeal has indicated consent. The other conditions of the policy are not complied with. Therefore the development is not in compliance with the policy.

9.6 Reason 2 refers to policy 101 which refers to areas of High Visual Amenity (HVA), identified on Map 4.12 of the plan, see copy attached as appendix 2, and also identified on the map extract provided by the planning authority in response to the grounds of appeal; which area includes the area in which the subject site is located.

9.7 Policy 101 states:

It is the policy of the Council to permit development in an area of High Visual Amenity only where the applicant has demonstrated a very high standard of site selection, site layout and design and where the planning authority is satisfied that the development could not be accommodated in a less-sensitive location.

9.8 The proposed development is not in compliance with this policy. This is referred to further under the heading, visual amenity.

- 9.9 Reason 4 refers to the Development Plan provisions which seek to direct development to existing towns and villages where services can be economically provided and the social and urban structure can be consolidated, (see CDP extract in appendix 2, attached to this report).
- 9.10 This provision addresses the cost of urban generated rural housing and the loss of opportunity to build up towns and villages. The issue is referred to further under the heading rural housing pressure, below.
- 9.11 **Visual Amenity**
- 9.12 The subject site has some natural screening from hedgerow boundaries around the field in which both this site and the site of 246360 are located, however due to the elevated and sloping nature of the land relative to the River Shannon, any house and particularly one of the scale proposed, would be exposed to views from the river and constitute a dominant feature which would detract from the landscape quality of the area.
- 9.13 In the grounds of appeal it is stated that the dwelling is not located on a sensitive route within the county and the existing mature trees and hedgerow boundary will provide significant screening. I accept that there is very little traffic passing the site on this laneway which extends from the end of a cul de sac road, however it is the impact from the river that is at issue. The River Shannon is an important navigable waterway connected to the Erne navigation, a cross border waterway with significant recreational use and with very significant potential for further development for recreation and tourism. The River Shannon Waterway Corridor has been described as a waterway corridor area of international significance by the Heritage Council in the *River Shannon Waterways Corridor Study*, 2005. The proposed development would seriously detract from the unspoilt rural nature of this section of the River Shannon waterway corridor and this impact on the proper planning and sustainable development of the area should be a reason to refuse permission.

9.14 **Rural Housing Pressure**

9.15 Reasons 4 and 5 refer to the development contributing to rural housing pressure in this area. The grounds of appeal states that there are only 5 dwellings in a 0.5km radius of the site, which area they have indicated on a map. The radius includes inaccessible rural lands and part of the river. It can be seen from the map that although this is a very narrow access laneway, only part of which is a public road, there is a considerable amount of recently constructed single housing. The planning authority's response includes an aerial photograph, which shows further rural housing in the Hartley area where another local road runs close to the river. Most of this urban generated rural housing appears to have coincided with the Pilot Rural Renewal Tax Incentive Scheme, introduced to the Upper Shannon Region in 1998, and which generated particular pressure for such development in high amenity locations along rivers and lakes. In my opinion the proposed development would contribute to urban generated rural housing development in an area under pressure from such development.

9.16 **Site Suitability**

9.17 Site suitability for the treatment and disposal of effluent is referred to in reason no. 3. The reason also refers to the sloping nature of the site and proximity to the River Shannon. The report of the site inspection by the planning authority official, with photographs taken at the time of inspection, 10/02/2016, show that water in the test holes was at ground surface level. On the date on which I inspected the site, 7th June 2016, the field was recently mown but the vegetation comprised largely rushes indicative of impeded drainage. The site characterisation report also refers to rushes. I noted that ground in the area was wet underfoot and that rushes grew in the fields on both sides of the laneway. I would share the planning authority's concerns regarding the suitability of the subsoil on this site as an effective medium for the treatment of wastewater. The slope of the site (c11%) is close to the maximum slope (12%) beyond which mound filter systems, as proposed, are not permissible.

9.18 **Appropriate Assessment**

9.19 The proposed development is the construction of a house with on-site effluent disposal. The nearest Natura site is Lough Arrow SAC (001673) almost 10km away.

9.20 In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment. In this regard a guidance document 'Appropriate Assessment of Plans and Projects in Ireland' was published by the DoEH&LG on the 10 December 2009.

9.21 Having regard to the nature and scale of the proposed development and 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.

10 **RECOMMENDATION**

In accordance with the foregoing assessment, I recommend that planning permission be refused for the following reasons.

REASONS AND CONSIDERATIONS

1 The site is located in an area which is designated in the current Leitrim County Development Plan as an Area of High Visual Amenity in relation to which it is a policy of the planning authority to

control development in order to maintain the scenic value, recreational utility and existing character of the area. This designation and policy are considered reasonable. It is considered that the proposed development would materially contravene this policy, would detract to an undue degree from the rural character and scenic amenities of the River Shannon corridor and be contrary to the proper planning and sustainable development of the area.

2 Taken in conjunction with existing development in the area, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and served by a poor road network. It is the policy of the planning authority, as expressed in the current Leitrim County Development Plan, to channel housing into serviced centres and to restrict development in rural areas of Low Capacity/Low Availability to one off housing development to serve the needs of qualifying categories of applicant, specified in Policy 17 of the Plan. This policy is considered reasonable. It is considered that the applicant does not come within the scope of the housing need criteria in the Development Plan. The proposed development would contravene materially the policy of the planning authority and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed.

3 Having regard to the soil conditions and high water table, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

Dolores McCague
Inspectorate

Date

Appendix 1 Map and Photographs

Appendix 2 Extracts from the Leitrim County Development
Plan 2015 -2021