



An  
Bord  
Pleanála

## Inspector's Report

**PL91.247204**

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| <b>Development</b>                  | House, garage, wastewater treatment system, change of use of existing dwelling to agricultural use and ancillary site works. |
| <b>Location</b>                     | Ballincarroona, Knocklong, Co. Limerick  |
| <b>Planning Authority</b>           | Limerick County Council  |
| <b>Planning Authority Reg. Ref.</b> | 16/48  |
| <b>Applicant</b>                    | Gerard Hennessy  |
| <b>Type of Application</b>          | Permission   |
| <b>Planning Authority Decision</b>  | Refuse   |
| <b>Type of Appeal</b>               | 1 <sup>st</sup> Party v. Refuse  |
| <b>Appellant</b>                    | Gerard Hennessy  |
| <b>Observer(s)</b>                  | None   |
| <b>Date of Site Inspection</b>      | 24/10/16   |
| <b>Inspector</b>                    | Pauline Fitzpatrick  |

## 1.0 Site Location and Description

- 1.1. The site subject of the appeal is located within a larger farmholding accessed via an avenue from a minor county road off the R515 Kilmallock – Tipperary Road. c. 1.5km to the north-east of Knocklong village in south-east Limerick. Sporadic one off housing is evident along the local road leading to the farmholding.
- 1.2. The site constitutes part of a larger field to the north of the avenue. It is relatively level and is currently subdivided by post and wire fencing. A ringfort is evident c. 120 metres to the north-west of the site. A watercourse runs parallel to the hedgerow delineating the field boundary to the east. The avenue terminates at the existing dwelling and farmyard c.120 metres to the east.
- 1.3. The existing dwelling is single storey with a corrugated roof. Farm buildings are clustered around it.

## 2.0 Proposed Development

- 2.1. The application was lodged with the Planning Authority (PA) on the 25/01/16 with further plans and details including revised notices received 14/07/16 following a request for further information (FI) dated 16/03/16.
- 2.2. The proposal is for a single storey dwelling with a stated floor area of 172 sq.m. to be served by a proprietary effluent treatment system. A detached garage is also proposed. The dwelling is to replace the existing dwelling on the farmholding which is considered to be substandard. It is considered that the dwelling could not be upgraded at a reasonable cost. It is to be converted to agricultural use. Supporting documentation including a design statement and photographic survey accompany the application.
- 2.3. In terms of site suitability water was encountered at a depth of 1.65 metres in the trial hole. A T value of 73.53 and P value of 49.28 were recorded. Water supply is to be from an existing well on the holding.
- 2.4. The applicant owns and lives on the farm with his mother.

- 2.5. An Archaeological Impact Statement was submitted by way of FI. No intrusive investigations were undertaken. A programme of test trenching is recommended to mitigate against future impacts.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

The PA decided to refuse permission for the above described development on the grounds that it would materially contravene development plan objectives EH 026 and EH 027 regarding the preservation of archaeological heritage.

#### 3.2. **Planning Authority Reports**

##### 3.2.1. **Planning Reports**

The **1<sup>st</sup> Planner's** report dated **16/03/16** (countersigned) considers the development as described to be inaccurate as it is proposed to construct a new dwelling. Therefore objective RS 02 applies. The applicant and his mother would be considered as local rural persons but no documentary evidence is provided. The replacement dwelling should be located on the footprint of the existing. The PA is of the opinion that the proposal would give rise to archaeological concerns. A request for FI is recommended re. compliance with settlement location policy, setback from the channel, review of house location and, if no suitable alternative sites within the landholding, the submission of an archaeological assessment. The location of the private well serving the site and amendment to proposed polishing filter design also required. The **2<sup>nd</sup> report** dated **04/08/16** (countersigned) following FI maintains the concerns regarding impact on archaeological sites. A refusal of permission is recommended.

##### 3.2.2. **Other Technical Reports**

**Water Services** in a report dated **08/03/16** notes that the site is not within a flood zone. Flooding is unlikely.

**Environment Section** recommends FI on the location of the well to serve the dwelling, amendment to design and details of proposed polishing filter.

The **Executive Archaeologist** in a report dated **01/03/16** notes the proximity of two recorded monuments with other anomalies apparent from aerial photography in the intervening area. A refusal of permission is recommended. A **2<sup>nd</sup> report** dated **16/03/16** following a site inspection recommends FI requesting the applicant to review the proposed location for the development. If no other viable site then archaeological assessment, including a topographical survey of the area, to be carried out. The **3<sup>rd</sup> report** dated **22/07/16** following FI considers that the issue of alternative locations on the holding has not been adequately addressed. The Archaeological Assessment bears out the original concerns. There is sufficient evidence to suggest at least one other enclosure to the south of the two recorded monuments and that they are within a wider archaeological landscape. A refusal of permission is recommended with reference to plan objective EH 026 and EH 027.

### 3.3. **Prescribed Bodies**

The **OPW** in a report dated **18/02/16** notes that a small part of the site falls within the area deemed to benefit from Channel C1/25/28 and may be at an increased risk of flooding. A 5 metre strip is required for maintenance of the channel. A **2<sup>nd</sup> report** dated **22/07/16** following FI has no further comment.

The **Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs** in a letter dated **03/08/16** considers that it has not been properly demonstrated that the applicant is unable to undertake the development on an alternative site that would not create any adverse archaeological impact. A refusal of permission is recommended because of possible archaeological remains on the proposed site being impacted. Should the PA decide to grant permission a condition requiring further archaeological assessment should be attached.

### 3.4. **Third Party Observations**

None

## 4.0 **Planning History**

I am not aware of any previous planning applications on the site.

## 5.0 Policy Context

### 5.1. Limerick County Development Plan 2010-2016

The site is within an area designated as being 'Strong Agricultural Base'.

**Objective RS O2** – It is an objective to permit single houses in the area of strong agricultural base to facilitate those with a genuine rural housing need in the area. In order to demonstrate a genuine rural housing need any of the following criteria should be met including:

- (a) The application is being made by a long term landowner or his/her son or daughter seeking to build their first home on the family lands; or
- (b) The applicant is engaged in working the family farm and the house is for that person's own use; or

**Objective RS O5** – the retention and sympathetic refurbishment, with adaptation if necessary, of traditional dwellings in the countryside in sympathy with the character of the existing building will be encouraged in preference to their replacement.

Planning permission will generally only be granted for replacement of a dwelling where it is demonstrated that it is not reasonably capable of being made structurally sound or otherwise improved, where the building is not of architectural merit.

In this instance consideration will be given to the replacement of the existing dwelling with a dwelling at the same location, subject to appropriate design, scale of building and normal planning considerations. Local rural housing need shall not apply in this instance.

**Objective EH O25** – it is an objective to seek the preservation (in situ, or at a minimum preservation by record) of all known sites and features of historical and archaeological interest. This is to include all the sites listed in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act 1994.

**Objective EH O26** – it is an objective to protect and preserve (in situ, or at a minimum preservation by record) all sites and features of historical interest discovered subject to the publication of the Record of Monuments and Places.

**Objective EH O27** – it is an objective to ensure that any proposed development shall not have a negative impact on the character or setting of an archaeological monument.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The submission by Denis O'Malley on behalf of the 1<sup>st</sup> Party appellant, which is accompanied by supporting detail, can be summarised as follows:

- The revised plans submitted by way of FI show that the site is outside the zone of influence of the two recorded monuments.
- An archaeological assessment undertaken does not concur with the opinion expressed by the Council Archaeologist that there is sufficient evidence that the two monuments are within a wider archaeological landscape. The possible linear features identified are considered to be drainage features common to this part of County Limerick. They run in a reasonably regular fashion with one terminating at an east-west running water course.
- The view that there is sufficient evidence to suggest at least one other enclosure to the south is contested. Just because it appears that drains curve does not mean there is another enclosure in that area. This is a misinterpretation of the survey drawing.
- All the features are outside the site and would not be impacted in any way.
- Archaeological testing should have been facilitated prior to the decision to refuse permission so as to remove all doubt as to the nature of the linear features.
- Having protected the features on their farm since the early 1950's their existence is being used as grounds for refusal to allow the building of the needed dwelling.
- Following an assessment of the landholding a report was prepared in which it is concluded that there are no alternative sites available for the proposed development. Sites to the rear of the landholding (to the east and north)

can only be accessed via the farmyard which, for safety and practical reasons were eliminated.

- The existing dwelling on site is substandard and unfit for purpose. It would not be possible to upgrade the building to modern standards at a reasonable cost.

Details of the pre-planning meeting held with Council Officials are detailed.

## 6.2. **Planning Authority Response**

No response received.

## 6.3. **Observations**

None.

## 6.4. **Response to Section 131 Notice**

Due to the location of the site in proximity to recorded monuments certain prescribed bodies were invited to make a submission on the appeal. No responses were received.

## 7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Compliance with Settlement Location Policy
- Impact on Archaeology
- Appropriate Assessment

### 7.1. **Compliance with Settlement Location Policy**

- 7.1.1. As per the current County Development Plan the site is within an area designated as having a strong agricultural base. The key challenges in these areas pertain to the restructuring required to cope with the changes in the agricultural sector and the need to sustain the vibrancy of rural communities by facilitating rural generated need

whilst focusing urban generated housing to the network of settlements to support the development of services and infrastructure. In such a designated area there is a presumption in favour of applicants seeking dwellings who have a genuine rural generated housing need based on their social and/or economic links to the area, subject to compliance with normal planning criteria and environmental protection considerations. These development plan provisions would have been informed by the Rural Housing Guidelines.

- 7.1.2. The applicant currently resides in the family home on the farmholding with his mother. He owns and farms the landholding stated as being 24.4 hectares in area. The said dwelling is c. 120 metres to the east of the proposed location and is accessed through the farm yard. The application is accompanied by a report detailing the shortcomings of the existing dwelling in which it is concluded that the house is substandard and unfit for purpose and that it would not be possible to upgrade the dwelling to modern standards at a reasonable cost. The replacement of the dwelling at its original location is constrained by its position within the farmyard and the desire to relocate it away from the farm building and yard for health and safety reasons. Should the applicant secure permission for the new dwelling the existing dwelling would be used for purposes ancillary to the agricultural activity.
- 7.1.3. I consider that the applicant has provided sufficient detail to support his case in this regard and that he can be seen to comply with the tenets of the development plan in terms of settlement location policy. Whilst the parameters in terms of replacement dwellings as set out in development plan objective RS 05 are not strictly met in that the dwelling as proposed is not to be located on the footprint of the existing, I submit that the proposal is, de facto, a replacement dwelling.
- 7.1.4. The single storey house design is considered reasonable and is cognisant of its rural setting. It is to be served by a proprietary effluent treatment system served by a raised polishing filter with the details of the site characterisation form. A T value of 73.53 and P value of 49.28 were recorded. Water supply is to be from an existing well on the holding located to the north of the farm buildings.



## 7.2. Impact on Archaeology

- 7.2.1. The landholding is accessed via an avenue from a minor local road. The existing farmyard, dwelling and site subject of the appeal are not visible from the road. The location as chosen for the new dwelling was dictated by the desire to remain in close proximity to the farmyard and buildings whilst maintaining the necessary setback from the stream channel to the east. In principle it is acceptable.
- 7.2.2. The issue arises in terms of its location relative to recorded monuments, site codes LI041-09 (ringfort) and LI041-060 (enclosure). I note that the ringfort, only, is delineated on the current and historic ordnance survey maps for the area. The said monuments are protected under Section 12 of the National Monuments (Amendment) Act, 1994.
- 7.2.3. The two sites are described in the Archaeological Impact Statement submitted by way of FI. The first is a ringfort with a diameter of c.30 metres surrounded by a ditch 7 metres in average width. The 2<sup>nd</sup> is an enclosure with a diameter of c.28 metres surrounded by ditch c. 5 metres wide. The statement also makes reference to linear features within the field and concludes that they appear to be drainage features common in this part of County Limerick. The linear features are not designated as a recorded monument and are located to the west and outside of the site boundary.
- 7.2.4. In terms of the recorded monuments the north-western most corner of the site impinges on the zone of influence designated around the monuments but the proposed dwelling and effluent treatment system are outside of same. The dwelling location, as amended by way of further information, would be setback a minimum of 60 metres from the enclosure and 85 metres from the ringfort. It is proposed that a programme of test trenching be carried out under licence prior to commencement of development.
- 7.2.5. Both the County Archaeologist and the Department of Arts, Heritage and the Gaeltacht are not satisfied that it been properly demonstrated that there are no alternative sites within the holding. From my site inspection I would accept that any alternative, if viable, would be appropriately located in the south and south-western portion of the farmholding availing of access from the avenue. The lands to the north and east of the holding would require significant intervention in terms of access. Two sites to the south-west were investigated and were ruled out due to unsuitable

ground conditions for the proprietary effluent treatment system with evidence in support of the assertion submitted in the FI response. On the basis of this information I submit that the applicant has demonstrated, to a sufficient level, that alternative sites are not available.

- 7.2.6. I consider, subject to the requirements in terms of archaeological excavations prior to commencement of development, that the proposed development could be accommodated without having an adverse impact on the setting of the archaeological monuments and that the proposal would therefore comply with the development plan objectives EH026 and EH027 of the current County Development Plan. The relocation of the dwelling 10 metres to the east would further increase the separation distance to the recorded monuments whilst maintaining the necessary buffer to the channel to the east as required by the OPW. I recommend that such a requirement be attached by way of condition should the Board be disposed to a favourable decision.

### 7.3. **Appropriate Assessment**

- 7.3.1. The site is c. 9km to the south-east of the Glen Bog SAC (site code 001430) the qualifying interests for same being Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae). To date generic conservation objectives apply to the site the overall aim being to maintain or restore the favourable conservation status of habitats and species of community interest so as to contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level. Taking into consideration the qualifying interests as detailed, the small scale nature of the development and the relative separation between the sites it is reasonable to conclude that on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and in particular specific site number 001430 and in view of the site's conservation objectives. An appropriate assessment (and submission of a NIS) is not therefore required.

**Note:** As the proposal entails a de facto replacement dwelling I submit that the provisions of the adopted Section 48 Development Contribution Scheme apply whereby the contribution would be charged on the additional floor area, only.

## 8.0 Recommendation

8.1. Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Limerick County Development Plan, the scale, nature and design of the proposed development and the relationship of the development to the recorded archaeological monuments to the north and north-west, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the amenities or have an adverse impact on the archaeological heritage of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 14<sup>th</sup> day of July, 2016, 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 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 in the interest of the proper planning and sustainable development of the area.

3. The existing dwelling on the site shall not be used for habitable purposes completion and occupation of the proposed dwelling.

**Reason:** In the interest of clarity.

4. The proposed dwelling, detached garage and proprietary effluent treatment system shall be relocated 10 metres to the east of the location as shown on the site layout plan received by the planning authority on the 14<sup>th</sup> day of July, 2016. A revised site layout plan shall be submitted to the planning authority with the alterations shown thereon for written agreement prior to

commencement of development.

**Reason:** In order to conserve the archaeological heritage of the area.

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. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted with the application, as amended by the plans and detailed submitted to the planning authority on the 14<sup>th</sup> day of July, 2016, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. 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) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.
- (e) 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

7. 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

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

**Reason:** In the interest of visual amenity

9. 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 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.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**November, 2016**