



An
Bord
Pleanála

Inspector's Report PL03.248905

Development	Replace existing house with a new passive dwelling house with garage.
Location	Killerk West, Darragh, County Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	P17/214
Applicant(s)	Sarah & Michael McCarthy
Type of Application	Appeal
Planning Authority Decision	Refuse permission
Type of Appeal	First v refusal
Appellant(s)	Sarah & Michael McCarthy
Observer(s)	None
Date of Site Inspection	03 rd November 2017
Inspector	Karla Mc Bride

1.0 Site Location and Description

- 1.1. The appeal site is located within an undulating rural area to the SW of Ennis in County Clare and N of the River Shannon. The site is located on the S side of the N68 Ennis to Kilrush Road and c. 2.5km to the S of Darragh. It is accessed via a narrow laneway off a local secondary road, there are several detached houses in the vicinity and the surrounding lands are in agricultural use. The irregular shaped site slopes down from NW to SE towards a wooded area, and it contains a single storey house and shed in the NW corner.
- 1.2. The N site boundary is defined by a row of mature trees whilst the SE site boundary comprises a section of the wooded area which is located at a significantly lower level, and the remaining boundaries are defined by agricultural fields and hedges. The proposed house would be located in the N section of the appeal site and the sites of the existing and proposed houses were separated by an electrical fence.
- 1.3. The site occupies an elevated position relative to the surrounding area, there are clear uninterrupted views from the site towards the River Shannon to the S and the site is also visible from the surrounding local road network to the E, S and SW.
- 1.4. Photographs and maps in the accompanying appendix describe the site and surroundings in more detail.

2.0 Proposed Development

- 2.1. Permission is being sought to replace an existing house (235sq.m.) with a new passive dwelling house and garage on a 3.88ha site, which would comprise:
 - Construction of a 300sq.m passive house and garage in 3 interconnecting single storey sections which would be stepped back from each other.
 - The overall structure would be c.42m wide, c.7m deep and c. 3.5-4.3m high.
 - The timber framed, flat roofed structure would have a contemporary design.
 - Utilise the existing water supply and septic tank connections.
 - Vehicular access would be via the existing laneway to the W off the local road.

- All associated site works.

3.0 Planning Authority Decision

3.1. Further Information

Further information was requested in relation to the following:

1. (a) Provide information in relation to the deficiencies in the existing house and the feasibility for the restoration and extension of same - *Structural Survey Report submitted which concluded that it would be more economical to build a new house than restore the existing house to required standards.*
(b) Proposals for the future use of this structure - *future change of use will be subject to a later planning application.*
2. (a) A report related to the suitability of, and spare capacity in the existing WWTP - *Septic Tank Report submitted which recommends the installation of a new septic tank with a capacity of 3.0 cubic meters.*
(b) Provide details of the water supply - *Connected to Group Water Scheme.*

3.2. Decision

Following the receipt of FI, the planning authority decided to refuse permission for 3 reasons related to:

1. House already constructed on the site; further house would result in a density which would be out of character with the pattern of development in the area; injury to amenities of existing and proposed houses; disorderly development, injury to amenity and property depreciation.
2. Non-compliance with Rural Housing policies and the housing need criteria set out in Objective CDP3.11, and Material Contravention of this Objective.
3. Unsuitable for the safe disposal of foul effluent; conflict with the EPA Code of Practice for WWTP (2009); and prejudicial to public health.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The report of the planning officer recommended the refusal of planning permission for the 3 reasons summarised above.

The AA Screening Report concluded that no AA issues arose.

3.3.2. Other Technical Reports:

None received.

3.3.3. Submissions

None received.

4.0 Planning History

No relevant cases for the appeal site.

5.0 Policy Context

5.1. Sustainable Rural Housing Guidelines for PAs, 2005

These Guidelines state that planning authorities should:

Ensure the needs of rural communities are identified in the development plan process, and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated.

Manage pressure for overspill development from urban areas in the rural areas closest to the main cities and towns.

Recognise that exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation – may require a person to live in a particular environment or close to family support.

The Guidelines highlight four Rural Area Types which are Areas under Strong Urban Influence, Stronger Rural Areas, Structurally Weak Areas, and Areas with Clustered Settlement Patterns.

The appeal site is located within Areas under Strong Urban Influence,

5.2. Circular Letter PL 2/2017: Sustainable Rural Housing Guidelines for Planning Authorities 2005 – Local Needs Criteria in Development Plans

This Circular Letter was issued on 31st May 2017 in response to an EC Infringement Notice against Ireland in 2007 in relation to the “local needs criteria” in the 2005 Guidelines and a subsequent ECJ Ruling in 2013 in regard to another EU case. It relates to section 3.2.3 of the 2005 Guidelines in relation to the consideration of planning applications for houses in rural areas, particularly urban generated rural housing in those areas under pressure in the environs of cities and towns, and also in the context of future variations or revisions to development plans.

The Letter states that in order to avoid the up-scaling of the previous Infringement Notice against Ireland and referral of the matter to the ECJ for determination, the 2005 Guidelines will be revised to ensure that rural housing policies and objectives contained in local authority development plans comply with article 43 of the EU Treaty on the freedom of movement of citizens. It advises that a Working Group has been established to review and, where necessary, recommend changes to the 2005 Guidelines, with a view to issuing replacement text on section 3.2.3 of the Guidelines to planning authorities in the second half of 2017. It is also anticipated that Ireland 2040 - Our Plan, the proposed new National Planning Framework will further assist in informing the revision of the 2005 Guidelines. When these two processes are finalised, the revised guidance on rural generated housing will be issued.

The Letter concludes, that in light of the foregoing, planning authorities are hereby advised that the existing 2005 Guidelines remain in place and that pending the conclusion of the two aforementioned national policy review processes and advised otherwise by the Department, they should defer amending their rural housing policy/ local housing need criteria in existing statutory development plans either by way of the cyclical review or variation procedures.

5.3. **Clare County Development Plan 2017-2023**

The relevant Development Plan policies and objectives are summarised below.

Areas of Special Control: the site is located within an **Area Under Strong Urban Pressure** and the key objectives of the Council are:

- (a) To facilitate the genuine housing requirements of the local rural community (rural generated housing), subject to satisfactory site suitability and technical considerations.
- (b) To direct urban-generated development to areas zoned for new housing development in the adjoining urban centres, towns and villages as identified in the County Settlement Strategy and to seek to enhance these settlements.

Objective CDP 3.11 (New Single Houses in the Countryside within the Areas of Special Control) seeks to permit a new single house for permanent occupation of an applicant who falls within Categories A, B or C and meets the necessary criteria.

- Category A: Local Rural Person (must have a local housing need)
- Category B: Persons Working Full Time or Part-time in Rural Areas
- Category C: Exceptional Health and/or Family Circumstances

The following 3 criteria arise in assessing A Local Rural Person under this category:

- The applicant must come within the definition of a Local Rural Person
- The proposed site must be situated within their Local Rural Area
- The applicant must have a Local Rural Housing Need

Local Rural Person is a person who was born within the local rural

area, or who is living or has lived permanently in the local rural area for a substantial period of their life prior to making the application, and it includes returning emigrants seeking a permanent home in their local area who meet this definition.

Local Rural Area is defined as the rural area within a 10km radius of where the applicant was born, living or has lived (for a substantial period of their life) and includes the countryside small villages but excludes urban settlements.

Local Rural Housing Need is defined as a person who does not or has not ever owned a house in the surrounding rural area (except in exceptional circumstances) and has the need for a dwelling for their own permanent occupation).

Objective CDP 3.14 (a) (Replacement of Substandard Habitable Houses) seeks to permit the demolition of a habitable but substandard dwelling and its replacement with a new single dwelling, subject to normal site suitability considerations. Where sites occur in “Areas of Special Control” the provisions of Objective CDP 3.11 (Local Need requirement) will not apply. Notwithstanding the above, it is Council policy to protect the county’s vernacular building stock from demolition where restoration and extension is an option (see CDP 15.4).

5.4. **Natural Heritage Designations**

The following European sites are located within a 15km radius:

- Lower River Shannon SAC
- River Shannon & Fergus Estuaries SPA

6.0 **The Appeal**

6.1. **Grounds of First Party Appeal**

Reason no.1:

- Existing substandard dwelling is not currently inhabited and is one of two existing structures on the 9.6acre site.

- Proposed house is 36m from the existing house & 150m from the nearest habitable dwelling, with lines of trees in-between.
- Proposed house is 175m from and 6m below access laneway.
- Proposed house is 4.3m at its highest point.
- No adverse impacts on residential amenities anticipated.
- Intend to apply for permission to change the use of the existing house to a stables in the future.
- Current and long terms proposal are compatible with the rural area with regard to density, scale and layout, with no impact on property values.

Reason no.2:

- Objective CDP 3.14 seeks to permit and support the “replacement” of a “habitable but substandard dwelling” in the countryside.
- In a situation where permission is sought to replace a substandard dwelling in the countryside and in an area of “special control” the “Local Rural Housing Need” and Objective CDP 3.11 does not apply.
- The Structural Survey supports the substandard nature of the property, and the costs of making it compliant would exceed the replacement cost.
- Appellants fall within “Category A - Local Rural Person”, Mr. Mc Carthy is a returning migrant whose family home (Beechpark Ennis) is within a 10km radius of the site and he has strong family ties to the immediate area.
- Appellant does not own the site or any other property in the area and the house will be used for permanent occupation.

Reason no.3:

- The replacement of the septic tank is supported by the site assessor’s report which concludes that both the septic tank and percolation area are working correctly with the minimum recommendation to replace the existing tank.

6.2. Planning Authority Response

Reason no.1:

- Change of use of the existing house is beyond the remit of this application.
- The number of houses in the area would increase from 1 to 2.
- Excessive density and contrary to the rural settlement strategy.

Reason no.2:

- The change of use could happen at some stage in the future.
- The number of houses would increase by from 1 to 2.
- CDP3.11 is applicable due to the location within an Area of Special Control.
- Therefore, contrary to the rural settlement strategy (local housing need).

Reason no.3:

- Propose to replace the septic tank and percolation area with a new facility.
- No percolation test results were provided.
- No details provided of the design and location of the revised onsite system.
- Upgrade is acceptable in principle, but insufficient information provided.

6.3. Observations

None received

7.0 **Assessment**

The main issues arising in this case are:

- Material contravention
- Principle of development
- Visual & residential amenity
- Environmental services
- Other issues

7.1. **Material contravention**

The planning authority decided to refuse planning permission for the proposed development for 3 reasons. Reason no.2 related to non-compliance with, and material contravention of the Council's Rural Housing policies and the housing need criteria set out in Objective CDP3.11 of the current Development Plan. This objective seeks to permit a new single house for permanent occupation of an applicant who falls within one of three separate categories and who meets the necessary criteria including the demonstration of local rural housing need.

Section 37 (2) (a) and (2) (b) of the Planning and Development Act, 2000 (as amended) sets out the four circumstances under which the Board can give overrule the decision of a planning authority when material contravention forms part of the reason for refusal. The proposed development is not of national or regional importance, the Development Plan incorporates all relevant national planning policy and regional guidance, the policies and objectives are clearly stated in the Plan and

without conflict, and the pattern of planning permissions since the last Development Plan was adopted reflect current planning policy for the area. I am satisfied that the current case does not represent an exemption under Section 37(2)(b).

Notwithstanding all of the above, the merits of the proposed development will be assessed in the following sections.

It is noted that Circular Letter PL 2/2017 in relation to Sustainable Rural Housing Guidelines for Planning Authorities 2005 - Local Needs Criteria in Development Plans, which is summarised in section 5.2 above, advises that the existing 2005 Guidelines remain in place until advised otherwise by the Department.

7.2. Principle of development

The proposed house would be located within a rural area to the SW of Ennis in County Clare and the applicant has the written permission of the landowner to make a planning application in respect the proposed development.

The appeal site lies within Area of Special Control as designated in the current Development Plan which specifically relates to an Area Under Strong Urban Pressure for residential development in the countryside. Two Development Plan Objectives are of relevance. Objective CDP 3.11 which deals with proposals for New Single Houses in the Countryside within the Areas of Special Control, and Objective CDP 3.14 (a) which deals with the proposed Replacement of Substandard Habitable Houses in the Countryside.

Objective CDP 3.11 seeks to permit a new single house in the countryside for permanent occupation of an applicant who falls within one of three Categories and also meets the necessary criteria for a house in a rural area. The three categories include a Local Rural Person, Persons Working in Rural Areas, and Persons with Exceptional Health or Family circumstances. This Objective also defines a person with a Local Rural Housing Need as someone who does not or has not ever owned a house in the surrounding rural area and has the need for a dwelling for their own permanent occupation.

However, Objective CDP 3.14 (a) seeks to permit the demolition of a habitable but substandard dwelling and its replacement with a new single dwelling, subject to normal site suitability considerations. This objective goes on to state that where sites occur in “Areas of Special Control”, the provisions of Objective CDP 3.11 (Local Need requirement) will not apply.

The c.3.88ha site is occupied by an existing c.235sq.m. house and the proposed c.300sq.m. house would be located to the SE of this structure. The planning authority requested the applicant to provide information in relation to the deficiencies in the existing house and the feasibility for the restoration and extension of same. A Structural Survey Report was submitted in response to the FI request.

This report stated that the house originally comprised a cottage that was extended and renovated in c.2004, it is connected to all services and there are no signs of structural cracks or instability. However, it is not well ventilated, the ground floor is structurally compromised and in need of repair, the heating system should be checked for leaks, the chimney should be re-lined and several other problems were identified. The report concluded that it would be more economical to build a new house than restore the existing house to required Building Regulation standards. The applicant was also requested to submit proposals for the future use of the existing house and they stated that planning permission would be sought at a future date to change the use of the existing house to stables.

Notwithstanding the contents and conclusions of this report, and based on my external examination of the existing house, I am satisfied that the house is in a reasonably good state of repair, it is reasonably well maintained and it appears to have been occupied until recently, and I would not concur that it is substandard.

Furthermore, and notwithstanding the applicant’s stated future intentions to convert the house to stables, the existing use of this building as a habitable house would be

retained for the foreseeable future under the current application, irrespective of whether or not it is occupied. Therefore, the provisions of Objective CDP3.14 (a) do not apply as the proposed development could constitute an additional house on the site and not a replacement house, as the existing house would be retained and not demolished. Furthermore, the exemption granted under Objective CDP3.14 (a) from the need to comply with Objective CDP 3.11 (Local Need requirement) in an Area of Special Control, does not apply to this case as the applicant is not seeking planning permission to demolish a “habitable but substandard dwelling” and replace it with a new single dwelling.

The applicant states in the appeal submission that he has a Local Housing Need as he falls within Category A - Local Rural Person, he is a returning migrant whose family home at Beechpark Ennis is within a 10km radius of the site, he has strong family ties to the immediate area, he does not own the site or any other property in the area and that the house will be used for his permanent occupation.

It is noted from the planning application submission, that the applicant’s family home is located a substantial distance to the N of the appeal site and that both Mr and Ms McCarthy work in the UK (Gatwick Airport and Central London). The applicant did not submit the required additional documentation to demonstrate compliance with the objectives for single houses in the countryside and none was provided with the appeal submission. Although the applicant does not own the appeal site and the existing house, he does have the written permission of the landowner to make the planning application with a view to purchasing the site. In the event that this transaction is completed, the applicant would then own the existing house on the site (irrespective of occupation) and therefore the proposed house would constitute a second house in his ownership on the same site. The permanent occupation of the proposed house by the applicant could be reinforced by way of a planning condition.

Conclusion:

Having regard to all of the foregoing, the principle of building a house on the appeal site would not be acceptable with respect to Objective CDP 3.14 (a) as the proposed house would constitute an additional house and not a replacement house, and the applicant does not comply with the terms and conditions of Objective CDP 3.11 due to the absence of supporting documentation with respect to Local Housing Need.

7.3. Visual and residential amenity

The proposed house would occupy an elevated and exposed position within an attractive rural area and there are clear interrupted views from the site towards the River Shannon to the S. However, the site and surrounding lands are not covered by any sensitive landscape designations and there are no protected views through the site. The c. 3.88ha site is currently occupied by an existing c. 235sq.m. house and there are four detached houses nearby along the local road to the NW.

The proposed single storey c.300sq.m. house and garage would be located to the E of the existing house and it would comprise 3 interconnecting blocks that would be stepped back from each other. The timber framed, flat roofed structure would have a contemporary design and it would be c.42m wide, c.7m deep and c. 3.5-4.3m high. The proposed house would be located to the rear SE of an existing line of mature trees, it would be separated from the existing house by a distance of c.37m and it would be set back in excess of 100m from the local road to the NW. The location, design and layout of the proposed house would not have an adverse impact on the visual amenities of the area.

The concerns raised by the planning authority in relation to density are noted. Having regard to the issues discussed in section 7.2 above, the proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random urban generated development in the countryside, which would in turn have an adverse impact on the character and function of the rural environment and the efficient provision of public services and infrastructure.

As previously stated, the proposed house would be set back c.38m from the SE corner of the existing house on the site and well over 100m from the rear elevations

of the existing houses along the local road to the NW. Therefore, the proposed house would not overshadow or overlook the neighbouring houses and it would not be overbearing or visually obtrusive.

7.4. Environmental services

The c.3.88ha site is currently occupied by a 6-bedroom house which is served by a connection to the local Group Water Scheme and effluent is treated by means of an existing septic tank and percolation area. It is proposed connect the new house to the existing services. The planning authority requested a technical report with regard to the suitability of, and spare capacity within the existing wastewater treatment facility. A Septic Tank Report was submitted in response to the FI request.

This report confirmed that the existing tank caters for a PE of 8, that it has an internal capacity of c.2.65cubic meters and that it meets all the required EPA Table 6 separation distances. The report stated that the system needs to cater for a proposed additional PE of 5 which would require a capacity of 2.75 cubic meters (which doesn't allow for any habitable use of the existing house). The report concluded that the existing tank is not suitable as it doesn't have the required capacity to treat effluent and at minimum it needs to be upgraded. The report recommended the installation of a new septic tank with a capacity of 3.0 cubic meters. The report also stated that the existing percolation area appears to be adequately catering for the effluent currently being generated, but recommended that the percolation area be upgraded in order to comply with EPA Table 7.3 by installing a percolation area with 90 linear meters of percolation pipe.

The existing wastewater treatment system currently serves the existing 6 bedroom houses however it does not have the capacity to also serve the proposed house. Notwithstanding the applicant's stated intention to apply for planning permission at some stage in the future to change of use of the existing house to stables, the existing use of this building as a habitable house would be retained for the

foreseeable future, irrespective of whether or not is occupied. Both the existing and proposed houses would need to be served by a fully functioning wastewater treatment system which has adequate capacity to manage the effluent produced by both houses.

Given that the applicant did not submit any site suitability tests or details of a proposed wastewater treatment system with the planning application or appeal submission, it is not possible to assess the environmental impact of the proposed development on the receiving environment. The proposed development could therefore give rise to groundwater pollution and be prejudicial to public health.

7.5. **Other issues**

Appropriate assessment: proposal would not have a direct link to a European Site.

Built heritage: proposal would not have an adverse impact on any heritage features.

Vehicular access & car parking: the proposed arrangements are acceptable and the proposal would give rise to a traffic hazard or endanger public safety.

Financial contribution: Standard conditions should be applied in accordance with the Council's Section 48 Scheme.

8.0 **Recommendation**

Arising from my assessment of the appeal case I recommend that planning permission should be refused for the proposed development for the reasons and considerations set down below.

9.0 **Reasons and Considerations**

1. Having regard to the location of the site within "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning

Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an Area of Special Control (Area Under Strong Urban Pressure) where housing is restricted to persons demonstrating local need in accordance with Objective CDP 3.11 (New Single Houses in the Countryside within Areas of Special Control) of the current Clare County Development Plan 2017-2023, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. Furthermore, the proposed development would materially contravene Objective CDP 3.11 of the Clare County Development Plan 2017-2023, and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the lack of information submitted with the planning application and appeal documentation in relation to the proposed waste water treatment system, and in particular the absence of a Site Suitability Assessment Report and details of a waste water treatment system, it is considered that the proposed development would be prejudicial to public health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Karla Mc Bride

Senior Planning Inspector

17th November 2017