



An
Bord
Pleanála

Inspector's Report PL92.249154

Development	Construction of 2 no. 2 storey detached dwellings.
Location	Moanbeg, Nenagh, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	17/600365
Applicant(s)	Pauline and Gerard O'Gorman
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions.
Type of Appeal	First Party
Appellant(s)	Pauline and Gerard O'Gorman
Observer(s)	None.
Date of Site Inspection	N/A
Inspector	Ciara Kellett

1.0 Introduction

There are two concurrent appeals on adjoining sites – the subject appeal and appeal reference PL92.249133. Each appeal refers to different structures but both appeals are submitted by the same party. The applicants and appellants are the same individuals in both cases. There are interconnected issues to do with development contributions.

2.0 Site Location and Description

- 2.1. The appeal site is located to the south of Nenagh Town, Co. Tipperary. It is located off the R498 Nenagh to Thurles Road, on the Ballygraigue Road, c. 1.2km south of the town centre and c.400m south of Nenagh Hospital. It is c.700m north of the M7 motorway.
- 2.2. The Ballygraigue Road comprises housing on either side of the road. The site is on the west side of the road and is currently a mix of gravel and scrub and is stated as being 0.185Ha on the drawings. A housing development, Ballygraigue Court, lies to the north and housing development Cluain Muilleán to the east. Other dwellings front onto the road further to the south of the site. Green fields lie to the west.
- 2.3. As noted above, a second planning appeal is concurrently before the Board for the site immediately to the north, ABP ref. PL92.249133.
- 2.4. Appendix A includes maps of the site.

3.0 Proposed Development

- 3.1. The proposal consists of the development of two detached two storey houses facing the Ballygraigue Road identified as being on 'Site Plot B'. A further two detached dwellings are proposed on 'Site Plot A' to the north (subject of concurrent appeal).
- 3.2. The drawings accompanying the application indicate that there are two dwellings proposed which are of different design – one is double fronted with a gable roof. The ridge height is 8.274m and there is an attached garage to the side. The other dwelling is double fronted and has a projecting gable roof and is 8.36m to ridge height.

4.0 Planning Authority Decision

4.1. Decision

The Planning Authority decided to grant permission subject to 11 conditions. Condition no.11 which is being appealed by the applicant is for a Development Contribution of €11,941.20.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Notes that two separate applications have been submitted for development on Plot A and Plot B.
- Notes that both sites with other lands were subject of a permission for substantial residential development which has not commenced and has now expired.
- Notes that the Ballygraique Road surface water drainage system is located on the proposed site and a wayleave to provide for its protection is required and has not been submitted.
- Considers a more sympathetic design on the gables should be addressed.
- Notes that 6m is provided between Site A and Site B for a road to lands to the rear and a minimum of 10m is required.
- Notes land is zoned for residential development and is acceptable in principle.
- Requests Further Information regarding the road width. Upon receipt of the revised proposal indicating 10m, considers it acceptable and recommends permission is granted.

The decision was in accordance with the Planner's recommendation.

4.2.2. Other Technical Reports

- **Area Engineer:** Notes corridor of land between both sites needs to be 10m and location of surface water pipe.

4.3. Prescribed Bodies

- **Irish Water:** File Referred, no submission on file.
- **OPW** – no submission on file.

5.0 Planning History

There are planning applications associated with the larger site. They are:

- **APB Ref. PL92.249133, TCC Reg. Ref. 17/600362:** Development of two houses on site to the north. Appeal currently before the Board.
- **Reg. Ref. 14/600117:** Permission refused by the Council in December 2014 for the development of 4 detached houses for three reasons. The reasons related to the development undermining the existing Ballygraique Road Surface Water drainage system, misleading in relation to the nature of the applicant's legal interest and piecemeal development on zoned land.
- **Reg. Ref. 05/520007:** Permission granted in March 2005 for changes to permission granted under 04/524152 to replace 54 dwellings with 60 dwellings and apartments.
- **Reg. Ref. 04/524152:** Permission granted in October 2004 for the development of 128 dwellings including 104 houses and 24 apartments, as well as a crèche and a foul sewerage pumphouse.
- **Reg. Ref. 04/524151:** Permission granted in October 2004 for the development of 10 detached houses, apartments and shop units. This permission was extended twice Ref. 09/520021 and Ref. 11/520018.

6.0 Policy Context

6.1. Nenagh Town & Environs Development Plan 2013 – 2019

The site is subject to the policies and objectives of the Nenagh Town & Environs Development Plan 2013 – 2019.

Chapter 3 refers to Core Strategy, Chapter 9 to Development Management Standards and Design Guidelines and Chapter 10 to Land Use Zoning & Zoning Matrix.

The site is zoned 'Existing Residential'.

6.2. Tipperary County Council Development Contribution Scheme 2015 – 2019

Section 11 of the Development Contribution Scheme refers to 'Points to Note'. It states:

Where a particular development comes within the remit of more than one category of reduced contributions set out in Section 10.0 above and/or Section 6.0 above, only one such reduction/exemption may be applied. In this instance the Council shall apply the category where the greater percentage reduction applies. The onus is on the applicant, as part of their planning application, to demonstrate eligibility for a waiver/reduction.

It further states:

Infrastructure in lieu: In the case of a multi-unit-residential, commercial or industrial development a developer may, subject to the agreement of the Planning Authority, provide public infrastructure as part or full payment in lieu of the relevant development contribution. Developments for the provision of water supply and/or waste water infrastructure that deliver additional capacity/supply for the catchment population (as defined by TCC) as projected for a minimum period of 10 years post project delivery shall be subject to a reduction of 100% in development contributions.

6.3. Natural Heritage Designations

The site is located c. 6km from the Slievefelim to Silvermines Mountains SPA (Site Code 004165) and c.8.5km from the Lough Derg (Shannon) SPA (Site Code 004058),

7.0 The Appeal

7.1. Grounds of Appeal

One first party appeal has been submitted against Condition no.11, the Development Contribution. In summary, it states:

- Consider a Development Contribution has already been made.
- State that in 2005 200m of road frontage was transferred to the Council for €1 to allow for the upgrading of the road.
- Agreed to pay €32,500 towards the cost of footpaths on Ballygraique Road.
- Condition no.10 of a 2010 legal agreement stated that the cost of the footpaths would be offset against the cost of other work applicants had done on Ballygraique Road.
- Copy of 2010 legal agreement enclosed with the appeal.

7.2. Planning Authority Response

The Planning Authority states that it has had regard to the grounds of appeal by the appellant and is satisfied with the decision to grant permission.

The Planning Authority were requested under S.132 of the Planning and Development Act to specifically supply details of the calculation involved in the condition under appeal. The Planning Authority responded with reference to the calculation of the floor areas which formed the basis of the calculation of the Development Contribution.

8.0 Assessment

8.1. The Board is requested to note that there is a concurrent appeal before the Board (PL92.249133) against the imposition of a Development Contribution on that application which is on a site immediately to the north of the subject site. The applicants are the same in both appeals.

8.2. The first party has appealed Condition no.11 only. Condition no.11 requires the developer to pay a Development Contribution of €11,941.20 to the Planning

Authority. The first party has appealed the condition under Section 48(10)(b) of the Planning and Development Act 2000, as amended. Section 48(10)(c) of the Planning and Development Act 2000, states that where an appeal is brought in accordance with Section 48(10)(b) and no other appeal of the decision is brought by any other person, the authority may make the grant of permission as soon as may be, after the expiration of the period for making an appeal. The appeal is therefore confined to the consideration of whether or not the terms of the Tipperary County Council Development Contribution Scheme 2015 – 2019 were properly applied in this instance.

- 8.3. The permission grants two dwelling houses. The total area of the two houses is 188.1sq.m plus 197.1sqm. This results in a total floor area of 385.2sq.m.
- 8.4. Section 6 of the Development Contribution Scheme provides information on classes of development. Class 2 is noted as being for the provision of a house on appropriately zoned lands and/or within the settlement boundary of a town or village and is noted as being €31 per square metre. In this instance 385.2sq.m x €31 = €11,941.20 of a Development Contribution.
- 8.5. The applicants consider that they have already paid contributions having regard to the fact that they transferred 200m of road frontage to the Council in 2005, and they agreed to pay €32,500 towards the cost of footpaths on Ballygraique Road. This €32,500 was to be offset against the cost of other works carried out by themselves.
- 8.6. No information has been provided by the applicant with respect to the details of any future agreements which may have resulted from the transfer of land, or commitments to pay for footpath upgrades.
- 8.7. I note that the copy of the 2010 legal agreement referred to by the applicants relates to (inter alia) the development of a pumping station and ancillary works. While this is a legal matter, it states that the applicant has the right to connect 314 houses to the pumping station in the future '*subject to normal planning permission and payment of development levies and sewer connection fees*'.
- 8.8. Section 10 of the Development Contribution Scheme provides for Exemptions and Reductions. A variety of exemptions are provided including for Voluntary Organisations, Part V development, Affordable Housing etc. The applicant has not provided any information to indicate that they fall into such a category. Section 11

refers to Points to Note and states that '*The onus is on the applicant, as part of their planning application, to demonstrate eligibility for a waiver/reduction*'. While the applicant has provided a copy of a legal agreement about the delivery of a pumping station, no information about the transfer of 200m of land is provided or if that provided for future offsets against Development Contributions. The legal agreement refers to the right of the applicant to connect 314 dwellings to the pumping station but does not mention any offsets of Development Contributions. From a review of the legal document it appears to state the opposite. However, as noted this is a legal agreement and not a planning document per se.

8.9. Section 11 of the Development Contribution Scheme refers to 'infrastructure in lieu' of contributions. It notes a developer can '*subject to the agreement of the Planning Authority, provide public infrastructure as part or full payment in lieu of the relevant development contribution*'. From a review of the file, no information is provided by the applicant or the Planning Authority to indicate that any such agreement is in place with respect to this particular application.

8.10. In conclusion, based on the information on file, I am satisfied that the condition should be retained.

8.11. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

9.0 **Recommendation**

I recommend that the Board directs the Council under Section 48 of the Planning and Development Act 2000, as amended, to retain Condition no.11.

10.0 Reasons and Considerations

Having regard to the Tipperary County Council Development Contribution Scheme 2015 – 2019, and the information on file, it is considered that no exemption, reduction or waiver of the Development Contribution is applicable. It is considered therefore that the terms of the Scheme have been properly applied in this instance.

Ciara Kellett
Inspectorate

27th November 2017