



An
Bord
Pleanála

Inspector's Report ABP-300321-17

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| Development | House, garage and septic tank |
| Location | Annagh, Lisnagry, County Limerick |
| Planning Authority | Limerick City & County Council |
| Planning Authority Reg. Ref. | 17/732 |
| Applicant(s) | Cathal & Eadaoin Sherlock |
| Type of Application | Permission |
| Planning Authority Decision | Grant |
| Type of Appeal | Third Party |
| Appellant(s) | Mike Blackwell |
| Observer(s) | None |
| Date of Site Inspection | 22 nd February, 2018 |
| Inspector | Kevin Moore |

1.0 Site Location and Description

- 1.1. The site of the proposed development is located in a rural area approximately 15km east of Limerick City Centre. It has frontage onto a minor local road and comprises part of a larger field that is relatively level, with hedgerow along its frontage. There is a bungalow in the same field to the south of the site and a two-storey house on the opposite side of the road. A church in ruins (Annagh Church) and a graveyard (Recorded Monument LI006-01501/02) is located a short distance north of the site.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a two-storey, four bedroom, detached house with a floor area of 230 square metres. It would also include the construction of a detached single-storey garage, with a floor area of 37.5 square metres, sited to the front and north of the proposed house. The development would be served by a mains water supply and a proposed septic tank system. The site area is stated to be 0.25 hectares.
- 2.2. Details submitted with the application included a letter from the landowner consenting to the making of the application, a design statement and a completed site characterisation report.

3.0 Planning Authority Decision

3.1. Decision

On 2nd November, 2017, Limerick City & County Council decided to grant permission for the proposed development subject to 14 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted development plan provisions, reports received, and a third party submission. The design of the house was considered acceptable. Concerns were raised about the proliferation of housing in the area and the need to enter into an agreement for the remainder of the holding. Details on the applicant's parent's house

were considered necessary. A request for further information was recommended seeking details of the location of the family home, a section 47 agreement to sterilise the remainder of the landowner's holding, and proposals for the treatment of surface water.

3.2.2. Other Technical Reports

The Roads Technician set out conditions to be applied with any grant of permission.

The Environment Engineer set out conditions to apply to any grant of permission.

The Executive Scientist submitted that the site would not appear to be at risk of flooding.

The Archaeologist, noting the context of the proposed development relative to the nearby church and graveyard, requested the proposed garage to be moved sufficiently to allow a belt of trees to be planted along the northern site boundary. Sterilisation of the remainder of the landholding was requested.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

3.4. Third Party Observations

An objection to the proposal was received from Mike Blackwell. The grounds of appeal reflect the concerns raised.

3.5 A request for further information was issued on 21st September, 2017 in accordance with the Planner's recommendation. A response was received from the applicant on 11th October, 2017.

Further to the receipt of this information, the reports to the planning authority were as follows:

The Planner acknowledged the receipt of the further information and recommended that permission be granted subject to conditions.

4.0 Planning History

I have no record of any previous planning application or appeal relating to the site.

5.0 Policy Context

5.1. Limerick County Development Plan 2010-2016

Rural Settlement Policy

The Plan states that the Planning Authority will favour appropriate development within designated villages and settlements over urban generated rural housing.

Policies include the following:

Policy RS P1

It is a policy of the Council to provide for the development of sustainable rural housing in the County in accordance with the 'Sustainable Rural Housing' guidelines issued by the Department of the Environment, Heritage and Local Government.

Policy RS P3

It is a policy of the Council to apply a presumption in favour of granting planning permissions to applicants for rural generated housing where the qualifying criteria set down in objectives RS O1 to RS O8 are met and where standards in relation to siting, design, drainage and traffic safety set down in the Plan are achieved.

The Plan states that the Council recognizes the needs of local rural people who wish to live or work in the area in which they grew up. The following 3 criteria arise in assessing applicants under this category:

1. The applicant must come within the definition of a 'Local Rural Person'
and
2. The proposed site must be situated within their 'Local Rural Area'
and
3. The applicant must have a 'Local Rural Housing Need'

A 'Local Rural Person' is defined as a person who is living or has lived in the local rural area for a minimum of 10 years prior to making the planning application. This includes returning emigrants seeking a permanent home in their local rural area.

The 'Local Rural Area' for the purpose of the policy is defined as the area generally, but not exclusively, within a 10km radius of the applicant's family home.

An applicant who satisfies a 'Local Rural Housing Need' is defined as a person who does not or has never owned a house in the 'local rural area' and has the need for a permanent dwelling for their own use in the rural area.

The site of the proposed development is located within an area designated a Rural Area under Strong Urban Influence.

Objectives include:

Objective RS O1: Single Houses in Area under Strong Urban Influence

It is an objective to recognise the individual housing needs of people intrinsic to the rural areas located within the areas defined as '*rural areas under strong urban influence*'. Such needs may be accommodated on lands within the rural area under strong urban influence, subject to the availability of a suitable site and normal proper planning and sustainable development criteria.

It is an objective of the Council to permit single houses in the area under strong urban influence 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:

(a) the application is being made by a long term landowner or his/her son or daughter;

or

(b) the applicant is engaged in working the family farm and the house is for that persons own use; or

(c) the applicant is working in essential rural activities and for this reason needs to be accommodated near their place of work; or

(d) the application is being made by a local rural person(s) who for family and/or work reasons wish to live in the local rural area in which they spent a substantial period of their lives (minimum 10 years).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the third party appeal may be synthesised as follows:

- The landholding is already subject to a Section 47 Agreement due to the granting of recent permission for a dwelling (Ref. 15/939), albeit the relevant condition being subject to clerical error.
- In granting permission on the current application, the planning authority made another clerical error in regard to sterilisation of land as the landholder has signed a document that includes a landholding that is not part of his landholding at the time of signing the legal agreement. This will leave the landholding open to further speculative development.
- There was a failure by the planning authority to notify the appellant of further information that was received.
- The entrance to the proposed development would be onto a substandard road that is adjacent to a hazardous road junction with inadequate sightlines.
- The development of a new entrance and agricultural access between the site and adjoining residential property is not included within the red line of the development boundary and would require planning consent. There is no logical reason to allow for the proposed gap.
- The site would potentially be subject to flooding, with the existing road frontage being flooded several times yearly and flood waters exiting the roadway into the west side of the site. The flood water will undermine the proposed garage structure and will cause the proposed percolation area to underperform.
- There is a need for a complete archaeological survey of the site due to the proximity to Annagh Church and graveyard.

- The development will highly impact on the visual attraction and individual view of the scenic Slieve Felims, Clare Glens region and is in breach of the Limerick County Development Plan.
- The height and prominence of the proposed dwelling is of concern due to significant impact on local amenity.

6.2. Applicant Response

The applicants' response to the appeal may be summarised as follows:

- Planning Ref. 15/939 did not put a section 47 sterilisation on the remaining lands held by the landowner.
- It appears that the map prepared by the local authority annexed to the section 47 agreement relating to the proposed development does include a portion of land no longer in the ownership of the landowner. The applicants disagree that this invalidates the agreement and the landowner can amend and re-sign the agreement as necessary.
- The planning authority does not have an obligation to inform all persons who submitted observations of further information requests and replies.
- The local authority confirmed in their planning report that the road was not considered substandard and that sightlines were adequate.
- The infill parcel of land between the site and adjoining property has no bearing on the planning application. Its inclusion was for information only. The reason for the gap is to create as much space as possible between the existing and proposed houses.
- The site is not in the defined flood zone. The percolation test indicated no issue with drainage on the site.
- There will be no impact on the nearby national monument and the visual impact would have been dealt with in the conditions attached with the planning authority's decision.
- There is no breach of the Limerick County Development Plan regarding protected scenic views.

- The proposed house would have a ridge height substantially below that of the appellant's house on the opposite side of the road. Also, there is a mix of house types in the vicinity and the proposal would not be out of place in the locality.

6.3. **Planning Authority Response**

I have no record of any response to the appeal from the planning authority.

7.0 **Assessment**

7.1. Introduction

7.1.1 I consider that the principal planning issues requiring consideration in this assessment relate to rural housing need (a matter addressed by the planning authority in its considerations prior to the making of its decision), the applicability of section 47 agreements, traffic impact, flooding impact, archaeological impact, visual impact, the illustrated entrance and agricultural access between the site and the adjoining residential property, and the failure to notify the appellant of further information.

7.2. Rural Housing Need

7.2.1 While this is not a matter directly related to the issues raised in the appeal, albeit submissions have been made on sterilisation of land to prevent further one-off housing, it is one of the most important planning considerations relating to the proposed development in my opinion.

7.2.2 The site of the proposed development is located in a rural area that is designated an Area under Strong Urban Influence in the Limerick County Development Plan and also is illustrated as such in "Map 1: Indicative Outline of NSS Rural House Types" in the *Sustainable Rural Housing Guidelines for Planning Authorities*. This is a rural location that is a short distance from Limerick City. It is under severe pressure for one-off housing and, in the wider environs, it is succumbing to such pressure with a proliferation of one-off houses arising. It is essential, therefore, in the interest of protecting investment in public infrastructure to provide for the needs of urban-

generated development and in the interest of protecting the amenity of this rural area, that further urban-generated housing and housing proposed by those with no association with the land or the location in which a development is proposed are avoided.

7.2.3 The above is supported in the recently published National Planning Framework. The Framework includes the following:

- * With reference to the development of rural areas, National Policy Objective 15 seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- * National Policy Objective 19 seeks to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, it is policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

7.2.4 I note from the details provided in this application that the applicant's family home is on Mountshannon Road, Lisnagry. This is a location west of Lisnagry, west of the M7, and on the approach into Limerick City from the north. How the applicant could be considered to have any association with lands some 8km away by road to the east of the M7 in a remote rural area cannot be understood. How one could in some way have an entitlement to seek permission in principle for a house at this rural location based on this fact cannot be understood, notwithstanding the Development Plan provision under Objective RS:01 subsection (d). It is accepted that the site is within 10km of Mountshannon Road, Lisnagry but it cannot reasonably be considered that this is a sustainable planning reason for allowing a house to be located where it is now proposed, a location where the applicants clearly have no ties, no land associations, and no economic or social reasons to reside there. This development is speculative and it is urban-generated. It clearly conflicts with the

provisions of the Sustainable Rural Housing Guidelines and the National Planning Framework. This is an unsustainable development that must be avoided in an area that is under severe pressure for such development.

7.3. Sterilisation of Land

7.3.1 The issue of sterilisation of land should not arise in this instance where it is very clear that the applicants have no economic or social need to reside at the location proposed and where they have no genuine rural housing need at this location. Notwithstanding this, I acknowledge the intent by the planning authority to seek to limit further unnecessary housing at this location in the event of a grant of permission and where the land has already been subject to a grant of permission on another part of the holding to be occupied by persons other than the original landowner. I also acknowledge, however, the issues that the appellant raises. The error relating to the section 47 Agreement associated with Planning Permission 15/939 appears to have been an error that has facilitated the landowner in acquiring a further planning authority decision to grant permission on his holding (i.e. this current application) where it appears that the original intent of the planning authority was not to do so. Following on from this, the planning authority's decision with the current application was to acquire an agreement under section 47 to sterilise the remainder of the land from further housing. However, it is again clear that this agreement is subject to error in relation to the extent of the landholding covered by the agreement, where it includes a recently constructed house not now in the ownership of the original landowner, i.e. the person, in the interim, to whom the restrictions would apply. This error could potentially frustrate any potential further control of development on the overall landholding.

7.3.2 Having regard to the above, it must be acknowledged that two errors on the same holding in relation to sterilisation of this landholding occurred and that these errors are most undesirable in seeking to control future development at this location. In conclusion, this issue must ultimately be tied back to the issue raised at the outset of this assessment, namely rural housing need and the need to control the unnecessary proliferation of housing, which the section 47 agreements seek to achieve. In the context of my conclusion that there is no rural generated housing

need associated with the proposed development, there should be no requirement for any section 47 agreement to sterilise this landholding.

7.4 Traffic Impact

7.4.1 The proposed development would access a narrow local road where two-way vehicular traffic cannot satisfactorily be accommodated. I acknowledge available sightlines at the proposed entrance would meet acceptable standards. I also acknowledge that the site is close to a junction with another local road lying a short distance to the south. This is a junction with restricted visibility, particularly in a western direction when exiting from the local road serving the proposed site. I note, however, that this is an established junction at present accommodating a relatively low level of traffic which serves the needs of those working and residing in the area. While the inadequacy of the road network further highlights the unsustainability of seeking to accommodate persons with no genuine rural housing need at this location, a refusal of permission on traffic grounds alone would not be merited.

7.5 Flooding Impact

7.5.1 I note all of the submissions made in relation to the issue of flooding. I particularly acknowledge the report of the Executive Scientist who analysed the flooding potential of the lands based on current available knowledge. In undertaking a site inspection, and further to prior periods of prolonged spells of heavy rain generally at this time, I could find no evidence of any ponding of water on the land or indication of vegetation indicating poor drainage. Rather, I noted that the location of the proposed site itself appeared to comprise free-draining lands. While I cannot refute that ponding may occur along the road frontage, I have no information to reasonably conclude that this site is subject to flooding periodically.

7.6 Archaeological Impact

7.6.1 Annagh Church and Graveyard is a national monument (Recorded Monument LI006-01501/02) that lies more than 80 metres to the north of the site. The proposed development would not have any direct impact on the existing monument due to its

separation distance. In terms of indirect impact, I note that the church and graveyard are located in open countryside where there is a high degree of visibility over an expansive landscape comprising a network of fields. The issue of the visual intrusiveness of a modern house at this location may reasonably be viewed as a matter requiring attention if a house was to be accommodated at the location of the proposed development, in order to protect the integrity of the setting of the church and graveyard. The planning authority's Archaeologist has taken a balanced approach to this issue, requesting a set back of the proposed garage and the provision of suitable boundary planting to limit the intrusion that would arise.

7.7 Visual Impact

- 7.7.1 The site of the proposed development is located within a Landscape Character Area designated 'Agricultural lowlands' in the Limerick County Development Plan. Permitted housing in this area is required to reflect existing housing stock. Having regard to the design and character of modern housing in the environs of this site, it is apparent that a two-storey house of modern design would not be out of character.
- 7.7.2 Limerick County Development Plan sets out views and prospects to be protected in the county in Map 7.6. There are no designated views and prospects relating to the location for the proposed development.
- 7.7.3 In conclusion, I note the proposed development would be located in open countryside and that, together with existing development in the immediate vicinity, would result in some degree of visual impact at a local level. However, the form, scale, height and design of the proposed development would not of themselves be out of character with development in this area and would not cause significant visual intrusion in themselves. The most likely significant visual impact extends from the relationship of the proposed development with the nearby recorded monument and this issue has been addressed above.

7.8 The Agricultural Entrance and Access

- 7.8.1 I note the submitted site layout plan shows what is termed 'agricultural entrance' to the south of the proposed site. This appears to comprise a tract of land, rather than

an entrance, abutting the southern boundary of the site. This lies outside of the site boundaries and the applicants have submitted that this is effectively intended as a buffer between the proposed development and an existing house to the south.

7.8.2 I consider that the illustrated 'agricultural entrance' is purely indicative and is separate from the development of the proposed house.

7.9 Notification of Further Information

7.9.1 While the appellant was somewhat restricted in being afforded an opportunity to respond to the applicants' further information submission, I note that this has not undermined his ability to make an appeal to the Board. Furthermore, it is clear that the Board would be assessing this proposed development *de novo* and would be considering all relevant planning matters arising from the application, inclusive of the further information submitted.

8.0 **Recommendation**

8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 **Reasons and Considerations**

1. Having regard to the location of the site within an Area Under Strong Urban Influence as identified in the current Limerick County Development Plan and in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government (2005), and to National Policy Objective 19 of the National Planning Framework (February 2018) which seeks to ensure that the provision of single housing in rural areas under urban influence are provided based upon demonstrable economic or social need to live in a rural area, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the

Guidelines and does not comply with National Policy Objective 19. 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. The proposed development would, therefore, contravene the provisions of the Guidelines and the National Planning Framework and would, therefore, be contrary to the proper planning and sustainable development of the area.

Kevin Moore
Senior Planning Inspector

13th March 2018