



An  
Bord  
Pleanála

## Inspector's Report ABP-301003-18

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<b>Development</b>	Dormer style dwelling house with detached garage, new vehicular site entrance, connection to foul sewer and watermain and site development works.
<b>Location</b>	Killyvanny, Ballyhaise, Co. Cavan.
<b>Planning Authority</b>	Cavan County Council.
<b>Planning Authority Reg. Ref.</b>	17/499.
<b>Applicant(s)</b>	Stefan and Simona Chirita.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Stefan and Simona Chirita.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	14 <sup>th</sup> May 2018.
<b>Inspector</b>	Deirdre MacGabhann

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## **1.0 Site Location and Description**

- 1.1. The 0.317ha appeal site is situated in the townland of Killyvanny, c.5km north of Cavan Town and immediately south west of Ballyhaise village, just south of the 50kph speed limit zone. It is situated to the east of the R212, the Regional road connecting Ballyhaise to the N3.
- 1.2. The flat, triangular shaped site lies north of three detached properties. The site has a small building on it and an existing gated entrance from the public road, located towards the northern part of the site (see photographs). A drain runs along the western side of the site and alongside its northern and eastern boundaries.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the construction of a dormer style property with accommodation in the roof space. Ridge height is 6.5m and a total floor area of 176sqm is provided. A separate domestic garage is proposed with a ridge height of c.6m and an floor area of 49sqm.
- 2.2. The development also includes new vehicular entrance and connection to the public foul sewer and watermain. The planning application includes:
  - A completed Rural Housing Application form (and supporting documentation) which states that the appellants have been living in Ballyhaise since 2013 and prior to that in Corrawellis, Carrickaboy, County Cavan and that they are part of the local community.
  - Correspondence from Irish Water stating that the proposed connection to the Irish Water network can be facilitated.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 31<sup>st</sup> January 2018 the planning authority decided to refuse permission for the proposed development on two grounds:

1. That the development as proposed is contrary to objective RH07 of the Cavan County Development Plan 2014 to 2020 in that the applicant has not displayed compliance with this objective and is not considered to have a rural generated housing need.
2. The development would endanger traffic safety as it is located close to a bend/summit in the road which seriously reduces sight distances. The development would generate dangerous cross-over traffic movements that would seriously prejudice the safety of traffic on the road.

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

#### Planning Reports

- 26<sup>th</sup> January 2018 – Refers to the location of the site on the R212, Development Plan policy in respect of Areas under Strong Urban Influence around Cavan Town, the planning history of the site and pre-planning consultations. It considers that (a) the applicants do not comply with the categories set out in the development plan that constitute a rural generated housing need, and (b) that minimum sight distances to the north cannot be satisfied. The report recommends refusing permission for the development on the above grounds.

#### Other Technical Reports

- Municipal District Engineer (15<sup>th</sup> December 2017) – Refers to severely restricted sightline in direction of Ballyhaise village and states that even if hedges along the entire site boundary were removed, it would still fall well short of the required 160m for the class or road (R212). Recommends refusal on this ground. Also refers to the open drain along site boundary and concern that any proposals to pipe the drain is adequately sized to ensure no surcharging occurs in the future. If a grant is being considered states that conditions to control hedges outside of the site, in Ballyhaise direction, and the drainage system will have to be imposed.
- Irish Water (13<sup>th</sup> January 2018) – No objections.

### **3.3. Prescribed Bodies/Third Party**

3.3.1. None.

## **4.0 Planning History**

4.1.1. The following planning applications have been determined in respect of the appeal site:

- PA ref. 17/310 - Stefan and Simona Chirita (the appellants) were refused planning permission in August 2017 for a dormer style dwelling, detached garage and new vehicular entrance on the grounds of traffic hazard (seriously reduced sightlines) and that the applicant had not displayed compliance with policies contained within section 2.7.5 of the County Development Plan, and therefore was not considered to have a rural generated housing need.
- PA ref. 03/1970 – Planning permission refused in 2004 for a dwelling house on the appeal site on the grounds that it was not viable to install a pumping station to connect a single property to the site to the public sewer (the site was also too small to accommodate a wastewater treatment system and percolation area to meet EPA guidelines).
- PA ref. 99/1239 – Planning permission was granted in 1999 for two dwellings on the appeal site.

4.1.2. The appellant refers to PA ref. 03/238 and 96/164, however these refer to applications for residential development on land to the south of the appeal site, were determined within a different policy context and are not, therefore, directly relevant to the proposed development.

## **5.0 Policy Context**

### **5.1. National Planning Policy**

- National Planning Framework, 2018.
- Sustainable Rural Housing, Guidelines for Planning Authorities (2005).

## 5.2. Cavan County Development Plan 2014 to 2020

- 5.2.1. The appeal site lies c.500m outside of the development envelope of Ballyhaise (Ballyhaise Map, Cavan CDP, Maps), a designated Tier Four Small Town. Section 2.7.1 defines rural areas as those falling outside of the defined development envelope of the County's towns and villages. Housing development within these rural areas is required to comply with the policies and objectives contained within Section 2.7 of the Plan, 'Rural Settlement Strategy'.
- 5.2.2. Ballyhaise lies within a wider rural area that is designated as a 'Stronger Rural Area' (Appendix 5 of the plan) and the area around Cavan Town, a Tier One County Town, as under 'Strong Urban Influence' (see attachments).
- 5.2.3. Policies of the Plan seek to restrict housing development in rural areas under Strong Urban Influence to landowners and their immediate family members, whilst directing urban generated housing need to adjoining towns and villages. Section 2.7.4 of the Plan defines urban and rural generated housing need (see attachments).
- 5.2.4. For 'Stronger Rural Areas' the plan seeks to facilitate rural generated housing needs, subject to good planning practice, whilst directing urban generated housing need to areas to adjoining towns and villages.
- 5.2.5. Section 10.14.10 of the Plan sets out policies to control new access points off regional and county roads. Policy DMO23 seeks to ensure that all development accessing of the county's road network is such that it would not give rise to traffic hazard and Policy DMO24 states that new development proposals onto certain regionally important road routes, that act as particularly important transport links and that traverse the County, shall be assessed having regard to:
- Avoiding unnecessary new accesses,
  - Ensuring that necessary new entrances are located to provide effective visibility so that opportunities for conflicting movements are avoided, and
  - Avoiding the premature obsolescence of regional roads, in particular, through creating excessive levels of individual entrances.

### 5.3. Natural Heritage Designations

- 5.3.1. The nearest sites of nature conservation interest to the appeal site lie c. 1km to the north west of Ballyhaise and comprise the Lough Oughter and Associated Loughs SAC and pNHA (site code 00007).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The first party grounds of appeal are:

- The application is for a family home on their family landholding.
- Zoning – The site is zoned as an ‘Area under Strong Urban Influence’. However, it is on the periphery of this area. The development should be assessed under the zoning ‘Stronger Rural Area’.
- Location – Whilst the site is located outside of the development envelope for the village it is within the periphery of it. Part of the site is within the 50kph speed limit zone and the site is serviced by sewer and mains water serving the village.
- Links to the area – The legal landowner of the site is Maria Dita, mother of the applicant (Simona Chirita). The appellants have been permanently resident in Ballyhaise since 2016, when they moved in with Maria Dita. Prior to this the appellants had moved to Cavan in 2008 and bought a house at Corrawellis, Carrickaboy. Maria Dita bought the subject site and an apartment in Ballyhaise in 2015.
- Appellant’s circumstances – The appellant’s moved to Ireland in 1999, have two children, one at DIT Kevin Street and the other at Loreto College, Cavan Town. In 2013 Stefan Chirita had a serious road accident and has not been able to work since. In 2016, the appellants were obliged to sell their home at Corrawellis which was in negative equity. Since 2016, the appellants have been living with Maria Dita in an apartment in Ballyhaise, which is unsuitable for a family. The appellants have a rural generated housing need, having been living in excess of 10 years in the environs of Cavan Town.

- Public safety/traffic hazard – The subject site is accessed via an agricultural gate which is very unsafe. Access to the development would be relocated in a southern direction to give a sightline of in excess of 130m (to Ballyhaise side) and 250-300m on the Cavan side. Part of the site is located within the 50kph speed limit zone, the remainder in the 80kph zone. The appellants wrote to the local authority seeking to have the speed limit zone relocated past the house. The request was acknowledged and the local authority stated that the proposal would be taken into consideration. The local roads engineer had agreed that a 130m sight line was acceptable (pre-planning meeting). Permission was previously granted for two no. houses in the same field as the proposed development (PA ref. 03/238 and 96/164). An internal memo on the file (PA ref. 96/164) states that the then speed limit was 45 miles per hour or 70kph and that a sight distance of 115m was acceptable. The reason for refusal (160m sightline) contradicts previous advice given and the above memo. The proposed improvement in sightline would benefit all road users. Traffic is coming out of a 50kph speed limit zone and speed will not necessarily be at the maximum (80kph).
- Conclusion – The appellants housing need has been unfairly assessed. Living near the appellants elderly mother will mean they can provide help and support. The appellants have strong reasons for a permanent residence at the subject site. Failing this, they will sign on to the local housing list. The appellants are willing to consent to an occupancy condition. There have been no third-party submission or representations in respect of the development.

## 6.2. Planning Authority Response

- Zoning/Development Plan - The appeal site is outside of the development envelope of the village and is therefore in a rural area. The proposed development was assessed under Section 2.7 of the Cavan Development Plan (Rural Settlement Strategy), in particular Section 2.7.4 Definitions – Rural and Urban Generated Housing. The applicants currently live in Ballyhaise and it was not considered that they complied with the definition of rural generated housing need.



- Appellant's circumstances - The application was assessed based on the current circumstances of the applicant who currently lives in the village of Ballyhaise and have not demonstrated a rural housing need as per the Development Plan.
- Traffic hazard - The Planning Assessment was based on the report of the Municipal District Engineer, which recommended refusal on the grounds of sightlines falling well short of requirements.

### 6.3. **Observations/Further Responses**

6.3.1. None.

## 7.0 **Assessment**

7.1. I have read the appeal file and inspected the site. The key issues arising in the appeal are confined to the matters raised by the appellant, namely:

- Compliance with policies of the rural housing policies of the County Development Plan.
- Traffic hazard.

### 7.2. **Rural Housing Policies**

7.2.1. Government policy on the future growth and development of rural areas is set out in Section 5.3 of the National Planning Framework (2018). National Objective 15 supports the sustainable development of rural areas by encouraging growth/arresting decline in areas that have experienced low population growth/decline, managing the growth in areas that are under strong urban influence to avoid over development, while sustaining vibrant rural communities.

7.2.2. National Policy Objective 19 provides that single houses in the countryside, in rural areas under urban influence (within commuter catchment of cities, large towns and centres of employment and elsewhere), will be facilitated on the basis of demonstrable economic or social need. In rural areas elsewhere, the policy seeks to facilitate the provision of single houses based on siting and design criteria, having regard to the viability of smaller towns and rural settlements.

- 7.2.3. The recent National Planning Framework post-dates the policies of government's guidelines on Sustainable Rural Housing, 2005 and the current Cavan County Development Plan.
- 7.2.4. The Sustainable Rural Housing Guidelines seek to facilitate people who are part of the rural community in all rural areas, including those under strong urban pressure, and to carefully manage urban generated housing needs in the environs of major urban areas and larger towns. Section 3.2.3 of the Guidelines identify two broad types of rural generated housing need, that generated by persons who are an intrinsic part of the rural community (e.g. having spent substantial parts of their lives living in rural areas as members of the established rural community) and persons working full-time or part-time in rural areas.
- 7.2.5. Consistent with Sustainable Rural Housing Guidelines, rural housing policies of the Cavan County Development Plan 2014 to 2020 seek to facilitate rural generated housing needs, subject to good planning practice, whilst directing urban generated housing need to areas to adjoining towns and villages. In areas under 'Strong Urban Influence' housing development in rural areas is restricted to the needs of landowners and their immediate family members. In 'Stronger Rural Areas' the plan seeks to facilitate rural generated housing needs, subject to good planning practice, whilst directing urban generated housing need to areas to adjoining towns and villages.
- 7.2.6. The appeal site lies within a rural area immediately south of Ballyhaise. I would consider, therefore, that it lies within the area identified as 'Stronger Rural Area' (Appendix 5, Cavan County Development Plan 2014-2020).
- 7.2.7. In Section 2.7.4 of the Plan rural generated housing need is considered to comprise persons who are an intrinsic part of the rural community or who are working full time or part time in rural areas. Persons who are an intrinsic part of the rural community are:
- Persons who have spent substantial periods of their lives living in rural areas as members of the established rural community e.g. farmers, their sons and daughters and/ or any persons taking over the ownership and running of farms, as well as, people who have lived most of their lives in rural areas and are building their first homes.

- Returning emigrants who lived for substantial parts of their lives in rural areas, then moved abroad and who now wish to return to reside near other family members, to work locally, to care for elderly family members, or to retire
- Persons originally from the local rural area who wishes to return.
- Persons currently residing in the local rural area and who can demonstrate a requirement for a permanent residence there.
- Persons who need to reside near elderly parents so as to provide security, support and care, or elderly people who need to reside near immediate family.
- Persons who operate a full-time business from their home, which is compatible with the local needs criteria for rural areas.

7.2.8. The appellant argues that they are intrinsic members of the local community. They argue that they currently live in Ballyhaise town, having previously lived in Corrawellis, Carrickaboy, Cavan (south east of Cavan Town) and they provide supporting information to this effect. They indicate that the site is owned by the appellant's mother (Maria Dita), however, the land registry details provided which refer to Ms Dita are in respect of an apartment in Ballyhaise.

7.2.9. Having regard to the material on file, I would accept therefore that they have been part of the wider community for some time (it is not clear when the appellants purchased their property in Corrawellis). However, based on the information on file it is not evident that the appellants have any particular link to the rural area in which they are seeking permission, except for its proximity to the urban area in which they are currently located, and there is no employment/business related reason articulated for their specific rural location. Furthermore, whilst the proximity of the appeal site to Ballyhaise would enable the appellant to take care of Ms Chirita's mother, this could equally take place from a residence in Ballyhaise where the elderly person resides.

7.2.10. Having regard to the above, I would conclude that the appellants do not satisfy the national guidelines on sustainable rural housing or the planning authority's definition of rural generated housing need.

7.2.11. The more recently published National Planning Framework may suggest a slightly looser approach to areas which are not under urban influence (National Policy

Objective 19) i.e. it states that in such rural areas, provision of single housing in the countryside will be facilitated based on siting and design criteria, having regard to the viability of smaller towns and rural settlements. This national policy document will ultimately frame future regional strategies and county policies and it may be premature to refer to the guidelines in advance of the evolution of these more detailed policy documents. Notwithstanding this, even if a more flexible approach to rural housing development was adopted for the 'Stronger Rural Areas' in which the appeal site lies, the site lies outside of the defined development envelope of the town but in close proximity to it and any such development, outside of the statutory development plan, would be premature, comprise haphazard development and could potentially adversely impact on the compact nature of the town, its sustainability and viability.

### **7.3. Traffic Hazard**

- 7.3.1. The appeal site lies within the 80kph speed limit zone (see photographs) and on a bend in the regional road. Access to the site is proposed from its southern end to maximise the sightline to the north. Plans for the development indicate 130m towards Ballyhaise and 180m towards Cavan. At the time of site inspection, I observed high traffic speeds on this road and a reasonable volume of traffic.
- 7.3.2. In their publication 'Geometric Design of Junctions' (April 2017), TII recommend sightlines of 160m in each direction (3.0m from the road edge) where the 80kph speed limit zone applies (section 5.6, DN-GEO-03060). Clearly the appellant is unable to provide this length to the north and access arrangements are sub-standard. The appellant indicates that they have approached the planning authority regarding changing the location of the 50kph zone to include access to the site. However, there is no evidence to suggest that this request is being actively considered or of the merits of such a proposal (i.e. the appeal site remains sited on a bend and traffic speeds will be increasing as they leave Ballyhaise). The appellants argue that the proposed relocated entrance will be an improvement on the existing entrance. However, I do not accept this point as any development of the site for residential purposes would be likely to significantly increase vehicle movements, and would not offset any risk associated with the current low level of traffic associated with the current use of the site.

- 7.3.3. In the absence of reduced speeds on this stretch of the road, I consider that the sub-standard sightline to the north would endanger public safety by reason of traffic hazard.

## **8.0 Appropriate Assessment**

- 8.1. Having regard to modest nature of the proposed development, a single dwelling which provides for connection of the proposed development to the public sewer and watermain, and to the distance of the proposed development from the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **9.0 Recommendation**

- 9.1. Having regard to the above, I recommend that planning permission for the proposed development be refused for the reasons and considerations set out below.

## **10.0 Reasons and Considerations**

1. Having regard to the location of the site within a "Stronger Rural Area" 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 where housing is restricted to persons demonstrating local need in accordance with the current Cavan County Development Plan, 2014 to 2020, 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. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a busy regional road at a point where sightlines are restricted in a northerly direction.

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Deirdre MacGabhann

Senior Planning Inspector

22<sup>nd</sup> May 2018