



An
Bord
Pleanála

Inspector's Report ABP 301565-18

Development	Dwelling house, entrance, wastewater treatment system and site works above and below ground.
Location	Hill Road, Killaloe, Co. Clare.
Planning Authority	Clare County Council
P. A. Reg. Ref.	P18/116.
Applicant	John Deegan
Type of Application	Permission
Decision	Refuse Permission
Type of Appeal	First Party X Refusal
Appellant	John Deegan
Date of Site Inspection	24 th July, 2018.
Inspector	Jane Dennehy.

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1.0 Site Location and Description

1.1. The site of the proposed development has a stated area of 9,200 square metres and is located at an elevated location on the north side of Hill Road to the west, of Killaloe. The ground is under pasture falls in a north easterly direction and access is via a farm gate from the Hill Road frontage. To the east side there is single house development along most of the road frontage as far as the town centre and there is intermittent single house development further to the west. To the north east towards the village there is residential development at the edge of the village.

2.0 Proposed Development

2.1. The application lodged with the planning authority indicates proposals for development of a house with a new entrance, private waste water treatment system and site development works. The purpose of the application according to the written submission is to address the reasons for refusal attached to the decision to refuse permission for the prior proposal. (P. A. Reg. Ref. 16/835, details of which are set out under Para 4 below refers.)

3.0 Planning Authority Decision

3.1. Decision

By order dated 12th April, 2018, the planning authority decided to refuse permission on the basis of:

- premature development pending the completion of the Killaloe bye-pass and associated road infrastructure because the proposed entrance is within the 'Infrastructure Safeguard' area of the By-pass,

- material contravention of Policy Objective 8.6 of the Clare County Development Plan, 2017-2023 which provides for and facilitates road projects including the Western By-pass of Killaloe and,
- endangerment of public safety by reason of traffic hazard.

3.2. Planning Authority Reports

Planning Reports

- 3.2.1. Apart from the reason arrived at for the decision for refusal of permission in that the front portion of the application site comes within the CPO for the by-pass, the planning officer was satisfied with the proposed development in all other respects.

Other Technical Reports

- 3.2.2. The report of the Area Engineer's Office dated, 16th March, 2018 indicates that the proposed development is premature until the By-pass scheme is constructed, and/or the design team has approved a layout. It is also stated that the stormwater outlet on the north east of the site would need to be maintained to ensure that runoff from Hill Road continues to drain through the site.
- 3.2.3. The report of the Roads Design Office dated 11th April, 2018 indicates that the proposed development is premature on account of the by-pass scheme which it is stated is at detailed design stage.
- 3.2.4. The report of Irish Water indicates no objections and includes details of some standard requirements to be complied with should permission be granted

4.0 Planning History

P. A. Reg. Ref. 16/835: Permission was refused for a single house development on grounds of serious injury to the visual and residential amenities of the area and the landscape relating to scale, bulk, design and positioning and undesirable precedent for similar development. The application indicated proposals for connection to the foul sewer in the adjoining lands for which permission for development had been granted under Reg. Ref 04/1859 details of which are provided below.

P. A. Reg. Ref. 08/87: Outline Permission was refused to John Deegan for a house and entrance for three similar reasons to those for which permission was refused under P. A. Reg. Ref. 05/865 and for an additional, fourth reason on grounds of premature development relating to the location within the Infrastructure Safeguard area proposed for the Killaloe by-pass, Shannon Bridge Crossing and R494 upgrade provided for in the East Clare Local Area Plan, 2005.

P. A. Reg. Ref. 05/865: Permission was refused to the John Deegan for a house, garage, stables, exercise yard, entrance and connection to the foul sewer proposed for the adjoining site for which permission was granted under P. A. Reg. Ref. 04/1859) (An application had been lodged for Outline Permission under P. A. Reg. Ref. 03/1044) Reasoning related to (1) lands under pressure for urban generated development and rural housing need; (2) visual impact relating to scale, mass and design at an elevated site overlooking Lough Derg and, (3) endangerment of public safety by reason of traffic hazard.

P. A. Reg. Ref. 04/1859. Approval was granted to John Deegan for eighty-seven dwellings, site entrance and site works on foot of an outline permission granted under **P. A. Reg. Ref .01/278.**

P. A. Reg. Ref. 03/1044: A request for additional information was issued in respect of an application for a house garage and entrance by Catherine and John Deegan to which a response was not lodged with the planning authority.

5.0 **Policy Context**

5.1. **Development Plan**

5.2. The operative development plan is the Clare County Development Plan, 2017-2023 (CDP)

5.3. The Western By-pass of Killaloe and the River Shannon Bridge Crossing is included among projects in Table 8.2 which are identified for future development during the lifetime of the CDP. It is the objective of the planning authority to provide and or facilitate these projects and ensure that roads infrastructure is designed and constructed to fulfil the intended purpose. In addition, there is provision for strict

adherence to relevant mitigation measures included within in Appendix C 2 (a) – (d) of Volume 10 (9).

- 5.4. According to the CDP the site partially, (the north east section) comes within the settlement boundary of Killaloe and is subject to the zoning objective AG3: “Agriculture-Killaloe” and for agricultural and farming related activities and individual dwellings for permanent occupancy of established land owners and immediate family members subject to criteria set out in Chapter 3 of the CDP. The south western section of the site is outside the settlement boundary and designated as being under strong urban generated pressure for development and designated as a Heritage Landscape.
- 5.5. According to the CDP the route of the Killaloe bypass intersects the site and this land is subject to the development objective: “infrastructure safeguards” which are lands *“...to be reserved for the future provision of key infrastructures services and for upgrading of existing services and infrastructure relating to road rail, air, electricity, telecommunications, gas, water and waste water treatment services.”*
- 5.6. For Killaloe Municipal District within Volume 3 of the CDP, provision is made for an Infrastructures Safeguard for the approved route of both the bye pass and the river crossing and among the general objectives there is a requirement to ensure provision of the Shannon Bridge crossing and the Killaloe Western Relief Road.

6.0 The Appeal

6.1 Grounds of Appeal

An appeal was received from HRA Planning on behalf of the applicant on, 8th May, 2018. According to the appeal:

- The house is intended as the applicant’s main place of residence and he has been in ownership of the site lands for over fourteen years and the planning officer acknowledges this in the assessment of the application lodged under P. A. Reg. Ref. 16/685 and in the assessment of the current application.

- The bypass within the CPO has a link road to Hill Street and a local road off Hill Street to the east side of the bypass. This will provide direct access to the site and to a farmstead further to the west. (The extent of the CPO and road design are shown in appendix 1 and 2 attached to the appeal.) The setback is 123 metres from the road and a temporary access is available onto Hill Road until the new road to the front of the site is constructed. A new local road is within the land take of the CPO at the south west boundary of the site. It is shown on the site layout plan and it will be eighty-four metres from the front façade of the dwelling. A permanent entrance on to the new road, once operational will have the set-back distance of eighty- four metres and this provides ample scope for tie in with the levels of the new road. The applicant will cover the cost of the works.
- The proposed development is not premature because the layout and design of the road has been determined, there is a timescale for delivery of the works and, funding is committed to the project in the National Development Plan. The determined road layout is clearly shown on the site layout plan with the application. The proposed development is premature having regard to Section 2 of the Fourth Schedule of the Planning and Development Acts as amended, (PDA) which provides for reasoning which does not attract compensation where development is premature pending the determination by the planning authority or the road authority of a road layout for the area or a part thereof. It is shown that the road works will not be hindered, restricted or prevented from delivery and that the proposed development can be simultaneously implemented and is not premature. There is a completion date of 2021 in place for the Road scheme.
- The Capital Projects Tracker shows the Shannon Crossing as being due for completion in 2021. The Mid-term Review of the Capital Plan Building on Recovery 2016-2021 shows allocation of €34 million in funding for the Killaloe Bypass, the Shannon Bridge Crossing and for the R494 Road Improvement Scheme.
- Consultants for the applicant who have liaised with Clare County Council have advised that the Roads scheme is not a Design and Build Scheme and will follow the proposed layout. A contractor is to be appointed and construction is

to commence in mid or late 2018, the estimated construction period is 18-24 months and construction is in a single stage. The layout is confirmed and determined and, construction commences before the end of the year and will be completed by mid-2021.

- As the development does not impede or obstruct the construction of the Western Bypass of Killaloe and the River Shannon Bridge crossing south of Killaloe it is not in material contravention of Objectives 8.6 and 8.6A of the CDP which provide for completion of the projects in Table 8.2 to fulfil the intended purpose. Regard is had to the zoning definition of 'infrastructural safeguards' provided for in the CDP. The 'Infrastructure Safeguard' on the south west boundary of the site at the public road is maintained free of development, there is safe provision for temporary access road and entrance pending the delivery of the new local road through the site and, there are no issues for the determined road layout and design and there is no material contravention of the CDP.
- There is no question of disorderly development or endangerment of public safety by reason of traffic hazard. The road project is not a 'design and build' scheme so the design will not change. It is demonstrated in the site layout plan that the development successfully operates in both existing and future scenarios, with and without the new road in place. Hill Road serves the existing housing on the north side, the new road will be in place before Hill Road is severed and, the construction of the new access road is a straightforward. One additional house does not amount to disorderly development and will not endanger public safety by reason of traffic hazard on a road where speed restrictions apply.

Planning Authority Response

- 6.2. A submission was issued by the planning authority on 7th June 2018 according to which it is confirmed that there is no objection to the development in principle subject to appropriate access and no impact on the area reserved for the bypass and local road. The planning authority considers the proposed development premature and may hinder the development of the bypass and local road pending such time as the bypass and local road are complete and in place.

- 6.3. It is acknowledged that the 'Infrastructure Safeguard' is maintained free in the development. The concern is that the proposed development would provide access across the safeguard which in turn would impact on the implementation of the by-pass scheme and specifically implementation in terms of the timing in relation to the construction of the local road which will service the site. Additional alterations to the final scheme may be required and may impact on the proposed development.

The by-pass scheme is at detailed design stage, but the proposed development is deemed premature by the roads design and Area Engineer. The final design details, notwithstanding the determination of the roads layout the final design detail may be subject to change. This is the concern as the entrance for the proposed development is off the Killaloe by-pass and the ancillary scheme which are not in place, so the proposed development would hinder and restrict the development of the by-pass scheme which is not in place. Unless the local road is constructed and operational the site may not be capable of being accessed during the construction of the by-pass itself. The proposed development is premature pending such time as appropriate access arrangements are in place.

7.0 **Assessment**

- 7.1. The sole overall consideration in dispute relates to the reasoning provided for premature development having regard to Western By-pass of Killaloe and the River Shannon Bridge Crossing included among projects in Table 8.2 of the CDP in material contravention of Objectives 8.6 and 8.6A or cause for endangerment of public safety be reason of traffic hazard. Issues as to consistency with the eligibility criteria for single house development in areas not designated for development, raised in the appeal are not in dispute between the parties. The dwelling design and positioning within the site is also not in dispute.
- 7.2. The Killaloe by-pass is part of the Killaloe By-pass, Shannon Bridge Crossing and R494 Improvement Scheme that creates a western by-pass of the town linking in with the Shannon Bridge Crossing and the R 463 at the south of the town and the R 463 at the north of the town. The 'Infrastructure Safeguard' or corridor for the bypass and connecting local road bisects the site which is on the north side of Hill Road which is subject of the application.

- 7.3. There has been a drawn out protracted period which included a Judicial Review and subsequent appeals which concluded in November 2016 leading up to the final Approval for the project and it is understood that following acquisition of the required lands works will commence in 2019.
- 7.4. It is appreciated that the applicant's case as set out in the application and appeal is comprehensive but there are no considerations within it that would facilitate a change to the position of the planning authority in relation to the application. It would be premature for the proposed development to be permitted and development commenced until all potential for hindrance or restriction to timing and advancement of the implementation of bypass and local road, without compromise to delivery of access to the application site, is fully eliminated.
- 7.5. It is also appreciated that scheme providing for the by-pass and local road is a 'design and build' scheme but it is reasonable that scope for consideration of all options should remain unrestricted in the event that design details do require change at a late stage. It is therefore agreed that the application is premature until such time as the local road is constructed and it can be ensured that the site is capable of access without constraint or hindrance in any way to the implementation of the by-pass and local road.
- 7.6. It is therefore concluded that the planning authority decision to refuse permission is reasonable and should be upheld. It would appear, subject to no other changes in planning policy, context and circumstances the proposed development could be reconsidered when the implementation of by-pass and local road are at an advanced stage.

Appropriate Assessment.

- 7.6.1. Having regard to the scale and nature of the proposed development and to the serviced central business district location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. In view of the foregoing, it is recommended that the planning authority decision to refuse permission be upheld and that the appeal be rejected, Draft Reasons and Considerations follow:

9.0 Reasons and Considerations

The site of the proposed development comes within, and, is dependant for vehicular access on the area of the “Infrastructure Safeguard” for the western by-pass of Killaloe which is part of the, Shannon Bridge Crossing and R494 Improvement Scheme that creates a western by-pass of the town linking in with the Shannon Bridge Crossing and the R 463 at the south of the town and the R 463 at the north of the town and which is included among the local roads projects to be facilitated and provided for according to Policy Objective 8.6 of the Clare County Development Plan, 2017-2023. The proposed development could hinder and restrict the construction and implementation of the by-pass scheme in terms of timing in relation to the construction of the local road from which access to the proposed development is required especially if design alterations to final scheme are required. The proposed development is therefore premature pending the construction of the by-pass scheme inclusive of the local road enabling appropriate access arrangements to be in place and would be contrary to the proper planning and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector
2nd August, 2018.