



An
Bord
Pleanála

Inspector's Report ABP-301834-18

Development	Construction of a two storey house, domestic garage, joint entrance, waste water treatment and disposal system and all associated site works
Location	Whitefield , Loughmore , Templemore
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	17601401
Applicant(s)	Padraic & Fiona Keely
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Padraic & Fiona Keely
Date of Site Inspection	20 th July 2018
Inspector	Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.343 hectares, is located on the western side of the N62, 2.5km south of Templemore. The appeal site is part of a field (grassland). Adjoining lands to the south and west are similar in nature, with an existing dwelling located to the north and a farmyard located further north beyond it.

2.0 Proposed Development

- 2.1. Permission sought to construct a two-storey dwelling, domestic garage, joint entrance, waste water treatment system and all associated site works. The proposed dwelling has a floor area of 326sqm, a ridge height of 8.805m and features external finishes of plaster dash on the external walls and a slate pitched roof. The garage has a floor area of 52.65sqm with external finishes matching the dwelling. The proposal entails the provision of a new vehicular entrance off the public road, which is also to serve the existing dwelling to the south east.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on two reasons...

1. It is the Policy TI3 Strategic Road Network and Policy SS6: Housing on National Secondary Roads of the North Tipperary County Development Plan (as Varied) to facilitate individual dwellings on the National Secondary Road for

(a) a son or daughter of a farming landowner (i.e. >20ha) engaged in farming the landholding and will inherit the holding at the location of the dwelling.

(b) the applicant has demonstrated, to the satisfaction of the Council, that there is no alternative site available to her/him off a local road, and,

(c) the dwelling is accessed off the existing farmhouse entrance.

The Planning Authority considers that the applicants have failed to demonstrate that they comply with the policy requirements as set out in Policy T13 and Policy SS6 of the North Tipperary County Development Plan 2010 (as varied) for access onto the strategic route corridor (National Secondary Road, N62) as the Applicant has not eliminated alternative site(s) off a regional and local road. Accordingly, the proposed development would materially contravene Policy T13 and Policy SS6 of the North Tipperary County development Plan 2010 (as varied) and would be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed entrance would create an adverse impact on the National Secondary Road where the maximum permitted speed limit applies and sightlines are deficient. This would, in the Authority's opinion, be at variance with the national policy as set out in the DoECLG Spatial Planning and the National Roads Guidelines for Planning Authorities (January 2012) in relation to control of frontage development on national roads. In addition, proposals do not satisfy the standards set out in the County Development Plan as required by Policy DM1. The proposed development would endanger public safety by reason of traffic hazard and obstruction of road users due to the movement of extra traffic generated. The proposed development is therefore, considered to be contrary to the proper planning and sustainable development of the area, national guidelines and Policy DM1 of the County Development Plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Road design (no date): It is not clear whether the applicant meets the terms of Policy SS6, in the interests of traffic safety a grant of permission is not recommended.

Planning report (14/09/18): It was considered that the proposal did not comply with Policy T13 and SS6 of the County Development Plan. Refusal was recommended based on the reason outlined above.

4.0 Planning History

No planning history.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the North Tipperary County Development Plan 2010 (as varied).

Policy SS4: Housing in the Rural Countryside

It is the policy of the Council to facilitate individual dwellings in the open countryside for person(s) who are intrinsic to the area, have a demonstrated housing need, and who are seeking to provide a home for their own occupation. A housing need should be demonstrated in accordance with any one of the categories set out below:

Category A: Local Rural Person

(i) A 'Local Rural Person' in the 'Open Countryside' is a person who has lived in the rural area within 10km of the proposed site for a minimum and continuous 10 year period.

(ii) A 'Local Rural Person' in a 'Primary Amenity Area' is a person who has lived in the primary amenity area (outside of designated centres, see below) and within 5km of the proposed site for a minimum and continuous 10 year period.

For the purposes of this policy 'Rural area' refers to the area outside of designated settlements with a population in excess of 1,500 people.

Or

Category B: Functional Need to Live in a Rural Area

Persons who can demonstrate a land-dependant need to be at the location of the farm and meeting either of the following criteria:

(i) A farmer of the land - defined as a landowner with a holding of >20ha, or

(ii) An owner and operator of an agricultural/horticultural/equine activity on an area less than 20 hectares where it is demonstrated to be of a viable commercial scale.

Policy SS6: Housing on National Secondary Roads

It is the policy of the Council to protect the carrying capacity of, and traffic safety on National Secondary Roads. The Council will only facilitate a dwelling on National Secondary Roads, in exceptional circumstances, where an applicant complies with Policy SS4, and the following criteria are met:

- (a) The applicant is a son or daughter of a farming landowner, is engaged in farming the landholding and will inherit the holding at the location of the dwelling, and,
- (b) The applicant has demonstrated, to the satisfaction of the Council, that there is no alternative site available to her/him off a regional or local road, and,
- (c) The dwelling is accessed off the existing farmhouse entrance.

Policy TI3: Strategic Road Network

It is the policy of the Council to avoid the creation of any additional access points from new development or the generation of increased traffic from existing accesses to Strategic Routes, subject to the following policy exceptions:

- (a) New access to facilitate orderly urban development on Strategic Routes on appropriately zoned land on the approaches to or exit from, urban centres that are subject to a speed limit of 60 km before a lower 50 km limit is encountered may be permitted subject to road safety audit carried out in accordance with the TII's requirements and avoidance of a proliferation of such entrances.
- (b) New access to lands adjoining Strategic Routes within 50 km speed limits may be considered in accordance with normal road safety, traffic management and urban design criteria for built up areas.
- (c) New accesses to Strategic Routes may be permitted in exceptional circumstances, in the case of developments of national and regional strategic importance which by their nature are most appropriately located outside urban areas, and where the locations concerned have specific characteristics that make them particularly suitable for the developments proposed.
- (d) Proposals for new rural houses to access onto a Strategic Regional Road or a

National Secondary Road will only be permitted where compliance is demonstrated with Policy SS5: Housing on Strategic Regional Roads⁵¹ and Policy SS6: Housing on National Secondary Roads.

(e) All development proposals shall demonstrate compliance with the development management standards set out in Chapter 10.

5.2 National Policy

National Roads Guidelines for Planning Authorities (January 2012)

Section 2.5 Required Development Plan Policy on Access to National Routes

Lands adjoining National Roads to which speed limits greater than 60 kmh apply:

The policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

Section 2.6 Exceptional Circumstances

(2) Lightly-trafficked Sections of National Secondary Routes

A less restrictive approach may also apply to areas where additional development may require new accesses to certain lightly-trafficked sections of national secondary routes. Such areas would be confined to lightly trafficked national secondary roads serving structurally weak and remote communities where a balance needs to be struck between the important transport functions of such roads and supporting the social and economic development of these areas. In such areas, policies in development plans permitting new accesses to national secondary roads may be considered acceptable where the following criteria apply:

- Traffic volumes are low and are forecast to remain below 3,000 AADT (as verified by the NRA) for the next 20 years;
- There is no suitable alternative non-national public road access available;
- The development otherwise accords with the development plan, and
- Safety issues and considerations can be adequately addressed in accordance

with the NRA's Design Manual for Roads and Bridges.

Where planning authorities wish to identify an area/national road where the foregoing less restrictive approaches could apply in a development plan or local area plan they must:

- (a) Consult with the NRA at the earliest practicable stage in reviewing the development plan on the identification of areas and developments that the planning authority considers represent exceptional circumstances, taking the criteria above and below into account; and
- (b) Ensure that any submissions from the NRA have been fully and properly considered within the process of preparing the plan.

Sustainable Rural Housing

The appeal site is located in an area defined as a Stronger Rural Area.

In these areas population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas.

5.3 Natural Heritage Designations

None in the vicinity

6.0 The Appeal

6.1. Grounds of Appeal

A first part appeal has been lodged by Padraic & Fiona Keely, No. 2 Ma Teine, Manna South, Templemore, Co. Tipperary.

- The appellants note that they consider sufficient evidence was submitted to demonstrate compliance with Policy SS6 with it noted that maps were submitted that demonstrate that no alternative sites are available.
- The appellants have submitted evidence to demonstrate that Fiona Keely is involved in farming of landholding (evidence form revenue).

- It is noted that the proposal does not create any new entrance with the entrance to be shared with the existing dwelling. It is noted that the existing entrance serving the family home to the south east has significantly less sightlines than is proposed at the new shared entrance and that the proposal is an improvement in terms of traffic safety.
- The appellants are living off farm in rented accommodation and such results in traffic movements to and from the farm that would be eliminated if permission is granted. It is noted that such is in compliance with Policy DM1 of the County Development Plan.
- It is noted that National policy does allow for a less restrictive approach where no suitable non-national route access is available, the development is consistent with the County Development Plan. Safety issues can be adequately addressed and traffic volumes are low. It is considered that the proposal is compliant with such criteria.

6.2. **Planning Authority Response**

Response by Tipperary County Council.

- Having considered the grounds of appeal the Local Authority is satisfied that the decision to refuse permission was appropriate and in the interest of the proper planning and sustainable development of the area.

7.0 **Assessment**

- 7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Development Plan policy

Design/visual impact

Traffic safety

Wastewater Treatment

Appropriate Assessment

Material Contravention

7.2 Development Plan policy:

7.2.1 The relevant Development Plan policy is set out earlier in this report. Policy SS4 relates to rural housing and set down the criteria for rural housing. According to the information on file the applicant (Fiona Keely) is involved in full time farming in partnership with her father at this location on a landholding in excess of 20 hectares. This would be in accordance with Category B: Functional Need to Live in a Rural Area under Policy SS4. Based on the information on file the applicants do qualify for rural housing under Policy SS4 of eth County Development Plan.

7.2.2 The appeal site is located off the N62 and it is proposed to install a shared access for the new dwelling and the applicants family home adjoining the site to the south east (Fiona Keely) with the existing entrance serving the family home to be blocked up and no longer used. Policy SS6 relates to housing along National Secondary routes of which the N62 is such a route. The applicants in this case appear to comply with Policy SS6 (Fiona Keely) and the three criteria set out under such. Firstly involvement in full time farming of a landholding at this location, secondly demonstration that no alternative sites are available off a lower category route (landholding maps shows all lands have frontage along the N62 with no road frontage available along any lower category routes) and thirdly sharing of existing farmhouse entrance (new entrance shared with family home and removal of original entrance to achieve improved sightlines). Based on the information on file the applicants comply with Policy SS6.

7.2.3 The reasons for refusal note non-compliance with Policy SS6, which I do not consider to be the case and Policy TI3. This policy relates to new access points on strategic routes and national secondary routes. Although the proposal is a new access, it is a shared access with the existing dwelling to the north (Fiona Keely's family home) and is to replace an existing access serving the family home located further to the south east. The new entrance is being provided instead of sharing the

entrance at its existing location as the new entrance facilitates greatly improved sightlines. I am satisfied that proposal does comply with Policy TI3 and note that it clearly states under this policy that “proposals for new rural houses to access onto a Strategic Regional Road or a National Secondary Road will only be permitted where compliance is demonstrated with Policy SS5: Housing on Strategic Regional Roads⁵¹ and Policy SS6: Housing on National Secondary Roads”. As noted above this is the situation in this case. Policy TI3 does state that there is requirement for a new access to meet the development management standards set down under Chapter 10 of the County Development Plan (sightlines). This aspect of the proposal will be explored under the section relating to traffic safety below.

7.3 Design/visual impact:

7.3.1 The proposal is for a two-storey dwelling and a detached garage. The site is located on a relatively flat site. The site is not a prominent or highly visible location and the overall design of the proposed dwelling and associated garage would be acceptable in regards the visual amenities of the area.

7.4 Traffic impact:

7.4.1 As noted earlier the proposal is located on the northern side of the N62 National Route and at a location where the 100kph speed limit applies. The proposal is for a new dwelling and a new vehicular access point off the N62. The new access point is to be a shared entrance providing access to the new dwelling and the existing dwelling to the south east with the existing access serving such to be removed. Under Chapter 10 of the County Development Plan, Section 10.1 the sightline requirements for a new entrance onto a National Secondary Route within the 100kph speed limit is 215m (setback 2.5m from the road edge). In the case of the proposed access 215m is available in a southerly direction and 193m in a northerly direction from the proposed shared vehicular access point. The appellants note that the existing access serving the family home, which is to be replaced has significant poorer sightlines (91m to south and 89m to the north) and the proposal would be an improvement in terms of traffic safety as well as eliminating traffic movements from the applicants/appellants due to them living off farm currently. The proposal was

refused for lack of compliance with Policy DM1 (compliance required with all development management standards). I would consider that the level of sightlines provided is acceptable and in the case of the too the south, is not far shy of the 215m. I would consider that the level of sightlines being provided is adequate and would be a significant improvement over the sightlines at the existing entrance to be replaced.

7.4.2 The refusal reasons also refer to non-compliance with National Policy in the form of the National Roads Guidelines for Planning Authorities (January 2012). These guidelines do provide for the circumstances where new entrances would be possible on a National Secondary Route (low traffic volumes). The figures on the TII website for the N62 (up to 2012) show that traffic volumes on the N62 have been decreasing with a small increase over the period 2014-2018. I would consider that having regard to the proposal for a shared entrance at which sightlines are greatly improved over those at the existing entrance at this location, the proposal would be acceptable in the context of traffic safety and convenience.

7.5 Wastewater treatment:

7.5.1 The proposal entails installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation tests. The trial hole test notes that the water table level was encountered in the trial hole (2.2m) at 1.6m below ground level. The percolation tests result for T and P tests carried out by the standard method, indicate percolation values that are within the standards what would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The drawings submitted meets the required separation distances set down under the EPA Code of Practice (based on site size, separation from site boundaries adjoining wastewater treatment systems). I am satisfied based on the information submitted that the site is suitable for the operation of a wastewater treatment system and would not be prejudicial to public health.

7.6 Appropriate Assessment:

7.6.1 Having regard to the nature and scale of the proposed development and its proximity to 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.

7.7 Material Contravention:

7.7.1 Refusal reason one notes that the proposal development would be a material contravention of Policy TI3 and SS6 of the County Development Plan. As noted in the earlier section regarding Development Plan policy, I am satisfied that proposal is compliant with both of said polices and would not constitute a material contravention of development plan policy despite the views of the Planning Authority. Notwithstanding such I would draw attention to Section 37(2)(b) of the Planning and Development Act, 2000 (as amended). It notes the following...

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board

may only grant permission in accordance with *paragraph (a)* where it considers that—

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (ii) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

8.0 Recommendation

8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, Development Plan policy and the proposal to have a shared entrance with the existing dwelling to the north, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 20th day of December, 2017, except as may otherwise

be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The existing access point serving the dwelling to the north of the new dwelling shall be permanently closed up after works on the new entrance point are complete and such entrance is useable.

Reason: To ensure that the existing access point is closed in the interest of traffic safety.

3.

(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

4. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction waste. Reason: In the interests of public safety and residential amenity.

5.

(a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 20th day of December, 2017, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. < 10)" - Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the Environmental Protection Agency document.

Reason: In the interest of public health.

6. The roof colour of the proposed house and garage shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof. Reason: In the interest of visual amenity.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme

made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colin McBride
Planning Inspector

17th September 2018