



An
Bord
Pleanála

Inspector's Report ABP-301913-18

Development	Construction of a new single storey detached dwelling, vehicular entrance, wastewater treatment system and associated site works and services
Location	Aghanagh, Ballinafad, Co Sligo
Planning Authority	Sligo County Council
Planning Authority Reg. Ref.	18/121
Applicant(s)	Alan Carolan
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party against decision
Appellant(s)	Alan Carolan
Observer(s)	None
Date of Site Inspection	26/11/18
Inspector	John Desmond

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1.0 Site Location and Description

- 1.1. The application site is located in a rural area of southeast County Sligo, where the landscape is dominated by mountains and rolling hills, lakes and woodlands. One-off housing is prevalent along much of the rural road network, as is common in most rural areas. The site is c.26km south of Sligo town and c.18km northwest of Carrick-on-Shannon. Ballinafad village is a little more than a kilometre to the south.
- 1.2. The site, which has a stated area of 1.41ha, extends c.550m west to east from the public road to the banks of Lough Arrow (note the boundary encompasses part of the public road). It comprises a main site area, located at the eastern end adjacent the lake, measuring c.61m X 125m, with a narrow strip (c.13m wide) extending for c.425m west to the public road to accommodate the proposed access route. The site forms part of a contiguous holding of 3.74ha stated area.
- 1.3. The western portion of the site (to 130m east from road) is relatively low-lying, set below road level by c.1-1.5m, and is waterlogged and covered in rushes, but no watercourse was apparent. No contour or spot levels are provided for this section of the site but, based on levels provided for the balance of the site (assumed to be metre OD) I would estimate it to be at about 55mOD. The site rises to a peak of 71.49mOD c.380m east of the public road and declines to c.54mOD over the last 160m. There is little by the way of significant vegetation on site, except for traditional field boundary shrubs / hedging of varying quality, along the field boundaries and the roadside.
- 1.4. The public road, the L5805 (former N4), is of reasonable horizontal and vertical alignment and of reasonable width and surface condition at this location, but without road markings. It is without public lighting, footpaths or hard shoulders which is typical for a small rural road.

2.0 Proposed Development

2.1. Summary description

It is proposed to develop a single storey detached dwelling, with vehicular access and a wastewater treatment system.

2.2. Supporting documentation

- Cover letter prepared by McKiernan Architects
- Site Characterisation Form
- Architects Report / Design Statement prepared by McKiernan Architects
- Letter from applicant
- Additional letter (unsolicited FI 11/05/18) from applicant.

3.0 Planning Authority Decision

3.1. Decision

To **REFUSE** permission for 3no. reasons relating to the following:

- Conflict with CDP policy P-LCAP-1 and P-LCAP-2 to strictly control development within the context / setting of areas designated as sensitive and visually vulnerable and to protect the views from the adjoining scenic roads over Lough Arrow, in itself, by precedent and taken cumulatively.
- Non-compliance with policy P-GBSA-HOU-1 to restrict one-off rural housing within designated visually sensitive area, being inappropriate housing development in a rural area lacking certain public services and setting an undesirable precedent.
- Prejudicial to public health due to inadequate information to demonstrate WWTS compliance with the EPA CoP.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The comprehensive report of the planning officer (**29/05/18**) is consistent with the decision of the planning authority to refuse permission and the reasons therefore.

3.2.2. Other Technical Reports

Area Engineer (25/04/18) – Achievable sightlines to the edge of the road, as per standards, to be submitted; details of boundary setback to be submitted for agreement; details of surface water collection at entrance to be submitted for agreement. 3no. standard roads conditions to apply.

Environment Section (22/05/18) – Further information required on 6no. points relating to site characterisation (including carrying out of P and T tests to EPA CoP standards) and WWTS proposals.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

None received.

4.0 Planning History

Reg.Ref.PL08/955: Permission **GRANTED** to Tom Smyth and Aine Davin-Smyth for the construction of a new dwelling house, WWTS and etc., on the western part of the landholding subject of this application. The duration of the permission was extended up to 13/12/19.

5.0 Policy Context

5.1. Development Plan

Sligo County Development Plan 2017-2023

Section 3.0 Core Strategy - Section 3.3 Rural Settlement. Policies SP-S-4 and SP-S-7.

Section 5.3 Housing in Rural Areas – Policies P-RANR-HOU-1 and P-GBSA-HOU-1.

Section 7.4 Landscape Character – Policies P-LCAP-1 and P-LCAP-2.

Landscape Characterisation Map

5.2. **Natural Heritage Designations**

Lough Arrow SPA site code 004050 adjacent the east of the site. Features of interest – Little Grebe, Tufted Duck, Wetland and Waterbirds. Conservation objectives - to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA; to maintain or restore the favourable conservation condition of the wetland habitat at Lough Arrow SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

Lough Arrow SAC site code 001673 adjacent the east of the site. Features of interest - Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. Conservation objectives - to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The main grounds of appeal may be summarised as follow:

Background –

- Site purchased with benefit of planning permission in 2017.
- Applicants are from rural backgrounds near Manor Hamilton, Co. Leitrim and currently in a rented house there.
- Alan works as a pilot based in Abu Dhabi and his wife works in Sligo town.
- They plan to build a permanent home having lived abroad for many years and intend to operate a business, rearing alpacas as soon as possible.
- This is a genuine need to live and possibly work in a rural area in need of repopulation and is not a holiday home.

- The house type and location permitted under the original permission are unsuitable for their requirements.
- The CDP defines the landscape within which the site is located (from the lakeshore to beyond the N4) as normal rural landscape areas with natural features generally with the capacity to absorb a wide range of new development forms.

General points -

- The proposal arguably has less of a visual impact than the original proposal under PL08/955, which was readily visible from the former and new N4, being heavily trafficked routes.
- The Landscape Classification Map, under the CDP 2017-2023, defines the area from lake shore to the N4, to the hills, as a normal rural landscape with natural features with the capacity to absorb a wide range of new development forms.
- The nearest LCA defined as sensitive is well west of the site in the Bricklieve Mountains.
- All the edges of Lough Arrow are classified as visually vulnerable areas, with scenic routes on the old and new N4 and local roads leading south and along the south of the lake, from which the views and prospects to visually vulnerable features are to be preserved. These views will not be adversely affected.
- The immediate area is classified as a rural area in need of regeneration. To sustain and support rural communities, the planning authority will facilitate one off housing without requiring applicants to demonstrate a housing need, subject to normal planning considerations.
- Policy P-RANR-HOU-1 Allows for certain restrictions to the facilitation of one-off housing along scenic routes, in sensitive rural landscapes and in visually vulnerable areas, requiring compliance with local need as per policy P-GBSA-HOU-1, as well as a visual impact assessment.
- The proposed development closely adheres to the guidelines on Residential Development in Rural Areas under section 13.4.
- The proposed development is in accordance with the policies to the CDP policies to protect the landscape in permitting acceptable one-off houses which do

not contravene these policies, and with the inherent objective to sustain rural communities.

Refusal reason no.1 –

- The visual assessment submitted with the application demonstrated that the site was not visible from the scenic route L-18011 and the development would be a very small insertion in the distant middle ground viewed from across the lake.
- The view concerned is a wide-ranging panorama of the lake, Bricklieve Mountains, Carran, with Benbulbin and the Ox Mountains in the far distance and is not focused on the small hill [on which the application site is located].
- The narrow scenic route is not populated by much traffic and is not on any tourist route or scenic drive.
- It is difficult to see the site from the east side of the lake due to the distance, the backdrop of rising ground and boundary vegetation.
- The reason for refusal states that it is only the shores of Lough Arrow that are designated as visually vulnerable. The dwelling would be setback 87-110m from the shore.
- The mountain backdrop and vegetation (4m high hedging north and south) will readily absorb and integrate the proposal in its setting (site section drawing and photomontage attached), in addition to the cut-and-fill method of construction and the muted colour and texture of the external finishes.
- The site is designated normal rural landscape and the proposal does not impinge on the setting (physically or visually) on the protected lake shoreline and would not be detrimental to the character of the area.
- Refusing on grounds of precedent is not normally an acceptable reason for refusal where applications are to be assessed on their own merits.
- No objections were received from the departments or prescribed bodies and the proposed development complies with the design guidelines and normal planning objective of the Development Plan.

Refusal reason no.2 -

- The invoking of policy P-GBSA-HOU-1 is harsh given that one off houses can be granted permission in normal landscapes and in areas of regeneration such as this without demonstrating local need.
- The applicant has indicated a desire and plan to rear alpacas on a part time basis, possibly extending to a full-time pursuit over time, when early retirement considerations arise.
- The agent believes that there is a genuine intention of the applicant to engage in farming activity, as both are from farming backgrounds, and will seek to integrate with the local community and sustain local services (copies of applicant's letters concerning same attached. Refers, inter alia, to the need to live on site due to the high value of the animals).
- The financial and therapeutic benefits of this form of farming has proven to be significant.
- Having regard to the decision to grant permission for a higher house in the same field under reg.ref.08/955, the refusal reason that it would constitute inappropriate housing in a rural area is unjustified.

Refusal reason no.3 –

- The WWTS issue and compliance with the EPA CoP could have been addressed by further information request.
- The applicant proposes tertiary treatment not due to poor ground conditions but to ensure the highest quality treatment having regard to the site's location, to minimise any adverse environmental impact with deference to Lough Arrow SAC and SPA.
- Nowhere in the Council's reports is it stated that the proposed development was unacceptable.
- It is unreasonable and unsupported therefore to say that the proposal is prejudicial to public health.
- The proposed development will not result in any environmental pollution and provides a suitable and appropriate WWTS for this specific site situation.

- A letter from H.T. Phelan, MSc, who carried out the site characterisation, responding to the points of further information requested in the Environmental Section's report.

6.2. Planning Authority Response

The main points of the response to the appeal **(19/07/18)** may be summarised as follow:

- Potential significant impact on the visual amenity of this sensitive rural scenic, lakeshore location from the proposed development, in addition to precedent for similar development.
- The area is largely unspoilt, with some one-off housing in the vicinity.
- Policies P-LCAP-1 and P-LCAP-2 of the CDP outline policy to protect the physical landscape, visual and scenic character of the county, to preserve landscape character and to discourage any development that would be detrimental to the unique visual character of designated visually vulnerable areas, respectively.
- S.5.3.2 of the CDP outlines that new houses in rural areas should be absorbed and integrated successfully into the rural setting and should read with the traditional pattern of development. The neighbouring dwelling to the north setback c.160m from the public road; the permitted dwelling Reg.ref.PL08/955 was to be setback c.150m; the proposed dwelling would be setback c.450m.
- S.13.4.2 of the CDP – cannot rely on vegetation to address the visual impact concerns.
- Contrary to policies P-LCAP-1 and 2; discordant and obtrusive development; detrimental to unique visual character of designated visually vulnerable area; precedent for similar development with cumulative impact.
- In sensitive areas the CDP facilitates rural generated housing where a housing need is demonstrated by landowners, including their sons and daughters who wish to build a first home for their permanent occupation on the landholding associated with their principal family residence, or for persons whose primary employment is a rural-based activity with a demonstrated genuine need for live in the locality of that employment base.

- The applicant purchased the site in May 2017. It is not associated with his principal family residence located in Manorhamilton, County Leitrim. The applicant, who has outlined his intention to start a small agricultural based business at this location, given the limited extent of the landholding and the fact that he has not demonstrated that his primary employment is a rural based activity with a demonstrated need to live at this locality, would be contrary to policy P-GBSA-HOU-1.
- Directs the Board to the Environmental Services report of 18/05/18 concerning the WWTS proposals.
- It was considered that the previously proposed dwelling, under reg.ref.PL08/955 would not have a negative impact on the visual amenities of the area.

7.0 Assessment

The main issues arising in this case may be addressed under the following headings:

- 7.1 Policy / Principle
- 7.2 Visual impact
- 7.3 Waste water treatment
- 7.5 Roads issues
- 7.6 EIA Screening
- 7.7 Appropriate Assessment Screening

7.1. Policy / Principle

- 7.1.1. The development of rural settlements is addressed in the Core Strategy under section 3.3 Rural Settlement of the County Development Plan 207-2023 (CDP) is based on the underlying assumption that applicants with a demonstrable rural housing need will be accommodated subject to the policies set out under s.5.3 Housing in Rural Areas, as is reflected in Council policy SP-S-4 to *strengthen existing rural communities by facilitating sustainable rural settlement in accordance with the NSS and the SRH Guidelines (2005)*. The site is located within that part of

the County identified as rural areas in need of regeneration. It is also policy (SP-S-7) within the Core Strategy to *integrate transportation and land-use planning in order to reduce the need to travel (especially by car) and reduce the GHG emissions, by promoting the consolidation of development within settlements with adequate services and facilities.*

- 7.1.2. It is Council policy, P-RANR-HOU-1, to ‘*Accommodate proposals for one-off rural houses in Rural Areas In Need Of Regeneration, subject to normal planning considerations including Habitats Directive Assessment and compliance with the guidance set out in Section 13.4 Residential development in rural areas (development management standards)*’, which the appellant argues it the relevant policy to apply. However The Planning Authority considered the site to be within a sensitive area where policy P-GBSA-HOU-1 applies, as is provided for under s.5.3.1 Rural Housing Policy Areas which states ‘*In all rural areas, certain restrictions will apply in designated settlement green belts, along Scenic Routes, in Sensitive Rural Landscapes and in Visually Vulnerable Areas (for details on these designations, refer to Section 7.4 Landscape character)*’.
- 7.1.3. This more restrictive policy would accommodate one off housing to landowners, including their children, who wish to build a first home for their permanent occupation on the landholding associated with their principal family residence, and to persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, AND where such persons can demonstrate that the home they propose is in the interests of the proper planning and sustainable development of the area.
- 7.1.4. The Landscape Characterisation Map accompanying the CDP define sensitive rural landscape areas, in addition to identifying visually vulnerable areas and scenic routes. It clarifies that the environs of archaeological and historical sites are considered visually vulnerable areas and that scenic routes are public roads from which views and prospects to visually vulnerable features are preserved. The site is not within a defined sensitive rural landscape, but views from the N4 and former N4 over the site towards Lough Arrow (a visually vulnerable feature) are protected as scenic routes. From s.5.3.1 of the CDP it is clear that the scenic routes and visually vulnerable areas are included as sensitive areas and therefore the planning authority was entitled to apply the more restrictive policy P-GBSA-HOU-1.

- 7.1.5. The principle of accommodating a one-off rural house is acceptable in principle, subject to demonstration of housing need, compliance with the interests of the proper planning and sustainable development of the area, normal planning considerations including Habitats Directive Assessment and compliance with the relevant development management guidance and standards under the Plan.
- 7.1.6. **Housing need** – The appellant submits that he owns the site. The CDP does not define what is meant by landowner, therefore the common interpretation of landowner as the registered owner of the land concerned, regardless of when it was purchased, must be accepted. As noted by the planning authority, the appellant has not provided any proof of landownership, which is readily accessible from the land registry at minimal cost. In the absence of same I am not satisfied that the applicant can be considered the landowner within the context of the policy P-GBSA-HOU-1, part A. The appellant submits that it is intended to intend to operate a business, rearing alpacas, as soon as possible. The applicant is currently employed as a pilot based in Dubai and his wife is employed in Sligo town. Neither of the applicant or his wife's primary employment can therefore be considered to be in a rural-based activity and they have not therefore demonstrated they have a genuine need to live in the locality by reason of their employment base within the context of policy P-GBSA-HOU-1, part B, regardless of the intention to raise alpacas on this limited site.
- 7.1.7. Furthermore, I am not satisfied that the applicant has demonstrated that the home proposed is in the interests of the proper planning and sustainable development of the area, as it will necessarily be a car-dependent development that would conflict with policy SP-S-7 to *integrate transportation and land-use planning in order to reduce the need to travel (especially by car) and reduce the GHG emissions, by promoting the consolidation of development within settlements with adequate services and facilities.*

7.2. **Visual impact**

- 7.2.1. The proposed development would be erected in an elevated position overlooking the shores of Lough Arrow, which is designated as visually vulnerable area under the CDP. The CDP includes a number of policies to protect the physical landscape, including visually vulnerable areas and along scenic routes from development that may have an significant adverse impact thereon (policy P-LCAP-1), to discourage

development that would be detrimental to the unique visual character of designated visually vulnerable areas (P-LCAP-2) and preserve the distinct visual character of designated scenic routes (P-LCAP-3).

- 7.2.2. I note the visual impact assessment and photomontages submitted with the application and with the appeal. The dwelling has been designed to be set into the slope, with a relatively low height, possibly rendering the proposed dwelling invisible when viewed from the scenic routes to the west. The associated development of an access road and entrance will have a limited visual impact but will contribute to the erosion of the existing rural character as viewed from the adjacent scenic route.
- 7.2.3. Having inspected the site and viewed the site from the wider area, including from the designated scenic routes, it would appear that the proposed development would, in of itself, not have a significant adverse visual impact. I would, however agree with the planning authority that the proposed development, by precedent for similar development along the shores of the lough would, by reason of potential cumulative impact, contribute to a significant adverse impact on a designated visually vulnerable area contrary to Council policies P-LCAP-1 and P-LCAP-2.

7.3. **Waste water treatment**

- 7.3.1. The applicant submitted a detailed site characterisation assessment for the site which found the site, which is located in an area of low vulnerability for groundwater where the groundwater protection response is R1 (acceptable subject to normal good practice) is not suitable to accommodate a standard septic tank and percolation area but can accommodate a secondary treatment system with polishing filter. A tertiary waste water treatment system is proposed.
- 7.3.2. The Council's Environmental Section recommended that further information be sought concerning inter alia further percolations tests (P & T tests) in accordance with the EPA CoP, clarification of the reasoning for tertiary treatment proposed, soil and subsoil texture and classification, a cross section through the proposed polishing filter and a longitudinal section through the proposed onsite WWTS and a site-specific manufacturer's report for the proposed WWTS.
- 7.3.3. A response from the Assessor attached to the appeal, submitted that the tests were carried out as per the EPA CoP and addressing the issues raised by the

Environmental Section. The applicant clarifies that a tertiary treatment system is proposed not due to poor ground conditions, but to ensure the highest quality treatment having regard to the site's location in proximity to Lough Arrow SAC and SPA. Based on the information on file and the system proposed, I am satisfied that the proposed development would not be prejudicial to public health.

7.4. Roads issues

- 7.4.1. It is proposed to access onto the public road network on a local road (the former N4) where the 80kph speed limit applies. The public road is of reasonable alignment (horizontal and vertical) at the proposed point of access. The applicant submitted a drawing (Drawings 01) showing provision of 160m sight distance at the proposed entrance, but the said sight distance is incorrectly shown to the centre line of the road, not to the nearside of the road as per TD41-42/09. The Council's Area Engineer requested that the applicant submit sightlines to the correct standard. Given the limited road frontage under the control of the applicant, it would not appear possible to achieve the required sightline standard at the entrance. In the absence of achieving the minimum sightline standards at the proposed entrance, the proposed development would endanger public safety by reason of a traffic hazard.

7.5. EIA Screening

- 7.5.1. The proposed development is development of a class under Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, namely Class 10. Infrastructure projects, (b)(i) construction of more than 500 dwelling units. However, as the proposed development comprises a single dwellinghouse, it is significantly subthreshold the 500 unit limit provided under that part and, notwithstanding the site's proximity to a site of environmental sensitivity, namely Lough Arrow SAC and Lough Arrow SPA (consideration of potential for significant effects thereon necessarily to be addressed under Appropriate Assessment Screening procedures), EIA is not required.

7.6. Appropriate Assessment Screening

- 7.6.1. The proposed development is not located within a European site and does not relate to the management of any European site and direct effects can therefore be ruled out. The application site abuts and is hydrologically connected to two European sites to the east – Lough Arrow SPA site code 004050 and Lough Arrow SAC site code 001673 – and therefore there is potential for indirect effects.
- 7.6.2. The conservation objectives for Lough Arrow SPA are to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA - Little Grebe (*Tachybaptus ruficollis*) [A004]; and Tufted Duck (*Aythya fuligula*) [A061]; and to maintain or restore the favourable conservation condition of the wetland habitat at Lough Arrow SPA as a resource for the regularly-occurring migratory waterbirds that utilise it - Wetland and Waterbirds [A999]. The Natura 2000 Standard Data Form does not list the subject proposed development type as a threat or pressure on the subject European site.
- 7.6.3. The conservation objectives for Lough Arrow SAC are to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp. The Natura 2000 Standard Data Form does not list the subject proposed development type as a threat or pressure on the subject European site.
- 7.6.4. Having regard to the foregoing, potential for significant effects on the two said European sites, having regard to their conservation objectives, can be ruled out.

8.0 Recommendation

- 8.1. I recommend that permission be **REFUSED** for the reasons and considerations set out under section 9.0:

9.0 Reasons and Considerations

1. The application site is located within a sensitive area, including the visually vulnerable areas designated around Lough Arrow and the designated

scenic routes along the public road network to the west, south and east, where additional restrictions on one-off rural housing are provided for under section 5.3.1 Rural Housing Policy under the Sligo County Development Plan 2017-2023, including within Rural Areas In Need of Regeneration where rural housing policy P-GBSA-HOU-1 applies. The applicant has failed to demonstrate that he is the landowner of the applicant site in compliance with local housing need part A, and the Board is satisfied that the applicant has not demonstrated that he has a genuine need to live in this locality by reason of his employment in a rural-based activity. The proposed development is therefore contrary to the provisions of the County Development Plan 2017-2023, including its rural housing policy, and this car dependent development would therefore be contrary to Council policy SP-S-7 to integrate transportation and land-use planning in order to reduce the need to travel (especially by car) and reduce the GHG emissions, by promoting the consolidation of development within settlements with adequate services and facilities.

2. The proposed development, by reason of its location overlooking the shores of Lough Arrow, which are designated as a visually vulnerable area, by way cumulative impact with similar development for which the permitting of the proposed development would set precedent, would significantly affect the landscape character of the area contrary to Council policy P-LCAP-1 to protect the physical landscape, including visually vulnerable areas and along scenic routes, and policy P-LCAP-2 to discourage development that would be detrimental to the unique visual character of designated visually vulnerable areas and P-LCAP-2.
3. In the absence of demonstration that sightline distance can be achieved at the proposed entrance to current standard applicable to rural roads outside of the 60kph speed limit, *TII TD 41-42/09*, the proposed development would endanger public safety by reason of a traffic hazard.

John Desmond
Senior Planning Inspector

31 December 2018