



An
Bord
Pleanála

Inspector's Report ABP301939-18

Development	Construction of a 2-storey dwelling, detached garage and all associated works.
Location	The Lane, Newpark, Ennis, County Clare.
Planning Authority	Clare County Council.
Planning Authority Reg. Ref.	P18/295.
Applicants	John and Aoife O'Brien.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Refusal.
Appellants	John and Aoife O'Brien.
Observers	(i) Cllr. Mary Howard, (ii) Department of Culture, Heritage and the Gaeltacht.
Date of Site Inspection	19 th September, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

ABP301939-18 relates to a first party appeal against the decision of Clare County Council to issue notification to refuse planning permission for the construction of a two-storey dwelling and a detached garage and all associated site services at “The Lane”, Newpark, Ennis, County Clare. Planning permission was refused for a single reason by Clare County Council on the basis that the proposed dwellinghouse would constitute a haphazard and non-integrated style of development which would pre-empt the comprehensive development and servicing of adjoining lands and would set an undesirable precedent for other such development proposals along the said lands.

2.0 Site Location and Description

2.1. The appeal site is located in the north-eastern environs of Ennis Town, approximately 2 kilometres from the town centre. The subject site is located to the south of the Tulla Road, one of the main distributor routes leading eastwards from Ennis Town Centre. The site is located on the eastern side of a suburban residential cul-de-sac which runs southwards from the Tulla Road known as the “The Lawn” or “Cappaghard Lane”. Lands on the western side of this road have been the subject of comprehensive suburban residential development comprising of two-storey semi-detached and detached dwellings. The lands on the western side of this road have been developed for housing at much lower density. To date residential development has been confined to the upper, northern part of the road where approximately half a dozen dwellinghouses have been developed to date. These dwellinghouses are located on large generous plots of lands with detached garages. The land accommodated dense woodland prior to development and a ubiquitous feature of all development on the western side of the roadway to date has been the incorporation and retention of much of the woodland within the overall design and development of the plots in question. It appears that the plots have been developed on a one by one basis progressively southwards along the road.

- 2.2. The subject site is located at the lower end of the road almost opposite the main internal access road to the larger, higher density residential estate on the western side of the road. It comprises of a rectangular plot of land 30 metres in width and approximately 60 metres in depth. Like the lands immediately contiguous, the subject site is characterised by dense woodland (see photographs attached).
- 2.3. The dwellinghouses on the western side of the road the nearest of which is approximately 50 metres north of the site are under various stages of construction. With dwellings further north along the roadway at more advanced stages of construction than the dwellings nearest the subject site. The most northerly dwellings on the western side of the roadway have been completed whereas the closest dwelling approximately 50 metres from the northern boundary of the site was at the time of site inspection at foundation level only. It appears therefore that the houses in question are being constructed progressively in a southerly direction along the western side of the road. For the purposes of clarity there is no development on the sites immediately contiguous to the subject site.

3.0 Proposed Development

- 3.1. Planning permission is sought for the construction of a large two-storey detached dwellinghouse on the subject site. The house is to rise to a ridge height of 8.82 metres and is to incorporate a mixture of external finishes including extensive plaster render finish on the two side elevations and part of the front and rear elevation. It is also proposed to accommodate two-storey box shape projecting elements on the front elevation, one of which is to incorporate cedar-type timber cladding the other of which is to incorporate a natural stone cladding. It is also proposed to incorporate a balcony at first floor level at the south-eastern corner of the building. The building is to accommodate living and dining accommodation at ground floor level with four relatively large bedrooms (two en-suite) at first floor level. The gross floor area of the proposed dwellinghouse is 238 square metres, the overall site area is 1,816 square metres.

- 3.2. It is proposed to provide a car port area to the rear of the dwellinghouse and a detached single-storey garage at the north-eastern corner of the site. This garage occupies an area of 45 square metres. The vehicular access serving the house is to be located adjacent to the northern boundary. Residual land to the front and rear of the dwellinghouse and along the southern boundary of the dwellinghouse are to retain the dense woodland on site.

4.0 Planning Authority Decision

4.1. Decision

- 4.1.1. Clare County Council issued notification to refuse planning permission for a single reason which is set out in full below.

The subject site is located on lands zoned as “Low Density Residential” (LDR12) in the Clare County Development Plan 2017-2023. It is considered that the proposed development, by reason of its location and siting within the wider zoned land parcel of LDR12 would constitute a haphazard and non-integrated style of development which would pre-empt the comprehensive redevelopment and servicing of adjoining zoned lands. Furthermore, it is considered that the proposed development, if permitted, would set an undesirable precedent for other such proposals along the road frontage of zoned lands which would prejudice the development of an orderly in-depth scheme to maximise the development of the zoned lands. The proposed development would therefore constitute piecemeal development which would seriously injure the visual amenities of the area and would be contrary to the proper planning and orderly development of the area.

4.2. Application Documentation

- 4.2.1. The planning application was accompanied by planning application form, drawings, public notices and appropriate fee. It was also accompanied by a design statement prepared by Gormancad Limited. The design statement describes the proposed dwelling and states that it is a contemporary style two-storey house incorporating contrasting material to break up the mass of the building. The orientation of the house is designed to suit the sun path and it is proposed to keep as many trees as

possible on the site. A separate letter states that the proposal seeks to provide a new family home for the applicants and the proposal represents a natural continuation of the existing housing layout along the roadway. It is stated that the house design and layout are designed to fit into the existing housing layout of the recent housing developments to the immediate north.

4.2.2. Reference is also made to a bat survey however this survey does not appear on file.

4.3. **Planning Authority's Assessment**

4.3.1. A report from Irish Water states that where the applicant proposes to connect directly or indirectly to a public water or wastewater network operated by Irish Water, the applicant must sign a connection agreement. Furthermore, in the interest of public health and environmental sustainability, Irish Water infrastructure capacity requirements and proposed connections to the water and wastewater infrastructure will be subject to constraints of the Irish Water Capital Investment Programme. It is also stated that there is no public watermain adjacent to the proposed site. A further email from Irish Water states that the applicant has engaged with Irish Water and a pre-connection enquiry is currently being reviewed.

4.3.2. A report from the Environmental Assessment Officer notes that the bat survey report submitted with the application fulfils the requirement of the LDR12 Objective set out in the development plan and notes that all bat species are protected by law in Ireland under the Wildlife Act. The environmental assessment officer is satisfied that once the recommendations as outlined in Section 4 of the bat survey report are conditioned, that the proposed development will be in line with the requirements of the development plan and specifically the objectives relating to the LDR12 lands.

4.3.3. The planner's report sets out details of the site and the proposed dwelling. It also refers to the planning history and while there is no planning history associated with the subject site, reference is made to nearby planning applications where Clare County Council refused planning permission and outline planning permission for a number of dwellinghouses on the basis that the proposals contravened Policy SS6 of the previous Ennis and Environs Development Plan 2008 – 2014 as the residential lands in question did not have "Phase 1 status" under the previous plan.

- 4.3.4. Reference is also made to Reg. Ref. 17440 where outline planning permission was refused for a dwellinghouse to the south of the subject site.
- 4.3.5. The planner's report goes on to refer to pre-planning discussions and it is stated that the Planning Authority considers that the development of LDR12 zoned lands including the lands to the rear should be the subject of an overall masterplan or comprehensive layout. This would allow for a more orderly in-depth layout which would maximise the extent of the zoned lands and may allow for a more attractive residential scheme which would be in keeping with the proper planning and sustainable development of the area.
- 4.3.6. The report goes on to make reference to the technical reports received (reports from the Environmental Assessment Officer and Irish Water) and it is noted that no third-party observations were received in respect of the proposed development.
- 4.3.7. The planner's report states that there is no objection in principle to the provision of a dwelling on the said lands. However, it is not considered that the development as currently configured is acceptable. It is considered that the site should form part of a development design for a properly serviced small housing scheme that complies with the low density zoning thus eliminating the ad hoc nature in which applications have been coming forth on this holding. The form and layout of the development amounts to a very low density. Notwithstanding this, and having regard to the need for tree planting and to support the lesser horseshoe bat population in the area, it is considered that the density is acceptable in principle.
- 4.3.8. In terms of traffic issues the report states satisfaction with regard to site visibility at the entrance. However, some concern is expressed in relation to the ad hoc nature of the development which would result in the creation of an additional access opposite the main estate to the west and this would set an undesirable precedent and would mitigate against the proper planning and orderly development of the area.
- 4.3.9. In relation to water issues, it is noted that the applicant has submitted a copy of a pre-connection enquiry lodged with Irish Water and subject to the necessary connections being made, the Planning Authority is satisfied that the proposed development would not be prejudicial to public health.

4.3.10. In terms of design, visual amenities and residential amenities it is noted that the finished floor level is over 1 metre higher than the public road and the Planning Authority is concerned that the height and bulk of the proposed dwelling may not be in keeping with the scale of the surrounding built environment. In the absence of a plan for the overall holding, concern is expressed in relation to the proposed balcony at first floor level which may have a negative impact on the residential amenities of future adjoining occupiers and set an undesirable precedent in this regard. For the above reasons Clare County Council issued notification to refuse planning permission for the proposed development for the single reason set out above.

5.0 Planning History

- 5.1. Details of three history files are contained in a pouch to the rear of the file.
- 5.2. Under **P17/795** outline planning permission was refused for two dwellinghouses on the grounds that they were located in an area zoned residential but did not attract Phase 1 residential status and therefore would contravene Policy SS6 of the previous Development Plan 2008 – 2014. A second reason for refusal made reference to the site's close proximity to a bat roost. The decision was dated January, 2016.
- 5.3. Under Reg. Ref. **P17/796** outline planning permission was refused for the construction of two dwellinghouses for the same reasons.
- 5.4. Of more relevance to the current application and appeal is Reg. Ref. **P17/440** where outline planning permission was refused by Clare County Council to construct a dwellinghouse and garage approximately 30 metres to the south of the subject site for the same reason as the current application and appeal before the Board.
- 5.5. Under **P17/333** Clare Co Council granted planning permission for a single dwelling approximately 30 m to the north of the subject site subject to 10 conditions.

6.0 Grounds of Appeal

- 6.1. The decision of Clare County Council to issue notification to refuse planning permission was the subject of a first party appeal by Gormancad Limited. It states that it is the applicants' opinion that the reason for refusal is contrary to the Clare

County Development Plan as the site is located within a zoned area to accommodate residential development. It is stated that Clare County Council in its own development plan does not refer to any overall masterplan in relation to the subject lands. The proposal represents a natural continuation of the existing housing layout along the roadway. The dwelling will not negate any future development of the larger landholding as it is under separate ownerships to the side and rear. It is the applicants' opinion that the site and layout are of a high-quality design and fit into the existing housing layout. Any additional housing density would be in conflict with the preservation of the bats as outlined on Page 8 of the bat survey submitted with the application.

- 6.2. It is noted that the application was made simultaneously with two other applications (Reg. Ref. 17/333 and Reg. Ref. 17/440) one of which was granted and one of which was refused in December, 2017 and January, 2018 respectively. It is argued that the grant of planning permission under 17/333 sets a similar precedent for a grant of the current application. Clare County Council indicated to the applicants that any proposed development on the subject site would be refused permission without objectively reviewing any drawings submitted with the application. Details of the timeline in relation to the planning application are also set out in the grounds of appeal.

7.0 Appeal Responses

- 7.1. A response from Clare County Council received on the 16th July, 2018 stated the following:

The applicant was advised that the subject site is taken from the wider LDR12 landholding which includes zoned lands to the rear of the subject site and which by its configuration allows for, and is intended to be used for a single in-depth development. It is considered that the lands in question should be subject to an overall masterplan and this would allow for a more orderly in-depth layout which would maximise the extent of the zoned lands and provide for a more attractive residential scheme. It is stated that any pre-planning consultation does not prejudice the performance of the Planning Authority with regard to adjudicating on the application.

- 7.2. While there is no objection in principle to the provision of a dwelling on low density residential lands, the development as currently configured is not acceptable and does not present orderly development or the efficient use of lands. It is considered that the site should form part of a development designed for a properly serviced small housing scheme that complied with the low density zoning objective, thus eliminating the ad hoc nature in which applications have been coming forth on these holdings. A very low density development served by one vehicular access would be more suitable in this location. Concern is also expressed with regard to the close proximity of the access to the junction with the residential estate to the east which is a mere 25 metres away.
- 7.3. Concerns are also expressed in relation to the overall height and two-storey nature of the development which is 1 metre above the adjoining roadway. The planning authority was also concerned with the proposed balcony which could give rise to overlooking of adjoining dwellings.

8.0 Observations

- 8.1. An observation was submitted by **Cllr. Mary Howard**. This observation stated that the Councillor attended a pre-planning meeting in respect of the current application. It is stated that the applicant intended to show the design of the house to the local authority planner but the planner refused to acknowledge the drawings. Notwithstanding the fact that they were promised a meeting with a senior planner, the applicants were subsequently informed that if they submitted a planning application it would be refused.
- 8.2. A submission was also received from the **Department of Culture, Heritage and the Gaeltacht**. It notes that the area of mixed broadleaf woodland on which the site is located, has already been disturbed on both sides of the proposed development site and that the Department does not have concerns regarding the potential for a negative impact on the designated site. The Department believes that the minimum disturbances to bat and mammal populations using the site can be achieved with sensitive landscaping and by the retention of mature trees and supplementing the existing boundaries to create wildlife corridors. The installation of bat friendly lighting

as recommended in the Bat Report is also a necessity to the commuting wildlife around the site.

9.0 Development Plan Provision

- 9.1. The site is governed by the policies and provisions contained in the Ennis and Environs Development Plan 2017 – 2023.
- 9.2. The subject site is zoned low density residential in the development plan. This zoning refers to the use of lands to accommodate a low-density pattern of residential development, primarily detached family dwellings. The underlying priority shall be to ensure that the character of the settlement/area is maintained and further reinforced by a high standard of design. Proposed developments must also be appropriate in scale and nature to the area in which they are located.
- 9.3. The Ennis Municipal District Written Statement and Settlement Plans (Volume 3A) of the Clare County Development Plan sets out further details in relation to the subject site. LDR12 'The Lane, Cappahard' states specifically that any proposals for development at this site will need to be informed by a series of bat surveys to record the known use of the woodland and fields by the lesser horseshoe bats together with any structures that may be present on the site. All bat surveys must include light level surveys. Proposals for bat friendly lighting, vegetation, retention and management should all accompany any planning application and be prepared by suitably qualified ecologists. Monitoring proposals to record the impact of the proposed bat population should be included, with contingency measures if unforeseen impacts arise.

10.0 Planning Assessment

I have read the entire contents of the file, have had particular regard to the Planning Authority's reason for refusal and the grounds of appeal challenging this refuse. I have also had regard to the observations on file and visited the subject site and its surroundings. I consider the critical issues pertaining to the current application and appeal can be addressed under the following headings below.

- Density of Development

- Precedent
- The Requirement for a Masterplan
- Other Issues

10.1. Density of Development

- 10.1.1. It is clear from the zoning objectives relating to the site that the subject site and the lands immediately around the site are zoned for low density development. The low density development designation extends beyond the rear boundary of the subject site. Lands to the north of the subject site which have already been developed for low density single dwellinghouses are for the most part governed by the R1 zoning – ‘Existing Residential’. Furthermore, the low density residential zoning to the north of the subject site is also relatively modest in depth and therefore more suitable to accommodate a single dwellinghouse similar to the layout of the houses to the immediate north.
- 10.1.2. However, the low density residential lands on which the subject site is located and which surround the subject site are of greater depth in that the low density residential zoning stretches further back from Cappahard Lane. It would be more appropriate and logical that these lands, notwithstanding the fact that they may be within different ownerships, should be developed in a more comprehensive manner to accommodate a greater extent of residential development albeit at lower density.
- 10.1.3. What is proposed in the current application is develop a single site facing directly onto the Cappahard Lane on a site of a similar size to that associated with the dwellings to the north. If all site contiguous to the roadway were developed in a similar manner it would result in a large strip of residentially zoned land to the rear (albeit low density) which would be completely surrounding by agriculturally zoned development and therefore would lose its development potential.
- 10.1.4. It is appropriate in my opinion that residentially zoned and serviced land in close proximity to town centres would be developed in a more comprehensive and efficient manner to ensure that the development potential of the site is maximised in accordance with strategic planning policy.
- 10.1.5. I would agree with the Planning Authority that the continuation of one-off housing on single sites directly facing onto the road would result in a haphazard and piecemeal

development which would not be in accordance with the zoning provisions set out in the development plan.

10.2. **Precedent**

10.2.1. I do not consider that the issues of precedent apply in this instance. While permission has been granted for houses to the north of the site, the plots on which these houses are developed are commensurate in size with the residential zoning objective, ie they occupy the strip of land governed by the residential zoning objective and there is no residual residentially zoned land to the rear of the dwellings. The lands to the north therefore are more suited for a single line of dwellings fronting onto Cappahard Lane.

10.3. **The Requirement for a Masterplan**

10.3.1. I acknowledge that there is no explicit statement set out in the development plan in relation to the LRD12 lands which specifically requires a framework plan or a masterplan. However this should not preclude the Planning Authority from refusing planning permission for the said development before it, as it constitutes piecemeal development of single sites fronting onto the roadway would result in the sterilisation of a strip of zoned land for residential purposes to the rear. The lands governed by the LRD12 zoning objective would benefit greatly from a more comprehensive development approach to the lands in question to ensure that all residential zoned lands are developed efficiently.

10.3.2. While I acknowledge that there is a requirement to ensure that any future development is compatible with maintaining and facilitating bat habitats on site, I consider that this can be achieved through an appropriate low-density layout and incorporating and augmenting the existing mixed woodland into any low density residential scheme.

10.4. **Other Issues**

10.4.1. Both the planner's report and in the Planning Authority's response to the grounds of appeal also expressed concerns in relation to traffic issues and design issues, although these issues were not referred to in the planning authorities reason for refusal. I do not consider that the incorporation of an additional access to serve one dwelling directly opposite the main distributor road serving the adjoining residential

development would constitute a significant traffic issue. However, there can be little doubt that the incorporation of a single access onto the Cappaghard Lane to serve a number of dwellings would be more preferable than a proliferation of access serving single dwellings such as that which exists on the eastern side of the road to the north.

10.4.2. In relation to the overall design of the dwellinghouse I am generally satisfied that the overall size and scale of the dwellinghouse is acceptable in this instance, particularly having regard to the fact that the dwelling is set back from the public road and is well screened and landscaped. Furthermore it is proposed to augment the landscaping of natural mixed woodland which already exists on the site.

11.0 Conclusions and Recommendation

Arising from my assessment above I would concur with the Planning Authority that the proposed dwelling by reason of its location and siting within a wider parcel of land which is zoned for lower density residential development would constitute a haphazard and non-integrated form of development which would militate against the comprehensive development of the zoned lands in question and I therefore recommend that An Bord Pleanála uphold the decision of the Planning Authority and refuse planning permission for the dwellinghouse.

12.0 Appropriate Assessment

The subject site is located approximately 250 metres from the Lower River Shannon SAC (Site Code: 002165). Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European site, no appropriate assessment issues arise and it not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans and projects on a European site.

13.0 EIA Screening Determination

Having regard to the nature of development comprising of a single dwelling there is no real likelihoods of significant effects on the environment arising from the proposed

development. The need for environmental impact assessment can, therefore, be excluded as preliminary examination and a screening determination is not required.

14.0 Decision

Refuse planning permission based on the reasons and considerations set out below.

15.0 Reasons and Considerations

It is considered that the proposed development by reason of its location and siting within the wider zoned land parcel which is governed by the low density residential zoning objective (LRD 12) would constitute a haphazard and non-integrated form of development which would militate against the comprehensive development of the overall land parcel governed by this objective. The proposed development is therefore deemed to be premature and would constitute piecemeal development which would seriously injure the residential and visual amenities of the area and would therefore be contrary to the proper planning and sustainable development of the area.

Paul Caprani,
Senior Planning Inspector.

5th Nov, 2018.