



An  
Bord  
Pleanála

## Inspector's Report ABP-302256-18

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<b>Development</b>	Permission to construct a dwelling house, garage and fuel store, septic tank with intermittent sand filter and underlying polishing filter, site fencing and all ancillary site works
<b>Location</b>	Carrick Maunsell, Letteragh, Nenagh County Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	18/600223
<b>Applicant(s)</b>	Michael Ryan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Michael Ryan
<b>Date of Site Inspection</b>	03 <sup>rd</sup> October 2018
<b>Inspector</b>	Colin McBride

## 1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.241 hectares, is located 14km to the south east of Nenagh. The site is located on the western side of the L6151-0. The site is part of a field and is accessed over an existing laneway with vehicular access off the L6151-0. The L6151-0 joins the R498 a short distance to the south of the site. Levels on the site increase in a north westerly direction with the site elevated relative to lands further to the west. Adjoining lands are agricultural in nature with the nearest dwelling located to the south east of the site and just south of the laneway serving the site.

## 2.0 Proposed Development

2.1. Permission is sought to construct a dormer style dwelling, garage, fuel store, wastewater treatment system and associated site works. The dwelling has a floor area of 201.4sqm and a ridge height of 7.1m. The dwelling features a pitched roof and external finishes of plain plaster and a slate roof. The site is accessed over an existing laneway that that currently serves agricultural lands with an existing vehicular entrance onto the L L6151-0.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission refused based on two reasons...

1. It is the Policy SS4: Housing in the Rural Countryside of the North Tipperary County Development Plan 2010 (as varied) to facilitate individual dwellings in the open countryside for person(s) who are intrinsic to the area and who have demonstrated a housing need, and who are seeking to provide a home for their own occupation. The Planning Authority considers that the applicant has failed to demonstrate a local housing need as the applicant has a dwelling within the rural area. Therefore, the applicant does not comply with the policy requirements as set

out in Policy SS4 of the North Tipperary County Development Plan 2010 (as varied). Accordingly the proposed development would materially contravene Policy SS4 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. The Planning Authority is not satisfied based on the information submitted that applicant has sufficient legal right of way to the lands from the public road that serves this laneway and notes discrepancies between the submitted landholding map, folios and land registry. Accordingly, the proposed development is considered to be misleading and so would be contrary to the proper planning and sustainable development of the area and potentially lead to a traffic hazard.

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

#### **3.2.1. Planning Reports**

Planning report (10/04/18): It was considered that the applicant did not comply with Rural Housing policy (SS4) in the basis of owning a dwelling in the rural area and the fact that the landholding is smaller than 20 hectares in size. Concerns were also raised that the applicant does not have sufficient right of way along the proposed access laneway. Refusal was recommended based on the reasons outlined above.

### **4.0 Planning History**

17600625: Permission sought for a dwelling and associated site works on the appeal site. Application withdrawn.

### **5.0 Policy Context**

#### **5.1. Development Plan**

The relevant Development Plan is the North Tipperary County Development Plan 2010 (as varied). The site is in the rural area of the county.

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 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 are' 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-dependent need to be at a location of the farm and meeting either of the following criteria:

(i) A farmer of the land-defined as a landowner with a holding >20ha<sup>21</sup>, 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.

Or

#### Category C: Exceptional Medical Circumstances

Consideration will be given in very limited circumstances to an applicant demonstrating housing need on the basis of exceptional medical circumstance. Any planning application must be supported by documentation from a registered medical practitioner and disability organisation proving that a person requires to live in a

particular environment and in a dwelling designed and built purposely to suit their medical needs.

Table 10.1 Sightline Requirements: 70m minimum sightlines required.

## 5.2 Sustainable Rural Guidelines

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 party appeal has been lodged by Michael Ryan

- The appeal site is on lands the applicant/appellant has inherited and has been farmed by his family for a considerable period of time.
- The appellant notes his strong ties to the area and parish the site is located in including going to school, living locally for a period of time, being a member of the GAA club and helping out on the farm at this location.
- The appellant notes that they have maintained and improved the lands and had intended to seek permission for a dwelling on a different part of the

landholding (R498) and had three applications withdrawn due to indication of refusal.

- The lands have been leased to a farmer for a period of time.
- The appellant and his wife bought a house in Beechwood, Kilruane 17.5km from the landholding the site is part of and sought permission in 2017, which was also withdrawn.
- The appellant considered that they had addressed the Planning Authority's concerns in that they would be selling the existing house (letter included that they have entered into an agreement to sell with an estate agent attached) and they have demonstrated that they sufficient right of way along the laneway access (documents detailing that the applicant/appellant is the sole owner of the laneway).
- The appellant notes that other permissions for rural housing has been granted in the vicinity with a few examples cited.
- The appellant wishes to live and work on the landholding at this location. The appellant has included multiple documents detailing costs and invoices for services and goods relating to maintaining and improving the land as well as details of membership of the IFA and a business plan for farming the land (sheep farming).

## 6.2. Planning Authority Response

Response by Tipperary County Council

- The Planning Authority has no observations to make regarding the appeal.

## 7.0 Assessment

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

Rural Housing policy

Access/right of way/traffic

## Appropriate Assessment

### 7.2. Rural Housing policy:

7.2.1 The appeal site is located in the rural area of the county. Policy for rural housing is set down under Policy SS4, which is outlined above. 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<sup>20</sup> and who are seeking to provide a home for their own occupation, (20 Persons who already own/have been permitted a house in the rural area will generally be considered to have no rural housing need, however, ownership of a dwelling in a settlement in excess of 1,500 persons will not affect a local persons rural need claim).

7.2.2 The applicant/appellant at the time of the application and lodgement of the appeal has a dwelling with the address indicated as being Graigue, Beechwood, Nenagh, Co, Tipperary. The Planning Authority in their report note that this dwelling is within 10km of the appeal while the appeal submission states that it is 17.5km from the site. It would have been helpful if a map had of been supplied to identify the location of the appellant's current dwelling. Using google maps and the address Graigue as the location, the townland of the appellant's dwelling is 10.4km from the site and 12.5km from the site by the fastest driving route (18 minutes). The appellant's current dwelling does appear to be located in a rural area outside of Nenagh and on this basis the appellant would not have a rural housing need based on Development Plan policy. It is notable that the appellant is undertaking to sell his house to address this, however at the time of the application and the submission of the appeal, the applicant has a rural dwelling that fulfils his rural housing need.

7.2.3 Category A of Policy SS4 relates to links to the area the site is in defining a Local Rural Person as one who has 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. I acknowledge that the appellant has links to the area and the site although question whether he would qualify under Category A due to the time period and distance of residence relative to the site (the applicant has not given clear detail in this regard as local housing need appears to be based

on farming). Notwithstanding the appellant's status in relation to category B, the fact that they currently own a rural dwelling makes it immaterial anyway with the appellant considered to have no rural housing need under Policy SS4.

7.2.4 The appellant owns a landholding of 18.93 hectares at this location. Based on the information submitted that landholding has been farmed in the past and the appellant wishes to farm the landholding and is claiming a need for a dwelling at this location. Based on the information on file farming is not the appellant's primary or current occupation (printing business). It is acknowledged that the appellant has maintained and improved the land based on the various documents submitted and that the appellant has a desire to farm the land, however it is not clear whether such is to be appellant's sole and primary occupation. The landholding is smaller than the threshold level set down under Category B of Policy SS4 which states that

- (i) A farmer of the land defined as a landowner with a holding >20ha<sup>21</sup>, 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<sup>22</sup>.

(<sup>21</sup> Where a landowner has no children and a niece/nephew is inheriting the farm, this niece or nephew will also qualify as having a functional need.

<sup>22</sup> A detailed 5 year business plan will be required to demonstrate 'viable commercial scale').

The appellant has included a business plan (sheep farming) with the appeal submission. The landholding size is below that considered to be sufficient to demonstrate a rural housing need on the basis of farming unless it demonstrated to be a commercially viable unit. The business plan indicates that the landholding is commercially viable.

7.2.5 I would note regardless of the appellant intention in terms of farming on the landholding the site is part of, the very fact that he has a rural dwelling means that he has no rural housing need under Policy SS4 of the County Development Plan. In addition I would note that the appellant's existing rural dwelling is not a significant



distance away from the landholding and does not prevent the appellant from farming the landholding in question. Having regard to the fact that the appellant has an existing dwelling in the rural area of Co. Tipperary not a significant distance from the appeal site, the applicant has failed to demonstrate a rural housing need under Development Plan policy. The proposal would lead to demands for the uneconomic provision of further public services in an area where these are not proposed and would interfere with the rural character and attractiveness of the area. The proposed development would, therefore, contravene materially the development objective, as set out in the Development Plan and be contrary to the proper planning and sustainable development of the area.

7.3. Access/right of way/traffic:

7.3.1 The second refusal reason noted that the Planning Authority is not satisfied based on the information submitted that applicant has sufficient legal right of way to the lands from the public road that serves this laneway and notes discrepancies between the submitted landholding map, folios and land registry. It was considered that the proposed development would be contrary to the proper planning and sustainable development of the area and potentially lead to a traffic hazard.

7.3.2 The proposal is accessed over an existing laneway (250m) long with an existing vehicular entrance onto the public road (L6151-0). The laneway has a gravelled surface and accesses agricultural lands as well as the ruins of an agricultural shed (southern side of the laneway). The laneway is not part of the site (not within red line boundary) but is indicated as being within the appellant's landholding at this location. The appellant notes that the laneway part of the landholding had been misplaced on the land registry maps and has submitted documentation with the appeal submission demonstrating ownership of the full extent of the laneway. Based on the information submitted I am satisfied that the applicant/appellant is the owner of the laneway and has full right of access. Notwithstanding such the issue of right of way is not planning consideration and the onus is on the applicant to ensure they have rights of access to the site.

7.3.3 There is reference to potential traffic hazard in the second refusal reason. The proposal uses an existing access onto a lower category county road (L6151-0). Table 10 indicates that required sightlines at the entrance are 70m (road less than 4.25m wide). I am satisfied that the proposed layout of the entrance would have sufficient sightlines and that the access is onto a road with low traffic volumes. I would be satisfied that the proposal would not constitute a traffic hazard at this location.

#### 7.4 Appropriate Assessment:

7.4.1 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.

### 8.0 **Recommendation**

8.1. I recommend refusal based on the following reasons.

### 9.0 **Reasons and Considerations**

1. The proposed development is located in the rural area of Co. Tipperary. Under Policy SS4 of the North Tipperary County Development Plan it is stated that “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<sup>20</sup>”. It is clearly stated under this policy that “persons who already own/have been permitted a house in the rural area will generally be considered to have no rural housing need, however, ownership of a dwelling in a settlement in excess of 1,500 persons will not affect a local persons rural need claim”. Having regard to the fact that the applicant has an existing dwelling in the rural area of Co. Tipperary which is not a significant distance from the appeal site, the applicant has failed to demonstrate a rural housing need under Development Plan policy. The proposal would lead to demands for the uneconomic provision of further public services in an area where these are not proposed and would interfere with the rural character and

attractiveness of the area. The proposed development would, therefore, contravene materially the development objective, as set out in the Development Plan and be contrary to the proper planning and sustainable development of the area.

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Colin McBride  
Planning Inspector

18<sup>th</sup> October 2018