



An  
Bord  
Pleanála

## Inspector's Report ABP-302309-18

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<b>Development</b>	Construction of a dwelling, site entrance, effluent treatment system, and all associated site works.
<b>Location</b>	Croagh Commons, Rathkeal, Co. Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	18/518.
<b>Applicant(s)</b>	Conn Mullane.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Conn Mullane
<b>Observer(s)</b>	Maurice F. Noonan & Son
<b>Date of Site Inspection</b>	22.11.2018
<b>Inspector</b>	Fiona Fair.

## 1.0 Site Location and Description

- 1.1. The appeal site (of stated 0.261 ha) is located approx. 2 Km east of Rathkeale, north of the R523 to the south west of County Limerick. The road serving the site is a narrow substandard road / cul-de-sac, which runs north from the R523 and is severed by the N21 a short distance further to the north.
- 1.2. The site is roughly rectangular in shape, grassed, flat, in use for grazing horses and is bounded to the front / east, north and south by a mature hedgerow. The rear / western boundary is defined by a post and wire fence.
- 1.3. The lane provides access to 6 dwellings, 2 of which face onto the regional road. 5 on the eastern side of the cul de sac with a dwelling backing onto the site to the south. Lands to the west and north are in agricultural use. A two storey dwelling is immediately opposite on the lane.

## 2.0 Proposed Development

- 2.1. The proposal comprises:

Permission to construct:

- A dwelling, (196.65 sq. m)
- A site entrance,
- An effluent treatment system, and
- All associated site works

As per the details provided in the Site Characterisation Assessment (dated 23.07.2015) a T value of 47 was recorded, a P value of 35.14 with no water noted in the trial hole. It is proposed to install a packaged wastewater treatment system and polishing filter with discharge to ground water.

The applicant is stated to be from the area and currently resides with his parents at Reens East, Ardagh. His children attend school in Rathkeale. He does not own a dwelling house of his own. Proposal accompanied with letters of support from:

- St. Mary's Parish Rathkeale
- Principal St. Anne's Primary School Rathkeale

- Dr. Thomas K. Curtin, Dr. Sylvia Cooke and Dr. Cathy Brogan
- Michael B. O'Donnell Solicitors. Confirms Connie Mullane purchased no. 12 the Commons Croagh in 2006 and same was registered and completed in 2011. He also purchased no. 18 the Commons in 2008. Mr. Mullane's address is currently care of his family at Reens Pike, Ardagh, County limerick.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

Permission Refused for two number reasons, summarised as follows;

R1. The site of the proposed development is located within an area of strong agricultural Base as defined in the Limerick City and County Development Plan 2010 – 2016. It is considered that the applicant has not demonstrated that he meets the criteria for a house in this area as set out in the Development Plan and as such, the proposed development would materially contravene the objectives of the CDP in relation to rural settlement, militate against the preservation of the rural environment and be contrary to the proper planning and sustainable development of the area.

R2. The Road network serving the site of the proposed development is considered substandard in width, alignment, surface condition and has insufficient capacity to accommodate the additional traffic likely to result from the development. The proposed development would therefore materially contravene Objective IN O9: Substandard roads as set out in the CDP 2010 – 2016.

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

#### 3.3. **Planning Reports**

The Planners Report dated 09/07/18 details the planning history. Under the previous application it was deemed that the applicant did not demonstrate that he has lived within 10km of the site for a minimum of 10 years. That the road serving the site is substandard and the applicant has not demonstrated how he complies with objective

IN09 of the County Development Plan in relation to substandard roads. A refusal of permission for three reasons was recommended.

Under the current application it is considered that as the applicant has not submitted a supplementary application form B he has not demonstrated compliance with criteria for a house in this rural area in accordance with settlement plan policy set out in the County Development plan. It is therefore unclear whether they own a dwelling. The second reason for refusal relating to the substandard nature of the road network has not changed from the previous refusal on this site (PL91.245866 / Reg Ref. 15/773)

#### 3.4. **Other Technical Reports:**

Environment: No objection subject to condition.

Midlands West National Roads Design Office: No Observations

Transport Infrastructure Ireland (TII): No observations

#### 3.5. **Prescribed Bodies**

None

#### 3.6. **Third Party Observations**

One objection was received by the planning authority. Issues raised are similar to those raised in the observation to the appeal summarised in detail below.

### 4.0 **Planning History**

- 4.1. **PL91.245866 / Reg Ref. 15/773** Permission for house entrance and treatment plant at Croagh Commons, Rathkeale by applicant Con Mullane was Refused planning permission for two reasons, namely:

1. Having regard to the location of the site within the preferred route corridor for the proposed Foynes to Limerick Road Improvement Scheme, it is considered that the proposed development would be premature pending the determination by the road authority of a road layout for the area, and would contravene Objective IN O13 (Reservation of Corridors for Major Road Improvements) and Objective IN O21 (Promotion of Improvements to the N69 Limerick to Foynes) as set out in the Limerick County Development Plan 2010-2016, and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Objective IN 09 of the planning authority, as set out in the Limerick County Development Plan 2010-2016, seeks to ensure that development on sub-standard roads will only be considered in exceptional circumstances. Having regard to the location of the site on a minor road that is seriously sub-standard in terms of its narrow width and surface condition, and the failure to demonstrate that exceptional circumstances apply in this case, it is considered that the proposed development would contravene the stated objective of the Development Plan, and would, therefore, be contrary to the proposed planning and sustainable development of the area.

**4.2. The Planners report on file states:**

'DC-255-05 Enforcement Action taken for use of the site as a halting site.

Adjacent:

Reg. Ref. 13/531 Permission refused for construction of a dwelling, site entrance, effluent treatment system incl. associated site works.

Reg. Ref. 13/333 Permission refused for construction of a dwelling, entrance and installation of effluent treatment system and all associated site works'.

## 5.0 Policy Context

### Development Plan

The Council recognises the needs of local rural people who wish to live or work in the area in which they grew up. The following 3 criteria arise in assessing applications under this category:

1. The applicant must come within the definition of Local Rural Person
2. The proposed site must be situated within their Local Rural Area
3. The applicant must have a Local Rural Housing Need.

A Local Rural Person is a person who has been living in the local rural area for a minimum of 10 years prior to making the application.

The Local Rural Area is defined as the area generally, but not exclusively, within a 10km radius of the applicant's family home.

Local Rural Housing Need is defined as a person who does not or has never owned a house in the 'local rural area' and has the need for a permanent dwelling for their own use in the rural area.

The site is within an area designated as having a strong agricultural base.

#### **Objective RS02** – Single Houses in Area of Strong Agricultural Base

It is an objective to recognise the individual housing needs of people intrinsic to the rural area located within the rural areas defined as the 'areas of strong agricultural base'. Such needs may be accommodated on lands outside of the 'Rural Area Under Strong Urban Influence', subject to the availability of a suitable site and normal proper planning and sustainable development criteria.

It is an objective of the Council to permit single houses in the area of strong agricultural base to facilitate those with a genuine rural housing need in the area. In order to demonstrate a genuine rural housing need, any of the following criteria should be met:

(d) the application is being made by a local rural person who for family and/or work reasons wish to live in the local rural area in which they have spent a substantial period of their lives (minimum 10 years) and are seeking to build their first home in the local rural area.

**Policy IN P10** – the Council will continue to work with the NRA in protecting corridors and route alignments identified for national road projects from prejudicial development, in accordance with the Mid-West Regional Planning Guidelines, Transport 21 and the National Development Plan.

**Objective IN 09** – it is an objective to ensure that on roads that are sub-standard, either in terms of their width (less than 3 metres), alignment, surface condition or junction with the nearest main road, development will only be considered in exceptional circumstances. A presumption in favour of family members and long term landowners will be considered in exceptional circumstances, where no alternative site is available, or where the only alternative access available is onto a strategic regional road as designated in the County Development Plan

#### 5.1. **Natural Heritage Designations**

There are no natural heritage designations approximate or within close proximity of the subject appeal site. The following Natura 2000 Sites are within 15 Km of the subject appeal site;

- Special Area of Conservation: Askeaton Fen Complex SAC.
- Special Protection Areas: Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA
- Special Area of Conservation: Lower River Shannon SAC

## 5.2. Environmental impact Assessment (EIA)

Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first-party appeal is summarised as follows:

#### **The road Width / Long term Landowner**

- The applicant through his solicitor and an officer of the Courts submitted confirmation that the applicant has owned this site since 2008
- Planning permission was refused on the lands off the regional road, within the same family land holding, due to access off regional road plus other matters
- He owns the lands for 10 years and therefore a long-term landowner
- Given confirmed long-term landownership a relaxation of the road policy on substandard roads should apply in this instance.
- The applicant does not own another dwelling
- The applicant and his family have lived with his parents' home at Reens, Ardagh since his parents bought the property
- The applicant has a need to build a family home
- The dwelling design and site characteristic have all been deemed acceptable.
- Appeal Accompanied with:
  - Notification of decision to refuse permission Reg. Ref. 18/518
  - ABP Inspectors report and decision PL91.245866
  - Letter from Michael B. O'Donnell Solicitors



- States Connie Mullane purchased the site no. 12 the Commons Croagh in 2006 and same was registered and completed in 2011
- He also purchased No. 18 the commons and the matter has only recently been registered
- Mr Mullane's address is currently at his family address Reens, Ardagh, County Limerick
- Land Registry Folio 26652
- Letter, dated Feb 2015, from St. Anne's Primary School Rathkeale stating that the children of the applicant attend the school.
- Letter from St. Mary's Parish Rathkeale stating that Mr and Mrs Connie and Noreen Mullane have three children in St. Annes School in the parish.
- Copy of pre-planning meeting dated 5/03/2015
- Site Map / Plan

## 7.0 OBSERVATION

An Observation was received from Maurice F. Noonan & Son it is summarised as follows:

- The reason for refusal as per PL.91.245886, in respect of the substandard nature of the road network, has not changed. There is no improvement to the road network serving the site.
- Nothing has changed regarding the applicant's criteria to comply with the rural housing policy.
- Serious concern that the proposed development would exacerbate the excessive concentration of housing in the vicinity and contribute to an increasing pattern of suburbanisation of this rural area.
- Concern with respect to adequacy of road,
- Concern with respect to concentration of effluent treatment systems,
- Overall concern with respect to compliance with settlement location policy and density of development / ribbon development in the area.

## 8.0 Assessment

I consider the key issues in determining this appeal are as follows:

- **Compliance with Rural Settlement Policy**
- **Adequacy of road serving the site**
- **Appropriate Assessment**

### 8.1. Compliance with Rural Settlement Policy

As per the current Limerick County Development Plan, 2010 refers, the site is within an area identified as having a Strong Agricultural Base which is restructuring to cope with changes in the agricultural sector and is served by an extensive network of smaller rural towns, village and other settlements. In recognition of these characteristics and to consolidate and sustain the stability of the rural population, it is a plan requirement that applicants have a genuine rural generated housing need based on their social and/or economic links to the area.

The applicant is stated to be from Reens East, Ardagh c. 7.5 km to the south-west of the site and as such comes within the 10km radius set to generally determine 'Local Rural Area' as set out in Section 3.9.2 of the Development Plan. The applicant is also stated as being the owner of the appeal site in question and a solicitor's letter is attached to the file which states that Connie Mullane purchased no. 12 the Commons Croagh in 2006 and he also purchased no. 18 The Commons in 2008. Some details of land registry folio 26652 is attached, however, there is no plan or map accompanying the land registry document and therefore it is unclear precisely which parcels of land it pertains to.

On balance It was accepted, in the history case of PL91.245866, that the applicant is from the 'local rural area' however as no detail had been provided that the proposal would constitute the applicant's first home in the said local rural area. In view of the concentration of one off housing in the immediate vicinity and on the lands to the

north of the N21 (given demonstrated pressure from one off housing) it was considered that any application that is premised on genuine rural housing need must be fully supported. It was not believed that this was the case in this instance.

Under the current application the applicant has not submitted a supplementary application form B he has not demonstrated collaborated compliance with criteria for a house in this rural area in accordance with settlement plan policy set out in the County Development plan.

The County Development Plan states:

- 'A Local Rural Person is a person who has been living in the local rural area for a minimum of 10 years prior to making the application.
- The Local Rural Area is defined as the area generally, but not exclusively, within a 10km radius of the applicant's family home.
- Local Rural Housing Need is defined as a person who does not or has never owned a house in the 'local rural area' and has the need for a permanent dwelling for their own use in the rural area'.

In order to demonstrate a genuine rural housing need, any of the following criteria should be met:

(d) the application is being made by a local rural person who for family and/or work reasons wish to live in the local rural area in which they have spent a substantial period of their lives (minimum 10 years) and are seeking to build their first home in the local rural area.

It is unclear whether the applicant already owns a dwelling. I agree with the planning authority and the appellant has not satisfactorily overcome the previous reason for refusal in this regard. The first reason for refusal by the planning authority, which mirrors the Inspectors refusal reason in the case of PL91.245866 states that '...the proposed development would materially contravene the objectives of the CDP in relation to rural settlement, militate against the preservation of the rural environment

and be contrary to the proper planning and sustainable development of the area'. I note that the Board did not however include this reason as a reason for refusal in the case of PL91.245866.

The matter of material contravention of the plan was not raised by the Inspector or Board in the case of PL91.245866. Given that the planning authority have stated in their reason for refusal (Reg. Ref. 18/518) that the proposed development represents a material contravention of the development plan. In such circumstances, section 37 (2)(b) of the 2000 Act states that the Board may only grant permission where it is considered 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
- iv. 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.

While it is up to the p.a. and the board to decide whether the applicant complies with the rural settlement policy set out in the Plan I do not consider that any of the exemptions set out in Section 37 (2)(b) apply.

## 8.2. Adequacy of Road Serving the Site

The second reason for refusal relating to the substandard nature of the road network has not changed from the previous refusal on this site (PL91.245866 / Reg Ref. 15/773). It also sets out that the proposed development would materially contravene

Objective IN O9: Substandard roads as set out in the CDP 2010 – 2016. Therefore, section 37 (2)(b) of the 2000 Act once again applies.

The cul-de-sac serving the site was originally a through route but was bisected by the N21 national primary road. It provides access for 6 dwellings, two of which face onto the regional road. Albeit the fact that the road is a cul-de-sac, by reason of its inadequate width and poor surface I would agree that it a substandard road and that objective IN O9 of the development plan would apply, there has been no material changes since the determination of the previous history case. I would concur with the PA's reason for refusal in this regard and I do not consider that any of the exemptions set out in Section 37 (2)(b) apply.

### **8.3. Appropriate Assessment**

Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest Natura 2000 sites. 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.

## **9.0 Recommendation**

9.1. I recommend that planning permission should be Refused for the following reasons.

## **10.0 Reasons and Considerations**

1. The site of the proposed development is located within an area of strong agricultural Base as defined in the Limerick City and County Development Plan 2010 – 2016. It is considered that the applicant has not demonstrated that he meets the criteria for a house in this area as set out in the Development Plan and as such, the proposed development would materially contravene the objectives of the CDP in relation to rural settlement, militate against the preservation of the rural environment and be contrary to the proper planning and sustainable development of the area.

2. Objective IN 09 of the planning authority, as set out in the Limerick County Development Plan 2010-2016, seeks to ensure that development on sub-standard roads will only be considered in exceptional circumstances. Having regard to the location of the site on a minor road that is seriously sub-standard in terms of its narrow width and surface condition, and the failure to demonstrate that exceptional circumstances apply in this case, it is considered that the proposed development would contravene the stated objective of the Development Plan, and would, therefore, be contrary to the proposed planning and sustainable development of the area.

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Fiona Fair  
Planning Inspector

21.01.2019