



An
Bord
Pleanála

Inspector's Report ABP-302340-18

Development	Demolition of existing incomplete derelict structure and the construction of 1.5 storey dwelling, detached garage, entrance, proprietary waste water treatment system, connection to necessary services, boundary treatments and associated site works
Location	Ballygriffey South, Ennis, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	1817
Applicant(s)	Leo & Deborah Hogan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Pauline Allegre
Observer(s)	Kevin Finucane
Date of Site Inspection	3 rd October 2018

Inspector

Ronan O'Connor

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.2. Development Plan.....	6
6.0 The Appeal	6
6.1. Grounds of Appeal	6
6.2. Applicant Response	8
6.3. Planning Authority Response	8
6.4. Observations.....	9
6.5. Further Responses.....	10
7.0 Assessment.....	10
8.0 Recommendation.....	18
9.0 Reasons and Considerations.....	18

1.0 Site Location and Description

1.1. The appeal site is located in a rural area approximately 4.5km north-west of Ennis and is accessed off a local road. On site is a partially completed dwelling house and a mobile home structure, both of which are unoccupied. The site slopes to the south-west and is currently overgrown. To the south-west and to the north-east are residential dwellings.

2.0 Proposed Development

2.1. Demolition of existing incomplete derelict structure and the construction of 1.5 storey dwelling, detached garage, entrance, proprietary waste water treatment system, connection to necessary services, boundary treatments and associated site works.

3.0 Planning Authority Decision

3.1. Decision

Grant permission. Conditions of note include:

- Condition 2 – Occupancy Clause.
- Condition 3 – First floor windows on the western and eastern elevations to be obscured.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The reports of the planning officer reflects the decision of the planning authority. Points of note are as follows:

- Site was considered to be an infill site.
- No objection to the proposed development on grounds of traffic safety.
- No objection on design grounds.
- Further information requested in relation to (i) flooding/polishing filter/water table depth (ii) finished flood levels of adjacent dwellings/road/land levels to the west -

flood risk (iii) proposals to reduce overlooking of adjacent sites/finished floor levels of adjacent dwellings.

- Recommendation to grant following receipt of satisfactory further information.

3.2.2. Other Technical Reports

Environment Section – recommend conditions.

Water Services – Advices that there is no water main in the vicinity.

3.3. Prescribed Bodies

Irish Water – No objections.

3.4. Third Party Observations

One observation received. The issues raised are covered in the grounds of appeal.

4.0 Planning History

94/353 – Grant – House

02/89- Grant – Retain alterations to dwelling house.

5.0 Policy Context

5.1. Project Ireland 2040: National Planning Framework

From 16th February 2018, the National Planning Framework has replaced the National Spatial Strategy (NSS) and now represents the overarching national planning policy document. The National Planning Framework sets a new course for planning and development in Ireland, to achieve a shared set of goals for every community across the country, focused on ten National Strategic Outcomes.

5.2. Development Plan

Clare County Development Plan 2017-2023

The following provisions of the Development Plan are relevant:

- Section 3.25 Single Housing in the Countryside. CDP 3.13 'New Single Houses on Infill Sites in the Countryside'.
- Section 8.3.3 Water Resources including CDP 8.22 'Protection of Water' Resources'/Section 8.4 Water and Wastewater Services including Objectives CDP 8.26 'Ennis and Environs Water Supply' and CDP 8.27 'Waste Water Treatment and Disposal'.
- Chapter 13 Landscape including Landscape Character Areas.
- Chapter 17 Design and Built Environment including Objectives CDP17.2 'Universal Design' and CDP 17.4 'Design and the Built Environment'.

5.3. Section 26 Ministerial Guidelines

5.3.1. The following is a list of Section 28 Ministerial Guidelines considered of relevance to the proposed development.

- The Sustainable Rural Housing Guidelines 2005
- The Planning System and Flood Risk Management' (including the associated 'Technical Appendices') (2009)

5.4. Natural Heritage Designations

5.4.1. None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The Grounds of Appeal as submitted by the Third Party Appellant (Pauline Allegre, Green Lawns, Ballygriffey South, Ruan, Ennis, Co. Clare) are as follows:

- No consideration for the existing septic tank and percolation area.

- 17 houses on a 1 mile stretch of narrow road/dangerous bends.
- No reference to previous permission (0289) nor any reference to how the existing septic tank will be used/previous owner lived in mobile home with connection to electricity, water and septic tank.
- Site has a steep gradient/drop of c4m to where wastewater treatment and soakaway are planned to be installed.
- Larger than previous permission/site area is incorrect.
- Applicant is not known to neighbour's.
- Impact on Amenity – proposed development will tower over house/impact on privacy/frosted glass will only partially resolve this issue.
- Design will erode the rural character of the area/will create suburban appearance.
- The site is not an infill site – therefore local need requirements apply.
- No topographical survey has been carried out with response to levels and proposed changes to levels.
- Flooding – filling in site to accommodation waste water treatment/soakaway will cause flooding of appellant's property.
- Percolation area is within 3.3m of applicant's boundary.
- Information provided in relation to flooding is inaccurate/levels were lower due to constant pumping carried out by the applicant/does not reference flooding incidents in 2015/flood level recorded by neighbours was 13.35m with pumps running 24/7/does not provide an accurate baseline.
- Many flooding events have not been referenced.
- Proposal will impact on property value.
- Site has been previously flooded.
- Trees on boundary are deciduous and for most of the year appellant's house is exposed.
- Map of flood extent included/photographs included.

6.2. Applicant Response

6.2.1. The applicant's response to the Third Party Appeal is set out below:

- Site was occupied up until 2012/is an infill site.
- Previous permission is irrelevant.
- Proposed dwelling is orientated to take advantage of daylight/sunlight/is 36 m from the appellant's property/proposed garage mitigates any potential overlooking.
- Existing structure is located at the same height as proposed dwelling/is located closer to the appellant's property than proposed.
- Existing and proposed levels are clearly defined on submitted drawing/maximum change in levels of 1.5m across the site not 4m as claimed.
- Proposed house and garage will be c1.1m above the appellant's dwelling/will not tower over appellant's property.
- Presence of existing septic tank irrelevant as proposal must comply with existing EPA regulations.
- Proposed wastewater treatment was considered the most suitable for the application site/the alleged change in gradient of 4m is incorrect and misleading/will take cognisance of current best practice and regulations.
- Flooding – Have submitted a copy of report prepared by Environmental Planning Consultants (as submitted with the further information request) which deals with this issue.

6.3. Planning Authority Response

6.3.1. The response of the planning authority to the Third Party Appeal is as follows:

- Was satisfied that the applicant's response in relation to flooding was sufficient.
- Third Party did not make any submissions to refute the additional information.
- Agent for the applicant has stated that previous flood waters entered the appellant's site from the rear of the site to the east, and not from the appeal site.

- A drain is proposed around the appeal site to ensure that flood risk is not increased/other mitigation measures proposed.
- The appellant has not commented on these mitigation measures/if ABP considers further mitigation measures are necessary these can be dealt with by condition.
- Do not agree that house would tower over appellant's property.

6.4. Observations

6.4.1. 1 no. observation received from Kevin Finucane (Ballygriffy South, Ruan, Ennis, Co. Clare).

- Run a farm to the rear of the appeal site.
- Aware of flooding issues/have provided assistance to the appellant on many occasions.
- Granting permission feels like disregard for concerns.
- Application does not show fall of the site.
- Concern that any changes to the site topography will impact on water levels/have experienced flooding.
- Possible contamination of grounds as a result of flooding/application does not detail all previous flooding events.
- Proposals by the planning authority to construct a culvert have not happened.
- Resurfacing of roads without planing back to original level will make pumping flood waters more difficult.
- No reference to previous permission/existing septic tank/decommissioning of existing septic tank/possible contamination.
- Percolation tests may be impacted by the existing septic tank and percolation area.
- Impact on privacy – proposed house and garage will face towards observer's property/large windows/frosted windows on first floor/planting will not overcome issue.

- Previous application requested that gable windows be removed and replaced with velux windows on roof.
- Design will erode rural character.
- Planning Authority had concerns previously in relation to a one and a half storey house.
- Contravenes CDP 13.3 – site is visually prominent and does not avail of existing topography/will not enhance social well-being or sustain economic activity.
- Will overshadow property/impact of lights due to difference in elevation.
- Drawings do not indicate the full extent of the slope of the site.
- CDP 8.22 – developments should not have an unacceptable impact on water resources.
- Have carried out a survey of the extent of flooding – sites including some of the appeal site are shown to have flooded.
- Report has incorrect flooding levels, context is not provided.
- High probability of flooding in the area/impact on property values/adjacent house has not been sold due to risk of flooding.
- Impact of climate change with more frequent floods in the area.
- Photographs and map included.

6.5. Further Responses

6.5.1. None.

7.0 Assessment

7.1. The following assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. The main planning issues in the assessment of the proposed development are as follows:

- Principle of the proposed development.
- Flood Risk

- Impact on residential amenity.
- Water Supply/Waste Water
- Other Issues
- Appropriate Assessment.
- Environmental Impact Assessment

7.2. Principle of Development

- 7.2.1. The Clare County Development Plan 2017-2023 outlines different policy response for different development types, which includes new single houses on infill sites in the countryside. CDP 3.13 defines an infill site as where there where there is a grouping of rural houses, the development of a small gap site, sufficient to accommodate only one house, within an otherwise substantial and continuously built-up frontage. While the appellant has queried whether this is in fact an infill site, I am satisfied that it meets the definition of same and therefore the provisions of CDP 3.13 apply in this instance.
- 7.2.2. CDP 3.13 states that development of single houses on such infill site will be permitted provided the development respects the existing development pattern along the frontage in terms of size, scale, siting, plot size and meets normal site suitability requirements. The policy goes on to state that dwellings constructed on infill sites of this nature must be for the permanent occupation of the applicant.
- 7.2.3. As such given the above, and given the previous permissions on this site for a dwelling house, and given the existing structure on site, I consider that the principle of a dwelling on this site is acceptable, subject to the considerations below.

7.3. Flood Risk

- 7.3.1. The National Planning Framework is clear on the issue of flooding and states that inappropriate development in areas at risk of flooding should be avoided and new developments that increase flood risk elsewhere, including that which may arise from surface run off, should also be avoided. National Policy Objective 57 states that *inter alia* inappropriate development in areas at risk of planning should be avoided in accordance with the 'The Planning System and Flood Risk Management Guidelines for Planning Authorities'.

- 7.3.2. The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) are also unambiguous in relation to flooding and also state that inappropriate development should be avoided. It is further stated that where flood risk may be an issue for any proposed development, a more detailed flood risk assessment should be carried out appropriate to the scale and nature of the development and the risks arising. The detailed Site-specific Flood Risk Assessment should quantify the risks and the effects of any necessary mitigation, together with the measures needed or proposed to manage residual risks.
- 7.3.3. Both the appellant and the observer on the appeal has raised the issue of flooding in the area, and have cited previous flooding events and have included photographs of same. It is stated that the issue of flooding has not been adequately considered in the application documents and that site works, including the change of levels and infilling of the site may increase the risk of surface water run off onto adjacent sites.
- 7.3.4. The planning authority, while noting that the site falls outside Flood Zones A and B, also cited the concerns of the appellant in relation to flooding, and requested further information on this matter.
- 7.3.5. Further information received by the planning authority on 28th June 2018 refers to flooding and flood risk, in a letter prepared by Environmental Planning Consultants. It appears that the extent and direction of previous flood waters were determined following a conversation with a neighbour (who is also the appellant). I find this most unsatisfactory and there no other sources of information referenced. From the submissions and photographs on file it is clear that there is an issue with flooding in the area, which appears to be localised. The submission on behalf of the applicant does not reference the source of the flooding nor any area specific factors that may increasing the flooding risk of this site or surrounding sites.
- 7.3.6. While the site falls outwith flood zones A and B, these flood zones are only indicative of river and coastal flooding only and do not suggest that the site is free from flood risk, as they do not include the effects of other forms of flooding, including pluvial and groundwater flooding.
- 7.3.7. The letter prepared by Environmental Planning Consultants notes that while the appeal site is not the source of previous flood waters to the appellant's or the observer's properties, a drainage ditch is proposed along the boundaries of the

appeal site, draining to a soakaway of a specified volume. However, there is no discussion of whether this volume will be sufficient to accommodate excess surface water in the event of a flood. I would have expected the application to have been accompanied by the Site Specific Flood Risk Assessment, that would consider *inter alia* sources of flooding, all known previous flood events, site specific factors exacerbating or otherwise flood risk as well as pathways of floodwaters, a consideration of receptors at risk, as well as a detailed analysis of any mitigation measures proposed. The finished floor level of the proposed dwelling house appears to be based on verbal communication with the appellant which is unsatisfactory and does not give sufficient comfort, having regard to flood risk. Furthermore, the appellant and observer have stated that the previous flooding extent was reduced by the operation of one or more water pumps running continuously over several days, so therefore the potential extent of the flooding was not, in fact, realised. There are also significant groundworks taking place on the site and there is little discussion on how this will impact on surface water run-off.

- 7.3.8. Therefore I am not satisfied, given the information on file, that the proposed dwelling house will not be at risk of flooding, nor am I satisfied that the proposal will not increase the risk of flooding of surrounding sites.

7.4. Impact on Residential Amenity

- 7.4.1. There are residential properties to the south-west (the appellant's property), to the north-east and to the north-west (the observer's property). The appellant and the observer have raised the issue of residential amenity and state that the proposal will result in overlooking and loss of privacy, will be visually overbearing, will result in overshadowing and will result in light pollution.
- 7.4.2. The proposal is to demolish the existing structure on site and to construct a one and a half storey residential property closer to the eastern boundary of the site, and a garage structure close to the south-western boundary of the site.
- 7.4.3. In relation to the impact on the appellant's property, the proposed dwelling house is located 36m at its closest point and faces towards the site elevation of the appellant's house. I do not consider that overlooking will be material and I do not consider that frosted windows are in fact necessary for the first floor master bedroom and bedroom 2, and these would reduce the internal amenity of the proposed

dwelling house. The observer's property to the north-west will not be overlooked by the proposed dwelling house. Given the orientation of the windows and the existing garage on the site of the residential property to the north-east, there will not be any material overlooking of this property.

- 7.4.4. In relation to visual amenity the proposed dwelling house is sufficiently set back from surrounding properties so as not to be visually overbearing. Similar considerations apply having regard to overshadowing, and I do not consider any material overshadowing of neighbouring sites will result. In relation to light pollution, while the lights of the proposed dwelling may well be seen from neighbouring properties, the impact of same will not be material, and there is other development in the vicinity which would result in similar impacts.

7.5. **Water Supply/Waste Water**

- 7.5.1. In relation to water supply, the application form states that supply is via the public mains. The planning report notes a mains water maker outside the site. The Water Services Section state there is no mains supply to this site. As such given the ambiguity that exists in relation to water supply, should the Board be minded to grant permission, a condition should be imposed that seeks to clarify/confirm water supply arrangements.

- 7.5.2. In relation to waste water, a Site Characterisation Form (SCF) was submitted with the application and I have had regard to same in my assessment.

- 7.5.3. The GSI Groundwater maps show that the site is located within an area with an Aquifer Category of Regionally Important (Rkc) with a vulnerability classification of 'High'. It is also within the Inner Protection Area for Drumcliff Springs.

- 7.5.4. This represents a GWPR response of R2⁴ under the EPA Code of Practice (COP).

- 7.5.5. According to the response matrix, on-site treatment systems are acceptable in such areas subject to normal good practice and the following conditions:

1. A secondary treatment system as described in Sections 8 and 9 of the COP is installed, with a minimum thickness of 0.3 m unsaturated soil/subsoil with P/T values from 3 to 75 (in addition to the polishing filter which should be a minimum depth of 0.9 m), beneath the invert of the polishing filter (i.e. 1.2 m in total for a soil polishing filter).

2. The authority should be satisfied that, on the evidence of the groundwater quality of the source and the number of existing houses, the accumulation of significant nitrate and/or microbiological contamination is unlikely.
3. No on-site treatment system should be located within 60 m of a public, group scheme or industrial water supply source.

7.5.6. The trial hole was excavated to a depth of 1.8m. The trial hole reported the presence of top soil to a depth of 0.4m with gravelly silt to bedrock at 1.8m.

7.5.7. Under Part C.2.3 of the EPA Code of Practice: Waste Water Treatment and Disposal Systems serving Single Houses (p.e. <10) (COP), there is a requirement that the standard 'T' test be carried out on all sites irrespective of a P Test. I note that based on the Trial Hole examination, the applicant states that a T value of 25 is likely. A T value of 30.86 was found on site. A T value of greater than or equal to 3 and less than or equal to 50, means that the site is suitable for the development of a secondary treatment system discharging to groundwater.

7.5.8. The planning authority raised concerns in relation to flood risk issues and requested the applicant to submit relevant cross sections showing the potential flood level of the site as it relates to the polishing filter, as there is required to be 1200mm of unsaturated material for treatment at all times. The applicant submitted these details by way of further information on 28th June 2018 and the planning authority was satisfied with same. The relevant site cross-section indicates that the existing ground level is to be raised by 850mm and indicates an invert pipe level of 13.93 OD Malin. This level appears to be based on an assumed flood extent having regard to conversation with the occupant of the neighbouring site. In the absence of a relevant site specific flood risk assessment, which should include a detailed analysis of past and potential future flooding extents, including taking into account climate change factors, I am not satisfied that this level is sufficient to ensure the required depth in the event of a flood. This is especially pertinent given the location of the site with the Inner Protection Zone for Drumcliff Springs, and the risk of contamination of same.

The EPA report on Ennis-Drumcliff water source notes the source is at risk of contaminants.¹

- 7.5.9. In conclusion, in the absence of a site specific flood risk assessment, including a detailed analysis of potential flood extents, I cannot be satisfied that the site is suitable for the wastewater treatment proposed and that no significant risk of ground or surface water pollution exists.

7.6. Other Issues

- 7.6.1. Design - The appellant's and observers have stated that the design and location on the site is inappropriate, and it will erode the rural character of the area and is suburban in appearance. I do not consider that the design and location are inappropriate for the site. The neighbouring site to the north-east has a layout similar to that proposed, with the house set back from the road, with orientation facing away from the road. The scale of the dwelling house is appropriate with the overall bulk and height minimised by the provision of accommodation at roof level.
- 7.6.2. Traffic - There is an existing site access and there sufficient sightlines from the access point. I do not consider the proposal would result in a traffic hazard.

7.7. Appropriate Assessment

- 7.7.1. No Appropriate Assessment (AA) screening report has been submitted with the application. The planning authority carried out an AA screening exercise and ruled out significant impacts on the Nutura 2000 network.
- 7.7.2. There are 22 no. Natura 2000 sites within 15km of the appeal site, the closest of which are Toonagh Estate SAC (site code 002247) located 0.7km south-west of the appeal site, Ballyallia Lake SAC (000014) and Ballyallia Lough SPA (site code 004041), both of which are located 2km south-east of the appeal site. With the exception of these three sites above, I am satisfied that the remainder can be 'screened out' on the basis that significant impacts on these European Sites could be ruled out on the basis of a lack of a source-pathway link to these European Sites and/or distance to the European Site.

¹ https://www.epa.ie/pubs/reports/water/ground/gwmpinfo/EPA_GWMP_Ennis%20-%20Drumcliff.pdf (accessed 23rd November 2018)

7.7.3. In relation to the three European noted above, these sites are selected for following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive.

Toonagh Estate SAC (002247)	Ballyallia Lake SAC (000014)	Ballyallia Lough SPA (004041)
1303 Lesser Horseshoe Bat (<i>Rhinolophus hipposideros</i>)]	3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation	A052 Teal (<i>Anas crecca</i>) A125 Coot (<i>Fulica atra</i>) A053 Mallard (<i>Anas platyrhynchos</i>) A050 Wigeon (<i>Anas penelope</i>) A156 Black-tailed Godwit (<i>Limosa limosa</i>) A056 Shoveler (<i>Anas clypeata</i>) A051 Gadwall (<i>Anas strepera</i>)

7.7.4. The appeal site is located 700m from the Toonagh Estate SAC and is within foraging range of the lesser horseshoe bat (2.5km), having regard to the information on the NPWS website in relation to the Toonagh Estate SAC. There is residential development in the vicinity of the appeal site which would have a similar impact to the proposed development, in terms of any light pollution or physical barriers. However, the existing structure on site and the existing vegetation on site may provide suitable roosting and foraging habitat for the lesser horseshoe bat. In the absence of any information in relation to the potential of the site for roosting and foraging opportunities, and applying the precautionary principle, I cannot be satisfied that significant impacts on the Toonagh Estate SAC can be ruled out.

7.7.5. The Ballygriffey River, located to c500m to the south-east at its closest point to the appeal site, could provide a potential pathway link to the Ballyallia Lake SAC and Ballyallia Lough SPA in the event of flooding of the site and the transfer of

contaminated waters to the Ballygriffey River. Therefore, I am not satisfied that impacts on the Ballyallia Lake SAC and the Ballyallia Lough SPA can be ruled out.

7.7.6. I note that the impact on European Sites is a **New Issue** and the Board may wish to seek to cross-circulate in relation to same.

7.7.7. In conclusion, on the basis of the information provided with the application and appeal, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Toonagh Estate SAC (site code 002247), Ballyallia Lake SAC (000014) and Ballyallia Lough SPA (site code 004041), in view of the sites' Conservation Objectives. In such circumstances, the Board is precluded from granting approval/permission.

7.8. **Environment Impact Assessment**

7.8.1. Having regard to the nature and scale of the proposed development, the construction of a single dwelling, and having regard to the separation distance 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.

8.0 **Recommendation**

8.1. I recommend permission be refused for the following reasons and considerations.

9.0 **Reasons and Considerations**

1. From the evidence on file, the proposed development is in an area which is deemed to be at risk of flooding. Having regard to the provisions of Objective 57 of the National Planning Framework, and having regard to guidance as set out in 'The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)', in relation to development proposals in areas at risk of flooding, it is considered that, in the absence of adequate information relating to the risk of flooding, analysis of such risk, and appropriate mitigating

measures to address any risk, the proposed development would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the lack of an adequate flood risk assessment, and having regard to the evidence on file relating to previous flooding events in the area, the Board is not satisfied that the site is suitable for the treatment and disposal of domestic foul effluent in accordance with the "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)", 2009 and subsequent clarifications issued by the Environmental Protection Agency, having regard to the potential contamination of flood waters resulting from an inundation of the site. The proposed development would, therefore, be prejudicial to public health.
3. Having regard to the lack of information on file in relation to the potential impact on the lesser horseshoe bat, and having regard to the potential of the contaminated floodwaters to enter the Ballygriffey Stream, and subsequently Ballyallia Lake, and on the basis of the information provided with the application and appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on have a significant effect on the Toonagh Estate SAC (site code 002247), Ballyallia Lake SAC (000014) and Ballyallia Lough SPA (site code 004041), in view of the sites' Conservation Objectives. In such circumstances, the Board is precluded from granting approval/permission.

Rónán O'Connor
Planning Inspector

23rd November 2018