



An
Bord
Pleanála

Inspector's Report ABP 302676-18

Development	Demolition of existing dwelling and construction of new dwelling and ancillary works.
Location	Gardenhill, Castleconnell, Co. Limerick.
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	18/447
Applicant	Martin Berkery
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Dermot Kilbane
Observer(s)	None
Date of Site Inspection	29/11/18
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site which has a stated area of 0.24 hectares, is in the townland of Gardenhill c. 2km to the south-east of Castleconnell and c.16km north-east of Limerick City centre. It is accessed from a cul-de-sac road serving a number of one off dwellings and agricultural lands.

The site which is rectangular in shape, has an existing vacant, single storey dwelling fronting onto the road in the south-eastern corner with the remainder of the roadside boundary delineated by an earthen bank and trees. The eastern, western and northern field boundaries are delineated by hedgerows. The site falls from west to east. The site is bounded by agricultural buildings to the north. There is a stone cottage on the opposite side of the road with the appellant's two storey dwelling on the opposite side of the road to the south-west. It is set back from the road behind high boundary walls.

2.0 Proposed Development

The application was lodged with the planning authority on the 10/05/18 with further plans and details received 09/08/18 following a request for further information dated 03/07/18.

The proposal entails the demolition of the existing dwelling on the site and construction of a 158 sq.m. two storey dwelling setback 19.8 metres from the roadside boundary. The location of a future domestic garage is delineated on the site layout plan. The entrance to the dwelling is to be in the south-western corner with 70 metre sightlines in either direction.

The dwelling is to be served by a septic tank and percolation area. As per the details provided in the site suitability test report no water was encountered in the trial hole with a T-value of 4.69 recorded.

The application is accompanied by details including a structural report and photographic record of the existing cottage. It is considered that the cost to structurally secure and upgrade the dwelling would be prohibitive.

By way of further information, it is stated that the agricultural buildings to the north were built without permission and breach the 100 metre setback requirement to the

long established dwelling (to be maintained so as to avail of the exempted development provisions).

The applicant has consent from the landowner to make the application.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 17 conditions including:

Condition 4: Revised plans omitting the 1st floor balcony

Condition 9: Retention of roadside boundary save for entrance to serve the dwelling.

Condition 17: Submission of site specific waste management plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report dated 03/07/18 refers to reports from the Conservation Officer and Environment Section. A request for further information on the dwelling to be demolished including structural engineer's report and photographic survey, details on sightlines and location of the dwelling relative to the agricultural buildings to the north recommended. The 2nd report dated 30/08/18 (countersigned) refers to the 2nd Conservation Report which notes the engineers report and considers that the replacement house is acceptable. The report from Roads Section is also noted. The Planner but does not concur with the setting back of the existing hedgerow line. The onus is on the applicant to ensure that adequate sight lines can be achieved from a played access point. It is considered the proposal to be in accordance with the County Development Plan specifically objective RS 05 pertaining to refurbishment/replacement of traditional rural dwellings. Objectives RS01 and IN09 are not relevant in the context of a proposed replacement dwelling. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

Environment Section has no objection subject to conditions

Environmental Services details requirements including a Refurbishment Demolition Asbestos Survey and Site Specific Waste Management Plan.

Note: The Conservation and Engineer's reports referred to in the Planner's report summarised above are not on file.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

An objection received by the planning authority is on file for the Board's information. The issues raised are comparable to those set out in 3rd appeal summarised in section 6 below.

4.0 Planning History

PL91.247302 (16/601)– outline permission refused in 2017 for a dwelling on a site to the north-east of the appeal site for two reasons relating to non-compliance with Rural Housing Guidelines and access onto a substandard road. The Direction also noted concerns as to suitability of the site for effluent disposal

5.0 Policy and Context

5.1. Limerick County Development Plan, 2010 (as extended)

Objective RS O5 which refers to refurbishment / replacement of traditional rural dwellings states that the retention and sympathetic refurbishment, with adaptation if necessary, of traditional dwellings in the countryside in sympathy with the character of the existing building will be encouraged in preference to their replacement.

Planning permission will generally only be granted for replacement of a dwelling where it is demonstrated that it is not reasonably capable of being made structurally sound or otherwise improved, where the building is not of architectural merit. In this

instance consideration will be given to the replacement of an existing dwelling with a new dwelling at the same location, subject to appropriate design, scale of building and normal planning considerations. Local rural housing need shall not apply in this instance.

Objective IN O9: Substandard roads

It is an objective of the Council to ensure that on roads that are substandard, either in terms of their width, (less than 3m), 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.

5.2. **Natural Heritage Designations**

None in the vicinity.

5.3. **Environmental Impact Assessment**

Having regard to the nature and scale of the proposed development 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 3rd Party appeal against the planning authority's notification of decision to grant permission can be summarised as follows:

- The site is within an area designated as being under strong urban influence. It is not clear whether the Rural Housing Guidelines were taken into account or applied. The proposal is contrary to national policy.

- The Board refused permission for a dwelling along the local road under ref. PL91.247302 on grounds of the substandard nature of the road. The current County Development Plan has an objective that proposals on substandard roads will only be considered in exceptional circumstances. Such exceptional circumstances do not apply in this instance to justify the proposal
- The road should not bear further increases in vehicular movements.
- The proposal is for a two storey dwelling rather than a storey and a half as described in the application and public notices. There are concerns that it will directly overlook his property particularly during winter months when foliage is limited. The design is unlike any other in the area

6.2. Applicant Response

The response can be summarised as follows:

- The proposal is for a replacement dwelling and therefore not bound by the Rural Housing Guidelines.
- There will be no increase in the volume of vehicular traffic. The Development Plan objective relating to substandard roads relates to new development on green field sites which would increase traffic flow.
- As per the Building Regulations Part 8 – Fire, the proposed dwelling is classified as storey and a half as the upper storey living area encroaches into the roof space.
- The replacement dwelling is approx. 6 feet higher than the dwelling to be replaced.
- The front of the appellant's dwelling is over 80 metres from the front of the proposed dwelling.
- The dwelling design complies with the Limerick County Development Plan Rural House Design Guide.
- The grant of permission requires the retention of the front boundary and further planting. This would further screen the dwelling from the appellant's view.

6.3. **Planning Authority Response**

None received.

6.4. **Further Responses**

The applicant's response to the 3rd party appeal was circulated for comment. The submission from the 3rd Party can be summarised as follows:

- The rural housing guidelines do not make a distinction between replacement and new dwellings. The assertion that it is not bound by the guidelines is not accepted.
- The proposal will result in new residents. The site has been vacant for a material period of time. There must inevitably be an increase in vehicular traffic. Objective INO9 (substandard roads) applies to all development. Development means the carrying out of any works on land not just new development on greenfield sites.

6.5. **Section 131 Notice to Prescribed Bodies**

Certain prescribed bodies were invited to make a submission on the appeal on the grounds that the proposal might impact on a house of architectural merit. No responses received.

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Principle of Development and Compliance with Development Plan Provisions
- Adequacy of Road and Access
- Amenities of Adjoining Property
- Other Issues

7.1. **Principle of Development and Compliance with Development Plan Provisions**

The proposal is seeking permission to demolish an existing single storey dwelling and to construct a new dwelling to replace it. In this context I consider that the

provisions of objective RS O5 which refers to refurbishment / replacement of traditional rural dwellings is relevant. The objective clearly favours refurbishment with a high bar set for proposals seeking replacement with evidence required that the dwelling cannot reasonably be made structurally sound or otherwise improved. The dwelling must also not be considered to be of architectural merit.

The dwelling is not a protected structure and is not included in the National Inventory of Architectural Heritage for County Limerick. Whilst of an attractive vernacular design I do not consider it to be of specific architectural merit.

The details submitted with the application were supplemented by way of further information to support the case that the dwelling cannot be refurbished including a condition report with photographic record. The dwelling was last occupied in 2002. It is concluded that the extent of damage to the structure due to damp penetration and long periods of neglect have deemed the dwelling to be beyond a state of economic repair.

On balance I consider that the applicant has provided sufficient detail to support the proposal for demolition rather than refurbishment in this instance and consider that due consideration can be given to its replacement subject to appropriate design and compliance with normal planning considerations.

The site is within an area designated as being under strong urban influence. Due to its relative proximity to Limerick City and pressures from urban generated housing demand this designation is considered reasonable. As noted in the relevant objective in circumstances where replacement of an existing dwelling is acceptable the applicant is not required to comply with the settlement location policy as set out in the County Development Plan or demonstrate local rural housing need. I note that the said Development Plan had due regard to the Rural Housing Guidelines in its preparation and references same therein. I consider the objective to be reasonable and do not consider that it is appropriate to apply the settlement location policy requirements of objective RS 01 in this instance.

7.2. Adequacy of Road and Access

As noted on day of inspection the road is narrow characterised by high ditches with mature hedging and trees with entrances to farmyards and houses providing places to pull in thereby allowing for two-way vehicular movements. The road serves

approx. 8 dwellings in addition to a number of farmyards. It is lightly trafficked with speeds noted to be low

I note the appellant's reference to development plan objective IN O9 which precludes development on substandard roads save in exceptional circumstances and to the Boards decision to refuse outline permission for a dwelling on a site to the north-east on this basis. However, I do not consider that the current case is comparable in that the earlier application entailed development a green field site and provision of a new access. I would concur with the agent for the applicant that the objective is properly aimed at new green field development rather than the current scenario whereby the site is already served by an access. The fact that the dwelling has not been occupied for a period does not negate this fact.

The proposal entails measures to improve this access arrangement to serve the new dwelling with 70 metre sightlines attainable in both directions. This is considered acceptable. I consider that the vehicular movements arising from the replacement of an existing dwelling can be accommodated along the road and would not give rise to concerns in terms of traffic hazard or obstruction.

7.3. Amenities of Adjoining Property

The new dwelling is to have a setback of in the region of 20 metres from the roadside boundary which is to be retained, save as to facilitate the improved access and is to be augmented with further planting. The appellant's dwelling is located c. 80 metres to the south-west with its boundary delineated by a high boundary wall. In view of the intervening distance and screening no issues of overlooking or loss or privacy would arise.

Dwellings in the vicinity do not exhibit any particular design ethos and are reflective of house designs prevalent in rural areas. A contemporary house design is proposed with a ridge height of 6.9 metres. I consider the design to be acceptable subject to the removal of the balcony feature in the southern elevation.

7.4. Other Issues

The appellant considers that the description of the proposed development as storey and a half in the application and public notices is inaccurate. In response the agent for the applicant contends that the description is accurate with reference to the Building Regulations - Part 8 Fire. Notwithstanding the latter I would concur with the

appellant that the proposed dwelling effectively presents as a two storey dwelling. However, I do not consider this to be a material concern and consider that the nature and extent of the development as given in the public notices is adequate. I also note that the appellant is cognisant of the house design as proposed and that the description as given in the public notice has not compromised his 3rd party rights.

As per the details provided in the site suitability test report no water was encountered in the trial hole with a T value of 4.69 recorded. The site is considered suitable for a septic tank and percolation area.

Appropriate Assessment

The Lower River Shannon SAC (site code 002165) is located approximately 800 metres to the south east of the appeal site and separated by the R503 regional road. The planning authority carried out a screening and concluded that that a stage 2 Appropriate Assessment would not be required.

Having regard to the nature and scale of the proposed development, the nature of the receiving environment and suitable soil conditions as evidenced by the outcome of the trial hole and percolation tests, and the distance to the nearest European Site, no appropriate assessment issues arise and I consider that the proposed development would not be likely to have a significant effect individually or in combination with other plans or project on a European site.

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to nature, scale and design of the proposed development and the provisions of the Limerick County Development for replacement of traditional rural dwellings as set out in objective RS O5 it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously impact on the amenities of the area or of property in the vicinity, would not result in a

risk of pollution, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 9th day of August, 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The existing front boundary hedge shall be retained except to the extent that its removal is necessary to provide for the entrance to the site.

Reason: In the interest of traffic safety and visual amenity.

3.
 - (a) The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.
 - (b) The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity.

4. The French doors and first floor balcony feature on the southern elevation of the proposed dwelling serving master bedroom shall be omitted and shall be replaced with a window opening. Revised plans with the necessary alterations shown thereon shall be submitted to the planning authority for written agreement prior to commencement of development.

Reason: In the interest of visual amenity.

5. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

6. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

Reason: In the interest of traffic safety and to prevent pollution.

7. The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.

Reason: In the interest of public health.

8. The site shall be landscaped, using only indigenous deciduous trees and hedging species in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include a double row of trees along all site boundaries.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Pauline Fitzpatrick
Senior Planning Inspector

January, 2019