



An
Bord
Pleanála

Inspector's Report ABP-303988-19

Development	House, garage and waste water treatment plant
Location	Knockbrack East, Lisnagry, County Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	18/883
Applicant(s)	Mary Hassett & Andrew Eacott
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Kathleen & Michael Kennedy
Observer(s)	None
Date of Site Inspection	20 th May, 2019
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The site of the proposed development is located in a rural area a short distance east of the M7 motorway and approximately 5km from Castletroy in Limerick. The site comprises the western section of a larger field that slopes towards the local road to the west onto which it has frontage and southwards towards the neighbouring residential property to the south-east, the appellants' property. There is an agricultural gate along the frontage onto the local road and the frontage is otherwise defined by hedgerow. A narrow laneway runs between the site and the appellant's property. This area, in close proximity to Limerick City, is one that is under significant pressure for one-off rural housing, evidenced by the extent of detached housing in the immediate vicinity of this site.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a two-storey house of contemporary design and a detached garage on a site stated to be 0.3 hectares in area. The development would have a gross floor area of 361 square metres. The house would be served by a mains water supply and by a private waste water treatment system.
- 2.2. Details submitted with the application included an architect's report and a site suitability test report. It was submitted that the applicants wish to return to Ireland after decades abroad in Australia, the Middle East and the US and wish their children to grow up in Ireland.
- 2.3. In response to the planning authority's further information request, additional details were submitted on family lands, local school attendance, omission of windows, surface water provisions, and on an existing right-of-way.

3.0 Planning Authority Decision

3.1. Decision

On 22nd February, 2019. Limerick City & County Council decided to grant permission for the proposed development subject to 16 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's first report refers to planning history in the area, provisions of the development plan, internal submissions made, and an objection received. A request for further information was recommended, seeking details on family lands, removal of windows overlooking adjoining property, surface water proposals, a site layout showing unimpeded sight lines, and a response addressing third party issues raised, inclusive of clarification on a right of way.

Following the receipt of further information, in a second report the Planner noted the responses to the further information request and the internal reports received. A grant of permission was recommended subject to conditions.

3.2.2. Other Technical Reports

The Planner's first report refers to a report received from the Roads Section seeking further information relating to surface water.

Following the receipt of further information, the following reports were received:

The Roads Technician referenced his original report and recommended that it should be conditioned that the area between the edge of the road and the proposed drain at the access slope back towards the site.

The Environment Services Engineer submitted two reports, the first seeking further information septic tank and percolation details and the second setting conditions to apply to any planning permission granted.

3.3. Third Party Observations

An objection to the proposal was received by the planning authority from Michael and Kathleen Kennedy. The grounds of the appeal reflect the main concerns raised.

4.0 Planning History

I note that an application for a two-storey house on this site under P.A. Ref. 16/263 was withdrawn.

5.0 Policy and Context

5.1. Limerick County Development Plan 2010-2016

Rural Settlement Policy

The Plan states that the Planning Authority will favour appropriate development within designated villages and settlements over urban generated rural housing. Policies include the following:

Policy RS P1

It is a policy of the Council to provide for the development of sustainable rural housing in the County in accordance with the 'Sustainable Rural Housing' guidelines issued by the Department of the Environment, Heritage and Local Government.

Policy RS P3

It is a policy of the Council to apply a presumption in favour of granting planning permissions to applicants for rural generated housing where the qualifying criteria set down in objectives RS O1 to RS O8 are met and where standards in relation to siting, design, drainage and traffic safety set down in the Plan are achieved.

The Plan states that the Council recognizes 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 applicants under this category:

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

A 'Local Rural Person' is defined as a person who is living or has lived in the local rural area for a minimum of 10 years prior to making the planning application. This includes returning emigrants seeking a permanent home in their local rural area.

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

An applicant who satisfies a '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 of the proposed development is located within an area designated a Rural Area under Strong Urban Influence.

Objectives include:

Objective RS O1: Single Houses in Area under Strong Urban Influence

It is an objective to recognise the individual housing needs of people intrinsic to the rural areas located within the areas defined as '*rural areas under strong urban influence*'. Such needs may be accommodated on lands within 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 under strong urban influence 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:

(a) the application is being made by a long term landowner or his/her son or daughter;

or

(b) the applicant is engaged in working the family farm and the house is for that persons own use; or

(c) the applicant is working in essential rural activities and for this reason needs to be accommodated near their place of work; or

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

5.2 **Appropriate Assessment**

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

5.3 **EIA Screening**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appellants reside in the residential property to the south of the appeal site. The grounds of the appeal may be synthesised as follows:

- The landowner has not accrued a right of way to his lands via the appellants' land. He has only a right of way to the land to the rear of the appellants' property and it does not extend to the lands behind the proposed site. No further development should be permitted unless it can retain access to the agricultural lands at the rear of the site within the site itself.
- The concerns relating to surface water runoff have been ignored. The most vulnerable location is the south-west corner of the site where it is proposed to locate the septic tank and percolation area. There has been no reference to

the steep gradient at this location. Is it not a concern that the applicants are proposing six soakaways, with a further six rain gullies to take water from the driveway? Calculations in the drainage report are outdated.

- The location of the first floor balcony will wipe out any privacy the appellants have at the rear of their house.
- It is noted that the planning authority is seeking a section 47 agreement with the landowner. This is not the first time this has been requested and it has always been overruled in the past. The landowner has previously stated he will require permission for a fifth site for a family member in the future. Three approvals on a single parcel of land is more than enough.
- While the house plan is wonderful, it should not be squashed into a corner site. The ground surface area required for the house is a massive 402 sqm, excluding the garage area, front patios, soakaways and septic tank system. There will be little left of the site unexcavated.

The appeal includes a solicitor's letter relating to the right of way.

6.2. Applicant Response

The applicants' response to the appeal may be summarised as follows:

- The applicant spent her formative years living in the area with her family. She is a returning emigrant who wishes to reside at the proposed location with her immediate family. The applicant readily complies with the requirements of the rural settlement policy of the County Development Plan and the appellants do not refute this.
- The planning authority considers the site to be an infill site.
- It is agreed that a right of way exists south of the site which provides access to lands to the rear of the appellants' house. The land behind the appeal site does not form part of the planning application and consideration of this is beyond the scope of the application. This issue is a civil matter and the Board should dismiss this issue.
- The appellants give no consideration to the positive impact the development will have in controlling surface water runoff from the site. They have provided

no scientific evidence in support of their arguments on this issue. Having considered the applicant's submissions on this issue, the planning authority decided to grant permission, which included Condition 3 on the proprietary treatment unit and Condition 13 on drainage at the entrance. There are two separate reports in the application that examine the suitability of ground conditions, a site suitability assessment and a soil infiltration test and soakway design report. Both confirm the suitability of the site to accommodate the development.

- The roof terrace on the first floor faces south-west and not directly south into the appellants' garden. Thus, no direct overlooking or invasion of privacy would occur. The terrace would be located some 37m from the nearest point of the appellants' house. The applicant responded to this issue in the further information by removing access to and usability of the flat roof as a terrace. Conditional removal of the balustrades and sliding door would ensure the roof would not be used as a terrace. Substantial changes were also made to window arrangements.
- The site is 0.3 hectares in area and the total internal floor area of the house is 361 square metres. The volume of the building has been elongated the length of the site, reducing visual impact from the road. The house follows the established building line. Separation distances with adjoining houses, along with the design rationale and justification, do not support the concept of a house squashed into a site. In relation to excavation, an excavation drawing is submitted and a cut and fill method is proposed, ensuring removal of excavated material will be minimal. All excavated material will be retained and used in landscaping.
- The appellants erroneously suggest that the landowner previously entered into and broke section 47 agreements. The landowner has no difficulty with Condition 10(b) of the planning authority's decision. The subject lands are not, and never were, sterilised from development.

6.3. Planning Authority Response

I have no record of any response to the appeal by the planning authority.

6.4. Further Responses

In response to the applicants' response, the appellants submitted:

- The right of way does not, and has not in the past, served lands at the rear of the appeal site. The only access to the agricultural lands to the rear of the site is through the site itself. There is no other access available. This is why it is such an important issue in the application. This will have significant legal repercussions if the development is permitted.
- Concerns relating to surface water drainage, overlooking, site suitability, and section 47 agreements are reiterated.

7.0 Assessment

7.1. Introduction

7.1.1 I consider that the principal planning issues requiring consideration in this assessment relate to rural housing need (a matter addressed by the applicant in the response to the planning appeal), the right-of-way, the scale of the proposed development, drainage impacts, impact on residential amenity, and traffic impact.

7.2. Rural Housing Need

7.2.1 This issue is one of the most important planning considerations relating to the proposed development in my opinion. The vast number of one-off housing in this area is environmentally unsustainable. This is a location that is in close proximity to Limerick City and it is very clear that the planning authority is struggling in this area to control the haphazard development that is urban-generated rural housing. The actual need to reside at this location must be paramount in deciding to allow a house in principle in this area.

7.2.2 The site of the proposed development is located in a rural area that is designated an Area under Strong Urban Influence in the Limerick County Development Plan. It is also so designated in "Map 1: Indicative Outline of NSS Rural House Types" in the *Sustainable Rural Housing Guidelines for Planning Authorities*. This is a rural location that is under severe pressure for one-off housing and it is succumbing to

such pressure with a proliferation of one-off houses being the outcome. It is essential, therefore, in the interest of protecting investment in public infrastructure to provide for the needs of urban-generated development and in the interest of protecting the amenity of this rural area, that further urban-generated housing and housing proposed by those with no true association with the land is avoided.

7.2.3 The above is supported in the recently published National Planning Framework. The Framework includes the following:

- * With reference to the development of rural areas, National Policy Objective 15 seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- * National Policy Objective 19 seeks to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, it is policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

7.2.4 From the above, it is evident, firstly, from an examination of this area, that it is an area under strong urban influence that is rapidly becoming subject to over-development, notably in terms of the linear pattern of development now moving to ribbon development, the dependence on private infrastructure to serve such developments, and the threats such developments pose in terms of pollution and traffic safety in this instance in particular. Secondly, it is very clear from the details provided in this application that the applicant has no demonstrable economic or social need to live in this rural area.

7.2.5 I note from the details provided in the application that the applicant, Mary Hassett, resided in the Ardvarna area with her family from 1973-1995. The family home and farm buildings and main holding in Ardvarna is on the other side of the village of Laught, some 2km to the south. The applicant is clearly not 'intrinsic' to this rural

area of Knockbrack East as is required by Objective RS 01 of the Limerick County Development Plan. I acknowledge that her father farms a couple of fields in the area in which the appeal site is located. She is a returning emigrant who is proposing to return with her own family to live on a plot in one of her father's fields in Knockbrack East. In the applicant's own submission to the planning authority, she wishes to return to Ireland after decades abroad in Australia, the Middle East and the US. She has at no time demonstrated any economic or social need to reside in this isolated rural area, remote from her parents' home. This proposed development is wholly misplaced in terms of the proper planning and sustainable development of an Area under Strong Urban Influence. Such development could not rationally be determined to constitute a rural-generated housing need. It is entirely contrary to the planning authority's rural housing provisions (Objective RS 01, which facilitates those with a genuine rural housing need), the *Sustainable Rural Housing Guidelines* and the *National Planning Framework*.

7.3 Right-of-Way

7.3.1 The applicant, in the response to the appeal, has effectively dismissed the right-of-way concerns of the appellants as a civil matter. It is my submission to the Board that the appellants' concerns can reasonably be viewed as legitimate planning concerns. It is clear that the plot which is the appeal site forms part of the access to the remainder of the field behind it and to the remaining land in the landowner's holding at this location. If the proposed house is developed it will land-lock all of the landowner's holding behind the appeal site, i.e. there will be no roadside frontage for the farm lands. Access to the farm land behind the appeal site would be wholly reliant on the right of way separating the appeal site from the appellants' property. In my opinion, this is a very relevant planning issue, demonstrating the adverse effects on the viability and functionality of agricultural lands arising from the proliferation of one-off urban-generated housing. This issue reiterates the concerns and impacts relating to the development of the nature proposed in this remote rural location, i.e. one lacking any rural generated need.

7.4 Site Suitability

7.4.1 The appellants' have raised concern about the scale of the proposed development, referencing it in terms of 'site suitability'. The proposed house would have a floor area of some 361 square metres. The development also includes a structure incorporating a double garage 38 square metres in area and a shed/storage room 25 square metres in area. The development would constitute a large house and garage, with a large footprint. It would be sited in a fenced plot that would be larger than the other plots in the immediate vicinity where one-off houses have been constructed. While large in both footprint and visual effect and placed between two existing houses, it is clear from the drawings submitted that it could be accommodated on this site such that adequate amenity space to the front and rear of the house would be maintained. The distance of more than 30 metres between the proposed house and the appellants' house and the existence of established hedgerow between the plots would ease the overbearing impacts of such a large, elongated structure on the appellants' property, in my opinion. While conflicting in design and character with the longer established vernacular structures in this area, the proposed house would be no more or less incongruous than the modern houses that prevail.

7.5 Drainage Impacts

7.5.1 I note the prevailing topography of the lands at this location, the elevated nature of the site over the public road and lands to the south, the drainage measures proposed, and the photographs submitted by the appellants demonstrating drainage issues at this location.

7.5.2 With regard to surface water drainage, I must first acknowledge the existence of established housing at this location and the provisions that are made to ensure runoff from the road is accommodated, while runoff from sites onto the road is managed. The applicants propose extensive surface water drainage measures for this site, which reflect the site's constraints relative to the house design being proposed. I have no doubt that an adequate surface water drainage system can be engineered for this site to address runoff from the development of a new house on this plot. There is no reason why the provision of a comprehensive surface water drainage system for this site would not indeed improve roadside drainage at this

location. Therefore, I am of the opinion that surface water drainage concerns do not merit a refusal of permission in this instance.

7.5.3 With regard to effluent disposal, one cannot readily dismiss pollution concerns, notwithstanding any site suitability assessment which renders the site suitable for the disposal of final effluent to ground. This is a location where ribbon development is clearly forming in a confined area and where each individual house is reliant on private on-site effluent treatment systems. The continued proliferation of such systems cannot be seen to be sustainable. The pollution threat posed by the intensification of the discharge of final effluent to ground reinforces the unsustainable nature of urban generated housing in this location and the need to avoid unnecessary housing development where there is no sustainable provision of services and infrastructure to serve the needs of such development.

7.6 Impact on Residential Amenity

7.6.1 The building line of the proposed house would follow that of the house to the north-west. It, therefore, would be substantially behind the building line of the appellants' house, by some 15 metres or more. The elongated layout of the proposed house, the siting of windows along the south-eastern gable of the house, and the provision of a flat grass sedum roof at first floor level along its south-east side understandably causes concerns for the appellants relating to impact on their amenity by way of overlooking. These concerns are compounded by the more elevated nature of the site over the appellants' property.

7.6.2 It is my submission that there would be a significant separation distance between the proposed house and the appellants' house of at least 31 metres and I also note that there is an established hedgerow between both plots. The proposal also seeks to develop the house by using cut and fill, thus reducing the finished floor level of the house on the site. Any further concerns relating to impact on residential amenity could be satisfactorily addressed by requiring compliance with appropriate conditions that would restrict uses at roof level. I note that the applicant, by way of further information, addressed a number of overlooking issues by making changes to fenestration.

7.6.3 Overall, I consider that the concerns relating to impact on established residential amenity could be satisfactorily addressed.

7.7 Traffic Impact

7.7.1 The issue of traffic safety has not arisen in the submissions to this appeal. However, it is a significant planning issue relating to the proposed development. The local road onto which the proposed development would access is extremely narrow and poorly aligned and it is evident that there are some roadside drainage concerns at this location. The planning authority's Roads Technician notes in his report that the local road, L5008 Local Secondary Road, is approximately 3.0m in width. This road cannot accommodate two-way vehicular traffic and yet further one-off housing without rural-generated housing *need* is being facilitated by the planning authority. The width deficiency, together with poor alignment and some drainage concerns, make development such as that proposed a potential traffic hazard, a hazard that should not be facilitated in the interest of proper planning of this rural area to protect road users who need to utilise the road. Notwithstanding the removal of hedgerows to attain sightlines, grading of any approach to the frontage due to the elevated nature of the site, construction of roadside drainage provisions, etc., the addition of further urban-generated housing with access onto this road will add to the potential traffic hazard that clearly exists where there is a substandard road network seeking to facilitate intensified traffic movements.

8.0 **Recommendation**

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

9.0 **Reasons and Considerations**

1. Having regard to the location of the site within an Area Under Strong Urban Influence as identified in the current Limerick County Development Plan and in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government (2005), and to National Policy Objective 19 of the National Planning Framework which

seeks to ensure that the provision of single housing in rural areas under urban influence are provided based upon demonstrable economic or social need to live in a rural area, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and does not comply with National Policy Objective 19. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, contravene the provisions of the Sustainable Rural Housing Guidelines and the National Planning Framework and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development would be located on a minor local road which is seriously substandard in width and alignment. The proposed development would, therefore, endanger public safety by reason of traffic hazard and obstruction of road users.

Kevin Moore
Senior Planning Inspector

27th May 2019