



An
Bord
Pleanála

Inspector's Report ABP-304051-19

Development	Two storey house, garage, effluent treatment system and new site access.
Location	Birdhill, County Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	18601304.
Applicant(s)	Seamus O'Regan and Aoife Ryan
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Seamus O'Regan and Aoife Ryan
Observer(s)	None
Date of Site Inspection	30 th May, 2019
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located c.1.5km to the south west of the centre of the village of Birdhill. The site has frontage onto the R445 which was formerly the national primary road and which connects Birdhill with Nenagh. The R445 is now part of the national secondary road network.
- 1.2. The site comprises part of a linear landholding on the western side of the R445 which is bounded to the east by the road, to the west by the railway line, to the north by existing developed areas in Birdhill.
- 1.3. The roadside boundary comprises a deep drain and a line of mature trees and hedgerow fronting the R445. Access to the wider landholding is available via an agricultural access to the located to the north of the site and there is no existing access point along the frontage of the appeal site and the R445. A 100km/hr speed limit applies at the location of the proposed entrance.
- 1.4. The site falls from west to east and is currently in agricultural use. The stated area of the site is 0.256 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a large two storey dwelling on the site with a floor area of 256 sq. metres. The footprint of the dwelling is proposed to be in an approximately central position on the site and a detached single storey garage structure is proposed to be provided close to the northern boundary.
- 2.2. Site access is proposed to be via a new entrance onto the R445 located close to the northern end of the road frontage and a significant extent of surfaced area to the east and north of the house is indicated for car parking and circulation.
- 2.3. The site is proposed to be serviced by an effluent treatment system to be located close to the north west corner of the site and a polishing filter located at the south west corner. Water supply to the development is proposed to be from the public water supply.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission for a single reason that can be summarised as follows:

- That Policies TI3 and SS5 of the North Tipperary County Development Plan state that it is policy to protect the carrying capacity of strategic roads and that it is policy that dwellings will only be permitted where the applicant is a farming landowner, their son or daughter and where an existing or shared access are used where practicable and a clear housing need is demonstrated. The Planning Authority consider that the applicants have failed to demonstrate compliance with Policies TI3 and SS5 of the plan and that the proposed development would materially contravene these policies and be contrary to the proper planning and development of the area.

It is noted that the wording of the reason for refusal makes reference to the material contravention of the development plan and that the provisions of s.37(2)(b) apply to the determination of this case.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer notes the location of the site and the relevant development plan policy including Policies SS4 (housing in the rural countryside), TI3 (strategic roads) and SS5 (housing on strategic roads). Noted that the applicants have not indicated any involvement in agriculture, that the overall holding indicated is c.2.1 ha in total and that primary applicant resides with his parent's c.8km from the site. Refusal of permission for a single reason consistent with the notification of decision which issued is recommended.

3.2.2. Other Technical Reports

None on file.

4.0 Planning History

There is no reference on the appeal file to planning history relating to the appeal site or to adjoining lands within the control of the first party.

5.0 Policy and Context

5.1. Development Plan

The applicable development plan is the *North Tipperary County Development Plan 2010-2016* (as amended). The text of the original plan has been significantly varied to take account of the merger of north and south Tipperary councils and to ensure consistent policies and objectives across the new administrative area. The life of the 2010-2016 plan has also been extended under s.11A of the Planning and Development Act, 2000 (as amended) pending the adoption of the regional spatial and economic strategy following which a new plan will be prepared.

There are a number of development plan policies that are of relevance to the assessment, the most significant of which are considered to be as follows.

Policy SS4 sets out the council policy for housing in the rural countryside and states that it is policy to facilitate dwellings for persons with an intrinsic link to the rural area, have a demonstrated housing need and who are seeking to provide a home for their own occupation. Applicants are required to demonstrate a need in accordance with one of the following:

- Category A – local rural person (lived within 10km of the site for a minimum and continuous 10 year period),

- Category B – persons with a functional need to reside in the rural area. In the case of a farmer this is defined as a person with a holding of greater than 20 ha.
- Category C – exceptional medical circumstances.

Policy T13 relates to the strategic road network (as identified in Figure 9.2 of the plan) and states that it is policy to avoid the creation of additional access points to these roads subject to a number of exemptions including the following

- (d) proposals for new rural houses to access onto a strategic road will only be permitted where compliance is demonstrated with Policy SS5 (housing on strategic regional roads) and SS6 (housing on national secondary routes).

Policy SS5 states that it is the policy of the council to protect the carrying capacity and safety of strategic roads and that the council will only facilitate a dwelling on strategic regional routes for persons who have a demonstrated housing need and seeking to provide a home for their own occupation. The following must be met to demonstrate housing need:

- (a) the applicant a farming landowner, or their son or daughter and existing or shared access are used where practicable,
- (b) the applicant has demonstrated to the satisfaction of the council that is no alternative site available away from the strategic route.

The full text of these policies is attached with this report.

5.2. Natural Heritage Designations

The site is not located in or close to any designated site. The closest designated site to the appeal site is the Lower River Shannon SAC (site code 002165) which is located c.1.75km from the appeal site at the closest point.

5.3. EIA Screening

Having regard to the single dwelling nature of the proposed development and the separation of the site from sensitive environmental receptors including European designated sites, 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 following is a summary of the main issues raised in the first party appeal:

- That the applicant's family farm 67.69 ha. on either side of the Tipperary and Limerick border. The O'Regan family own 16.12 ha. and have a further 51.57 ha. leased.
- That the only part of the holding that is suitable is the appeal site as other lands either have no frontage or are too wet.
- That the planning authority have not raised any issues with regard to design, site suitability, the entrance or the applicants housing need.
- That the only issue appears to be that the applicant's family only own 16.12 ha. when the minimum as per the plan policy is 20 ha.

6.2. Planning Authority Response

The planning authority have responded to state that Policy SS5 is applicable and that the applicant has not demonstrated that they are the son / daughter of a farming landowner of at least 20 ha. Lands rented for farming or other purposes are not considered as lands in 'ownership'.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of development and housing need.
- Design and visual impact,
- Site access and traffic safety,
- Site servicing
- Other issues
- Appropriate assessment

7.2. Principle of Development and Housing Need.

7.2.1. The site is located approximately 1km outside and to the south west of the plan boundary for the settlement of Birdhill as identified in the settlement plan volume of the North Tipperary County Development Plan, 2010-2016 as varied. The site is therefore located in a rural area outside of any identified settlement.

7.2.2. The council's rural housing policy (as varied) is set out at section 3.4 of the plan, and Policy SS4 states that it is policy to facilitate dwellings for persons with an intrinsic link to the rural area, have a demonstrated housing need and who are seeking to provide a home for their own occupation. Applicants are required to demonstrate that they are either Category A being a local rural person (lived within 10km of the site for a minimum and continuous 10 year period), or Category B – persons with a functional need to reside in the rural area. In the case of a farmer this is defined as a person with a holding of greater than 20 ha.

7.2.3. The appeal site is located such that it fronts onto what was previously the national primary road which, since the construction of the M7 Dublin to Limerick motorway, has been downgraded to a regional road. The road is however one of a number of strategic transport routes identified in Figure 9.2 of the development plan where different policies relating to housing are applicable. Specifically, in the case of proposals for new houses which access onto strategic regional routes, Policy SS5 of the plan is applicable. This policy states that applications will only be granted where

the applicant have a demonstrated housing need. This need is demonstrated by meeting the requirement of being a farming landowner or their son or daughter and where the applicant has demonstrated to the satisfaction of the council, that there is no alternative site available.

- 7.2.4. In the case of the first party, Aoife Ryan has submitted information in the form of secondary school record that indicates she went to school between 2003 and 2008 and the family home was located at Coole, Newport, County Tipperary. Information submitted indicates that Seamus O'Regan is from Ballinascourty, County Limerick. While the place of birth and secondary education of Aoife Ryan is within the 10km radius of the appeal site as required to be considered a local rural person under Policy SS4 of the plan, it is not clear from the information available either applicant currently resides. Information submitted with the appeal indicates that the occupations of the first party appellants are as a hairdresser and a carpenter and are not therefore engaged in agriculture, however Michael O'Regan, the father of one of the first party appellants, is stated to be a beef farmer.
- 7.2.5. In any event, the provisions of Policy SS4 are overridden in this case by the fact that access to the site is proposed to be from a strategic route. In the case of a strategic regional route, such as that which fronts the appeal site, the requirement of Policy SS5 is that the applicant is a '*farming landowner*' or their son or daughter and that the applicant has demonstrated that there is no alternative site available away from the strategic route. Policy TI3 states that it is the policy of the council to avoid the creation of additional access to strategic routes subject to a number of exemptions, one of which is compliance with Policy SS5.
- 7.2.6. On the issue of alternative sites, the first party appeal sets out how the other land in family ownership is either too wet or does not have adequate road frontage. Aerial photographs and photographs of a number of alternative sites which are under the ownership of the family of the first party (O'Regans) are enclosed with the first party appeal. The extent of these lands is such that it is not possible to be definitive that there are no alternative sites available within these lands, however having regard to the submission of the Teagasc advisor submitted with the appeal and given that the appeal site has been put forward as the only viable alternative location, it is proposed to assess the site proposed.

- 7.2.7. The requirement of Policy SS5 is that the applicant is a farming landowner to be considered on a site where access is proposed onto a designated strategic route. No definition of a farming landowner is provided in Policy SS5, however Policy SS4 relating to Housing in the Rural Countryside specifies that Category B applicants include a farmer which is defined as a landowner with a holding of greater than 20 ha. This figure is in my opinion a reasonable minimum level of permanent lands to have in ownership to indicate a viable farming enterprise.
- 7.2.8. In the case of the first party appellants the O'Regan family own a total of 16.12 ha. of land with a further 51.57 ha. leased. The interpretation made by the Planning Authority of what constitutes a farming landowner is that a minimum of 20 ha. needs to be owned rather than leased. I would agree with this interpretation on the basis that 20 ha. is the minimum amount that could be considered to constitute a viable agricultural business and lands that are leased are not an indication of long term involvement in farming. Given that the agricultural holding owned by the first party and their families is below the 20 ha. minimum set out in the development plan I would agree with the decision of the Planning Authority that the applicants have not demonstrated that they are a farming landowner, or their son or daughter, as required to where an access is proposed onto a designated strategic route and that the proposed development would therefore be contrary to Policy SS5 and Policy TI3 of the development plan.
- 7.2.9. It is noted that the Notification of Decision to Grant Permission issued by the Planning Authority makes reference to the fact that the proposed development is considered to materially contravene Policy TI3 and SS5 of the development plan. The provisions of s.37(2)(b) of the Act regarding the circumstances where the Board can grant permission are therefore applicable in this case. In the circumstances of the current case, the extent of lands that are in the ownership of the first party is clearly less than the specific requirement of 20 ha. specified in Policy SS4 of the development plan. In addition, the proposed development is not in my opinion of strategic or national importance, and there are not conflicting objectives in the development plan relating to development of the form which is the subject of this appeal. A case could be made that the proposed development should be granted having regard to the fact that the housing demand is rural generated and that under the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities,

2005 such demand should be facilitated. Against this however, in my opinion regard also has to be given to the fact that the access is onto a strategic regional route where there is justification for restricting development on traffic safety and road capacity grounds and to the fact that the overall land holding in the ownership of the applicants is limited. For these reasons, I do not consider it appropriate that the decision of the Planning Authority would be overturned on the basis of planning guidance, government or ministerial policy. Finally, I do not consider that there is any indication presented on file or evident from an inspection of the site that permission for a dwelling should be granted having regard to the pattern of development in the vicinity or permissions granted since the making of the current development plan. For these reasons, it is my opinion that the provisions of s.37(2)(b) have not been met in this case, and that it is not therefore open to the Board to overturn the decision of the Planning Authority.

7.3. Design and Visual Impact,

- 7.3.1. The design of dwelling comprises a large two storey dwelling with a stated floor area of 256 sq. metres. The design incorporates a symmetrical front elevation around a central projecting gable element and the overall height of the dwelling is indicated as 8.6 metres above ground level.
- 7.3.2. The submitted Site Plan indicates a fall of c. 1.3 metres across the site from back to front which I estimate from my inspection to be the minimum variation in level. The rising site together with the two storey design of the dwelling would result in a visible structure in the landscape, albeit one that would be significantly screened by the mature and relatively high roadside vegetation. In terms of visual amenity I would also have some concerns with regard to the extent of hard surfaced area proposed around the house and connecting to the proposed detached garage. No cross section is provided that indicates how this would be incorporated onto the sloping site.
- 7.3.3. Overall therefore I would have some concerns with regard to the scale and visual prominence of the proposed dwelling, however given that it was not a reason for refusal and would constitute a new issue in the determination of this appeal and the

substantive reasons for refusal as identified in sections 7.2 and 7.4 of this report, it is not proposed to pursue this issue further.

7.4. Site Access and Traffic Safety,

- 7.4.1. The appeal site is located with frontage of c. 40 metres onto the R.445 downgraded national primary road which is now a regional road. The site is located on a section where the general speed limit applies and, as per Table 10.1 of the development plan, the sight line requirement for regional roads is 160 metres in each direction. At the time of inspection traffic volumes on the road were observed to be high, as was the general traffic speed. The current site context is such that there are a very limited number of existing, predominately agricultural, accesses located on the section of the R445 south of Birdhill. These limited number of existing accesses include an agricultural access located c.100 metres to the north of the appeal site which provides access to the agricultural lands in this location of which the appeal site forms part.
- 7.4.2. The location of the proposed entrance and the straight nature of the R445 in the vicinity of the site is such that a sight line of 160 metres in each direction is available at the location of the proposed new access. This sightline can be achieved without the removal of a very significant extent of the roadside vegetation due to the set back of the roadside hedgerow by c.3 metres from the road edge. There is a double dashed line down the centre of the road in the vicinity of the proposed access and from an inspection of the site I consider that the visibility at the proposed access point is acceptable in principle. Notwithstanding this however I note the designation of the R445 in the vicinity of the site as a strategic route where it is the policy of the council to protect the carrying capacity of the road through the restricting of new access points or the upgrading or intensification of existing accesses with the aim of ensuring that the strategic function of these routes is maintained. As set out at 7.2 above, I do not consider that the nature and purpose of the proposed development is such as to justify an exemption of Policy TI3 regarding the restriction of accesses to strategic routes and that permission should be refused on this basis.

7.5. Site Servicing

- 7.5.1. The application is accompanied by a site suitability assessment that indicates a T test result of 38.8 and a P test result of 19.31. The trial hole results did not indicate any water or rock. At the time of inspection the trial holes were not open, however a visual inspection of the site does not indicate any particular features that would indicate poor percolation. The roadside drain dictates that the treatment system and polishing filter are sited at the rear (western) side of the site and upslope of the watercourse along the eastern boundary.
- 7.5.2. The system proposed to be installed on the site is a Tricel Novo package system and, on the basis of the test results submitted and observations on site, I consider that it is suitable for the on site treatment of effluent.

7.6. Other Issues

- 7.6.1. It is noted that the layout of the appeal site relative to the overall landholding indicated as being within the ownership or control of the first party is such that it would result in the effective severance of an additional area of land to the immediate south of the appeal site measuring c.0.3ha. This site would be bounded by the appeal site to the north, a field boundary separating the first party lands from other third party lands to the south and the railway line to the west and no independent access would be available to facilitate the continued agricultural use of this area.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the proposed development and its location relative to 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 either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. Policy SS5 (Housing on Strategic Regional Routes) of the North Tipperary County Development Plan 2010 (as varied) states that it is the policy of the council to protect the carrying capacity and ensure traffic safety on strategic routes as identified on Figure 9.2 of the Plan. Policies SS5 and TI3 state that proposals for new houses that access onto designated strategic routes will only be facilitated where the applicants have a demonstrated housing need, including being a farming landowner or their son or daughter. These policies are considered reasonable. Having regard to the designation of the R445 as a strategic regional route in the development plan, to the limited extent of agricultural lands in the ownership of the family of the applicants, which is below the 20 ha. minimum specified in Policy SS4 of the development plan as indicating a functional need related to farming to live in a rural area, and to the high traffic volumes and speeds evident on the R445 at the location of the proposed new access it is considered that the proposed development would be contrary to the requirements of Policies TI3 and SS5 of the North Tipperary County Development Plan, 2010 as varied, would result in a reduction in the carrying capacity of the R445 and would be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

16th July, 2019