



An
Bord
Pleanála

Inspector's Report

ABP-304226-19

Development

Construction of dwelling, demolition and reconstruction of boundary wall, widening of entrance, construction of a new access driveway, installation of a proprietary wastewater treatment system and all ancillary works.

Location

Derrycastle, Ballina, Co. Tipperary

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

19/60/0064

Applicant(s)

Nigel Kenny

Type of Application

Permission

Planning Authority Decision

Refuse permission

Type of Appeal

First Party

Appellant(s)

Nigel Kenny

Observer(s)

None

Date of Site Inspection

11th July 2019

Inspector

Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 20.961ha, is located approximately 3.0km to the north of the village of Ballina, Co. Tipperary. Access to the site is from a recessed entrance on the R494 Regional Road linking Ballina/Killaloe to the south, with Portroe and Nenagh to the northeast. The 80kph speed restriction applies in this area: there are no public footpaths in the area and there is no public lighting. There is a single, broken white line in the centre of the road at this location. Sight distance at the entrance is substandard in both directions – owing to the proximity of the high boundary wall to the edge of the carriageway – notwithstanding that the entrance has recently been recessed. There are a number of one-off houses on the opposite side of the R494 – so placed to take advantage of the fine views over Lough Derg. [I note that the site, as mapped by An Bord Pleanála on the GIS system, is not the same as that indicated on the maps submitted by Tipperary County Council].
- 1.2. The site comprises a number of grassed fields, which are divided by hedgerows/walls/fences. The site slopes downhill from the road towards Lough Derg – there being a fall of approximately 50m. There is an existing vehicular entrance to the wider site, which is to be reconfigured as part of the planning application. There is an hard-core access avenue, flanked by recently-planted deciduous trees, leading to a cluster of farm buildings and a sand arena, located centrally within the site. The location of the proposed house is adjacent to the southwestern boundary – addressing Lough Derg. The site slopes gently downhill towards the lake in this area. The ground was dry under foot on the date of site inspection. There is an old stone wall field boundary a little to the southeast to the proposed house site.
- 1.3. The site, as outlined in red, is divided into two portions – one indicated as being in the ownership of Nigel Kenny (the applicant), and a larger portion in the ownership of Annette Kenny (the applicant's mother). To the southeast, the site abuts the R494 – the boundary with which is a 2.5-3.0m high stone wall (part of the demesne enclosure of Derry Castle to the northeast). To the southwest, the site abuts the curtilage of a two-storey house of recent construction and some farmland – the boundary with within is a timber post & rail fence. To the northwest, the site abuts Lough Derg – the boundary with which is a belt of mature deciduous planting, which screens the lake from view when leaves are on the trees. To the north, the site abuts farmland and the access drive to a lakeshore house.

2.0 Proposed Development

2.1. Permission sought on 25th January 2019, for development as follows-

- Single-storey, split-level dwelling-house of 307m².
- Demolition and reconstruction of roadside boundary wall to the R494 (approximately 320 linear metres).
- Widening of existing agricultural entrance.
- New access driveway.
- Proprietary effluent treatment system.
- Water supply from a private well.
- Surface water disposal to soakpit.

2.2. The application is accompanied by the following documentation of note-

- Aerial photographs.
- Colour photographs of roadside boundary.
- Site Suitability Assessment (Flynn & Shaw) – dated 14th May 2018.
- Letter of consent to the making of the planning application from Annette Kenny (dated 17th January 2019).
- Aerial photograph of site for Department of Agriculture, Food and the Marine.
- Evidence of engagement in equine farming activity.
- Evidence of connection to electricity supply since May 2008.
- Evidence of completion of Diploma in Equine Science, by the applicant, at the University of Limerick in 2015.
- Details of caretaker's agreement for the applicant's current place of residence.

3.0 Planning Authority Decision

By Order dated 20th March 2019, Tipperary County Council issued a Notification of decision to refuse planning permission for 2 reasons, which can be summarised as follows-

1. Contravention of access policy to Regional Roads in the Co. Development Plan.
2. Site lies within a designated Primary Amenity Area.

4.0 Planning History

Ref. 18/60/0835: Application to construct a single-storey house on this site by Nigel Kenny, was withdrawn.

Ref. 11/51/0078: Permission granted on 7th June 2011, to Nigel Kenny, for construction of a recessed entrance on the R464. This development would appear to have been carried out.

Ref. 09/51/0334: Permission refused to Martin Kenny for construction of a house, new entrance and wastewater treatment plant (on that portion of the current appeal site, indicated as being within the ownership of the applicant's mother). On appeal by the 1st Party to An Bord Pleanála (**PL 22.235958**) permission was refused on 31st May 2010, for 3 reasons, as follows-

1. Having regard to the location of the site in a high amenity area, in proximity to the lakeshore, and between a regional road and the lake, which comprises a view of special amenity value and special interest, and also to the policies of the planning authority, in relation to housing, as set out in the North Tipperary County Development Plan, 2004 and the Western Area Local Area Plan, which seek to limit development to housing which is essential and which does not detract from the natural unspoilt landscape of the area, it is considered that, the proposed development would be visually intrusive, would seriously injure the visual amenities of the area, would interfere with the character of the landscape, would conflict with the policies of the development plan and local area plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The site is located in the high amenity area as set out in Policy HSG8(a) of the North Tipperary County Development Plan, 2004 where it is the policy to restrict further individual houses to certain categories of housing need. It is not considered that the applicant meets the criteria for an additional house at this location as set out in the Development Plan and the proposed development would, therefore, contravene the policies in the said plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the location of the site in close proximity to Lough Derg Shore which is a designated Special Protection Area which it is an objective of the Development Plan to conserve, the Board is not satisfied that the proposed development would not adversely affect certain habitats and species. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Ref. 08/51/0787: Permission refused to Martin Kenny for a single-storey house and wastewater treatment system – on a site of 2.6ha – utilising the existing agricultural entrance.

5.0 Policy Context

5.1. Development Plan

The relevant document is the North Tipperary County Council Development Plan 2010-2016 (as varied).

Figure 9.2 indicates that the R494 road forms part of the 'Strategic' Tipperary Road Network.

Policy T13: Strategic Road Network states-

It is the policy of the Council to avoid the creation of any additional access points from new development or the generation of increased traffic from existing accesses to Strategic Routes, subject to the following policy exceptions:

(a) New access to facilitate orderly urban development on Strategic Routes on appropriately zoned land on the approaches to or exit from, urban centres that are subject to a speed limit of 60 km before a lower 50 km limit is encountered may be permitted subject to road safety audit carried out in accordance with the TII's requirements and avoidance of a proliferation of such entrances.

(b) New access to lands adjoining Strategic Routes within 50 km speed limits may be considered in accordance with normal road safety, traffic management and urban design criteria for built up areas.

(c) New accesses to Strategic Routes may be permitted in exceptional circumstances, in the case of developments of national and regional strategic importance which by their nature are most appropriately located outside urban areas,

and where the locations concerned have specific characteristics that make them particularly suitable for the developments proposed.

(d) Proposals for new rural houses to access onto a Strategic Regional Road or a National Secondary Road will only be permitted where compliance is demonstrated with Policy SS5: Housing on Strategic Regional Roads and Policy SS6: Housing on National Secondary Roads.

(e) All development proposals shall demonstrate compliance with the development management standards set out in Chapter 10.

Policy SS4: Housing in the Rural Countryside states-

It is the policy of the Council to facilitate individual dwellings in the open countryside for person(s) who are intrinsic to the area, have a demonstrated housing need, and who are seeking to provide a home for their own occupation. A housing need should be demonstrated in accordance with any one of the categories set out below:

Category A: Local Rural Person

(i) A 'Local Rural Person' in the 'Open Countryside' is a person who has lived in the rural area within 10km of the proposed site for a minimum and continuous 10 year period.

(ii) A 'Local Rural Person' in a 'Primary Amenity Area' is a person who has lived in the primary amenity area (outside of designated centres, see below) and within 5km of the proposed site for a minimum and continuous 10 year period.

For the purposes of this policy 'Rural area' refers to the area outside of designated settlements with a population in excess of 1,500 people.

Or

Category B: Functional Need to Live in a Rural Area

Persons who can demonstrate a land-dependant need to be at the location of the farm and meeting either of the following criteria:

(i) A farmer of the land - defined as a landowner with a holding of >20ha, or

(ii) An owner and operator of an agricultural/horticultural/equine activity on an area less than 20 hectares where it is demonstrated to be of a viable commercial scale.

Or

Category C: Exceptional Medical Circumstances

Consideration will be given in very limited circumstances to an applicant demonstrating housing need on the basis of exceptional medical circumstance. Any planning application must be supported by documentation from a registered medical practitioner [sic] and disability organisation proving that a person requires to live in a particular environment and in a dwelling designed and built purposely to suit their medical needs.

Policy SS5: Housing on Strategic Regional Roads states-

It is the policy of the Council to protect the carrying capacity and traffic safety on Strategic Transport Routes (see Figure 3.4). The Council will only facilitate individual dwellings on regional roads designated as strategic, for person(s) who have a demonstrated housing need and who are seeking to provide a home for their own occupation. A housing need should be demonstrated in accordance with the following categories:

(a) The applicant is a farming landowner or their son or daughter and existing or shared accesses are used where practicable.

And

(b) The applicant has demonstrated, to the satisfaction of the Council, that there is no alternative site available to her/him away from the strategic transport route.

Figure 7.1 of the Plan indicates that the appeal site is located within a Primary Amenity Area.

Policy LH2: Protection of Visual Amenity and Character of Primary and Secondary Amenity Areas states-

It is the policy of the Council to ensure the protection of the visual amenity, landscape quality and character of designated Primary and Secondary Amenity Areas. Developments which would have an adverse material impact on the visual amenities of the area will not be permitted. New development shall have regard to the following:

a) Developments should avoid visually prominent locations and be designed to use existing topography to minimise adverse visual impact on the character of primary and secondary amenity areas.

b) Buildings and structures shall ensure that the development integrates with the landscape through careful use of scale, form, finishes and colour.

c) Existing landscape features, including trees, hedgerows and distinctive boundary treatment shall be protected and integrated into the design proposal.

d) Developments shall comply with the development standards set out in Chapter 10 and, as appropriate, the Rural Housing Design Guidelines contained in Appendix 5.

Appendix 4 of the Plan indicates that there is a Listed View from the R494 – V01 – “Views west and section of the road to the east of the R494 road from Ballina to Portroe”.

Policy LH3: Protection of Views of Scenic Value states-

It is the policy of the Council to protect and enhance views identified in Appendix 4 Listed Views in Tipperary, and views to and from lakelands and waterways. The Council will not permit development which would obstruct or have a significant adverse impact on these views.

5.2. Natural Heritage Designations

The site is not within any natural heritage designation, but immediately abuts the Lough Derg (Shannon) SPA (Site code 004058). The Lower River Shannon SAC (Site code 002165) is located some 4.75km downstream of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal from Stephen Dowds Associates, agent on behalf of the applicant, Nigel Kenny, received by An Bord Pleanála on 16th April 2019, can be summarised in bullet point format as follows-

- The site forms part of a property occupied by a stud farm – Derrycastle Stud.
- The National Planning Framework 2018, seeks to promote the development of “diverse rural places”. Rural housing is to be facilitated based on demonstrable economic or social need.

- The applicant owns and operates a stud farm at this property, along with his mother, Annette Kenny (the latter owns just a small part of the property). The property has an area of just over 20ha.
- The house is low-level – with a ridgeline height of 6.4m.
- The house will be a farmhouse for the applicant's own use. He is renting a house in the vicinity at present – but will have to give it up in 2022. This house is not urban-generated.
- Visual impact will be ameliorated by set back from the road – 260m; site is below the level of the road (26m); rebuilding of the roadside boundary wall; house will be screened from the lake; access will be shared with the existing farm.
- The proposal does not contribute to ribbon development.
- The applicant meets each of the requirements for a policy exemption under T13 of the Plan.
- The proposed development complies with the requirements of Policy SS5 of the Plan.
- The site has been subject to EPA site assessment, and is suitable for the disposal of domestic effluent.
- The house will blend in with the surrounding landscape.
- The PA previously granted planning permission for the improving of the entrance to this farm holding.
- The applicant would be satisfied if an enurement condition was attached to any grant of permission.
- The holding is a large one and is a viable high-value equine activity.
- The applicant has no alternative site available to him, which would not rely on access from the Regional Road. The development will utilise an existing agricultural entrance.
- The design of the house will not detract from the scenic landscape. The design of the house is in accordance with the Rural House Design Guide of the Council. There is no removal of hedgerow necessary to facilitate this

development. The boundary wall will be taken down and rebuilt on the set-back line. The house is set at a significant distance from the road – 260m, and is well below the level of the road. The house will not be visible from Lough Derg.

6.1.2. The appeal is accompanied by the following documentation of note-

- Letter from the applicant (dated 15th April 2019), outlining his interest, involvement, achievements and expertise in horse-breeding.
- Series of photographs and photomontages of the roadside boundary and lakeshore frontage.
- Annotated aerial photograph of the site.
- Structural Engineering Report (dated 12th April 2019) in relation to the roadside boundary wall – Dennany Reidy Associates.

6.2. **Planning Authority Response**

There is no response from Tipperary Co. Council to the grounds of appeal submitted.

6.3. **Observations**

None received.

7.0 **Assessment**

The principal issues of this appeal relate to road access policy within the Co. Development Plan, traffic safety, housing need, appropriate assessment, effluent disposal and visual amenity.

7.1. **Development Plan Policy**

7.1.1. Planning permission has been refused for a house on this site, on a number of occasions in the past, due to contravention of development plan policies. The current development plan for the area remains the North Tipperary County Development Plan 2010-2016 (as varied), pending the adoption of a new plan for the united authorities of Tipperary North and Tipperary South.

7.1.2. The first reason for refusal quoted by TCC, related to access from a Strategic Road – the R494 Regional Road. There is an existing agricultural access at this location – which is to be upgraded to function as an access to the farmland and the proposed house. Policy T13 refers to generation of increased traffic from existing access points on such a road – where the 80kph speed restriction applies. Additional turning movements will reduce the carrying capacity of the road. The proposed development does not comprise ‘exceptional circumstances’. It is stated that proposals for new rural houses to access onto a Strategic Regional Road will only be permitted where compliance is demonstrated with Policy SS5: Housing on Strategic Regional Roads. Policy SS5 provides for access to housing, where the applicant is a farming landowner and where there is no alternative access. The applicant states that there is no alternative access. I note that the site forms a part of what would once have been the demesne of Derry Castle. The principal entrance avenue to the castle traversed the current appeal site. An original gate lodge remains in place to the south – currently providing access for the gate lodge and to another newer house. It is not clear when this original access was severed.

7.1.3. Policy SS4 relates to housing in the countryside, and refers to housing need, where there is a land-dependent need to be at the location of the farm. This policy further refers to a landowner with a holding of >20ha. The current appeal site is stated to be 20.961ha. The applicant is not the landowner of the entire site. Drawings submitted with the application indicate that the applicant owns under 50% of the site – the remainder being in the ownership of his mother. Permission has previously been refused for a house on the portion of the site in the ownership of the applicant’s mother. The applicant’s mother has indicated that she has no objection to the making of the planning application by her son. However, this is not the same as being a landowner with a holding greater than 20ha. Housing need refers to an equine activity on less than 20ha, where it is demonstrated to be of a viable commercial scale. No evidence of commercial viability of the equine facility has been submitted. I note that the agricultural access from the road; the sheds; and the sand arena are located within the portion of land owned by the applicant’s mother. I would consider that the applicant has not demonstrated compliance with the housing need requirements within rural areas of the county.

7.1.4. The second reason for refusal related to the location of the site within a Primary Amenity Area: as indicated in Figure 7.1 of the Plan. This designation arises from

proximity to Lough Derg, the quantity of woodland and mature timber in the area, the rolling nature of the countryside and views available from the elevated R494 towards the lake below and to mountains beyond. Policy LH2 states- “It is the policy of the Council to ensure the protection of the visual amenity, landscape quality and character of designated Primary and Secondary Amenity Areas. Developments which would have an adverse material impact on the visual amenities of the area will not be permitted. New development shall have regard to the following:

- a) Developments should avoid visually prominent locations and be designed to use existing topography to minimise adverse visual impact on the character of primary and secondary amenity areas.
- b) Buildings and structures shall ensure that the development integrates with the landscape through careful use of scale, form, finishes and colour.
- c) Existing landscape features, including trees, hedgerows and distinctive boundary treatment shall be protected and integrated into the design proposal.
- d) Developments shall comply with the development standards set out in Chapter 10 and, as appropriate, the Rural Housing Design Guidelines contained in Appendix 5.

In the current instance, the site is not visually prominent – being located some 360m from the R494, and at a considerably lower level. It is, however, in an elevated position relative to Lough Derg, and may be visible in winter when lakeshore trees are without foliage. The house, at 307m², is a large one and, with a ridge-line height of 6.4m, will be partially visible from the road for those travelling in high vehicles. The demolition of approximately 320 linear metres of old estate wall would materially conflict with policy LH2 – notwithstanding that the applicant proposes to reconstruct the demolished wall along a set-back line. There are a number of mature and semi-mature trees immediately behind the wall which would have to be felled to facilitate the setting back of the wall, and the felling of which would detract from the visual amenity of the area. The location, age, and variety of these trees has not been indicated on the plans submitted. The loss of so much original demesne wall, and some trees would be detrimental to the visual amenities of the area. I note the submission of a report detailing the structural condition of this boundary wall. I further note that the wall extends along the R494 on either side of the appeal site –

forming an attractive feature along a considerable portion of the R494. The recent reconstruction of the agricultural entrance to this landholding, which includes stone wing walls, is clearly not of the standard of the original estate wall, and indicates the extreme difficulty in matching the stonemasons' craft of an earlier period.

- 7.1.5. Policy LH3 refers to protection of Scenic Views, and states- "It is the policy of the Council to protect and enhance views identified in Appendix 4 Listed Views in Tipperary, and views to and from lakelands and waterways. The Council will not permit development which would obstruct or have a significant adverse impact on these views". Appendix 4 indicates that there is a Listed View from the R494 – V01 – "*Views west and section of the road to the east of the R494 road from Ballina to Portroe*". The proposed house would be located between the R494 and the lake and so, would impact on the Listed View. Policy LH3 also refers to views to and from lakelands and waterways. The Shannon is an important waterway for tourism and amenity purposes. Whilst there is a belt of mature deciduous trees which would screen the house from view from Lough Derg – this would only be the case when there were leaves on the trees. No winter photographic analysis has been undertaken to assess the visual impact when there are no leaves on trees. Permission should be refused for this reason.

7.2. Design & Layout

The proposed house is located a small way from the farm buildings/sand arena on the site. This will involve the construction of approximately 200 linear metres of new, 6m wide driveway. The topography of the area requires that there will have to be some degree of cut & fill, to facilitate the construction of the house. The proposed house is 307m². I would see no objection to the design of the house, *per se*. I note that external finishes have not been indicated on the drawings submitted. The absence of such specification, makes the assessment of the visual impact of this dwelling on the landscape more difficult – particularly in relation to visual impact from Lough Derg.

7.3. Access

I have elsewhere in this report commented on the access proposals for this site – particularly the necessity of removing 320 linear metres of old demesne wall, in order

to improve the sight distance at the existing entrance. I note that the gradient on the current recessed agricultural entrance makes the turning manoeuvre for vehicles exiting the landholding onto the R494 more difficult – this coupled with restricted sight visibility.

7.4. Water

7.4.1. Water Supply

The application indicates that water supply is to be from an existing well on the site.

7.4.2. Foul Effluent

The application was accompanied by a Site Suitability Report. Arising from the proximity of Lough Derg, it is proposed to install a proprietary effluent treatment system, with effluent pumped uphill to a polishing filter – located approximately 200m from the lakeshore. The house itself interposes between the polishing filter and the lakeshore. There are no streams in this area. I would be satisfied that the separation distance is sufficient to ensure that there would be no impact on the water quality of the lake. I note that the site was dry underfoot on the date of site inspection, with no evidence of waterlogging on any part of it.

7.4.3. Surface Water

Surface water is to be discharged to two soakways just downhill of the house. I would see no difficulty with this arrangement.

7.4.4. Flooding

The site is a sloping one – down towards the lake. There is no likelihood of flooding at this location. The proposed development will not result in any flooding issues.

7.5. Appropriate Assessment

The site immediately abuts the Lough Derg (Shannon) SPA. The house will be located approximately 100m from the lakeshore – separated from it by a mature belt of deciduous planting. The application was not accompanied by an Appropriate Assessment Screening Report. I note that TCC undertook screening of the application; and concluded that it would not have a negative impact on the SPA (Site code 004058). A lakeshore and adjacent woodland bird survey should have accompanied this application, in order to assess any impact on the SPA. In refusing

permission for a house on another part of the site (where the house was located roughly the same distance from the lakeshore), the Board referred to the potential impact on the adjacent SPA – an impact which had not been properly assessed. I would consider that the same considerations would apply in this instance.

7.6. Other Issues

7.6.1. Development Contribution

As permission was refused for this development, there is no indication of the development contribution which would be required of the developer. If the Board is minded to grant permission, then an appropriate condition should be attached, requiring payment of a development contribution, in accordance with the Development Contribution Scheme in force for the county.

7.6.2. Environmental Impact

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, 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 stage, and a screening determination is not required.

7.6.3. Archaeology

There is no reference made to any archaeological appraisal of the site. There are no recorded monuments in the immediate vicinity. However, having regard to proximity to the lakeshore and the extent of excavation required, an archaeological monitoring condition should be attached, if the Board is minded to grant permission.

7.6.4. Occupancy Condition

The 1st Party appeal indicates that the applicant would have no objection to the attaching of an enurement condition. If the Board is minded to grant permission, it would be appropriate to attach an occupancy clause.

7.6.5. Built Heritage

I have elsewhere in this report commented on the detrimental impact the development would have on an extensive length of old demesne boundary wall. Old maps for the area indicate a limekiln beside the farm buildings on this site. The proposed development will not have any impact on the limekiln.

8.0 Recommendation

I recommend that permission be refused for the Reasons and Considerations set out below.

9.0 Reasons and Considerations

1. Having regard to the necessity to take access to the site from the Strategic Road Network of the County, as set out at Policy T13 of the North Tipperary County Development Plan 2010-2016 (as varied), which seeks to limit development to housing which is essential; it is considered that, the proposed development would reduce the carrying capacity of the R494 Regional Road and would not meet with the requirements of rural housing policy SS5 of the plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site is located in a Primary Amenity Area, as set out in Figure 7.1 and Policy LH2 of the North Tipperary County Development Plan, 2010-2016 (as varied). Having regard to the location of the site in proximity to the lakeshore, and between a regional road and the lake, which comprises a Listed View (V01), the proposed demolition and reconstruction of 320m of old demesne stone boundary wall, and to the absence of any consideration to the impact of the development when viewed from the lake (when screening deciduous trees were stripped of foliage), it is considered that, the proposed development would be visually intrusive, would seriously injure the visual amenities of the area, would interfere with the character of the landscape, would conflict with the policies of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. It is not considered that the applicant demonstrably meets the criteria for a house at this location, as set out at Policy SS4 of the North Tipperary Development Plan 2010-2016 (as varied); as the applicant would not appear to come within Category A, B or C of the policy. It is not considered that the applicant can be classified as a landowner of more than 20ha – given that the details submitted with the planning application indicate that the landowner owns less than half of that amount at this location. The proposed development would, therefore, contravene the policy of the said plan and

would be contrary to the proper planning and sustainable development of the area.

4. Having regard to the location of the site in close proximity to Lough Derg, which is a designated Special Protection Area, which it is an objective of the Development Plan to conserve, the Board is not satisfied that, in the absence of any information in relation to bird species which form the conservation interests of the SPA, that the proposed development would not have an adverse impact on the SPA. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**Michael Dillon,
Planning Inspectorate.**

23rd July 2019.