



An  
Bord  
Pleanála

## Inspector's Report

**ABP-304267-19**

---

<b>Development</b>	Construction of an entrance, house, and domestic garage.
<b>Location</b>	Bushypark , Ennis , Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	18636
<b>Applicant(s)</b>	Tadhg O Regan.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Tadhg O Regan.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	27 <sup>th</sup> June 2019.
<b>Inspector</b>	Bríd Maxwell

## **1.0 Site Location and Description**

1.1. The appeal site which has a stated area of 0.289 is located within the rural townland of Bushypark, approximately 4 kilometres to the west of Ennis Town Centre and within 1.2m of the built-up area of the town. The site is undulating with visible limestone outcrops and levels fall generally eastwards to the rear of the site and beyond with extensive long-distance views to the east. Contour details submitted indicate a fall in the region of 12m from the southwestern corner of site frontage to the north-eastern rear corner of the site. The front roadside boundary is defined by a stone wall and hedge with an agricultural gated entrance. The site is accessed from a narrow largely single carriageway local road characterised by poor vertical and horizontal alignment. Whilst the area is rural in nature the considerable pressure for urban generated housing development is clearly in evidence with extensive one-off housing development.

## **2.0 Proposed Development**

2.1. The application as set out in public notices involves permission to construct and entrance, dwellinghouse, domestic garage, advanced waste water treatment system with polishing filter and all ancillary site development works and services. The initial proposal was for a two-storey double gable fronted dwellinghouse of 250.92m<sup>2</sup> and a single storey domestic garage 40m<sup>2</sup>. During the course of the application to the Council the house design was revised to a storey and half type structure with a reduced floor area 239.81m<sup>2</sup> and reduced ridge height 7.6m. The proposed dwelling is to be set back circa 24m from the front roadside boundary at a finished floor level of 81.228m relative to spot level on road front of 86.4m. The proposed dwelling is to be served by way of an effluent treatment plant and polishing filter located to the rear east of the dwelling.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1 Following extension of the time relevant time for consideration of the planning application as requested by the first party Clare County Council issued notification of its decision to refuse permission for the following reason:

*“The subject site is located in the countryside within the ‘Areas of Special Control’ and identified as being an area under ‘Strong Urban Pressure’, where it is an objective of the Clare County Development Plan to permit a new single house for the permanent occupation of an applicant subject to demonstrating compliance with criteria of a ‘local rural person’ with a ‘local rural housing need.’ The Planning Authority is not satisfied that the applicant complies with the criteria as set out under Objective 3.11 of the Plan and has not demonstrated a ‘Rural Housing Need’ to reside at this location. Accordingly, the proposed development would materially contravene Objective 3.11 ‘New Single Houses in the Countryside within Areas of Special Control’ and would conflict with the provisions of the ‘Sustainable Rural Housing Guidelines for Planning Authorities’ published by the Department of the Environment, Heritage and Local Government in April, 2005. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

3.2.1.1 Initial planner’s report questions the housing family history of permission for houses within the zoned area of Ennis (17/704). The proposed dwelling would be visually obtrusive and concerns with regard to potential adverse impact on public health. Refusal was recommended on grounds of non-compliance with rural housing policy, negative visual impact and impact on public health impact given location within the Drumcliffe Source Protection Zone and lack of detail with regard to depth of suitable soil for treatment and disposal of waste water.

3.2.1.2 Following extension of the appropriate period for determination of the application, instigated by request of the first party, and submission of revised plans and further information the final planner’s report recommended refusal on grounds of rural housing policy only deeming that other issues relating to visual impact and public health had been addressed.

#### **3.2.2. Other Technical Reports**

3.2.2.1 Environment Department report expresses concerns as bedrock was encountered at 160-mm below ground level however the site is in the inner source protection from

Drumcliff Springs and has a vulnerability response of R3.2 at least 1,800mm of suitable material beneath the percolation trench is required. The site has a slope but the generic cross section does not show this.

### 3.3. **Prescribed Bodies**

3.3.1 No submissions.

### 3.4. **Third Party Observations**

3.4.1 Representations by Cllr James Breen.

3.4.2 Representations by Cllr Paul Murphy.

## 4.0 **Planning History**

**06/862** Application by Garrech & Justine McGuinness on a larger site which included the current appeal site. Permission was refused for the construction of dwelling, private garage, proprietary waste water treatment system percolation area and new boundary wall with entrance to public road. Reasons for refusal were based on design, and non-compliance with rural housing policy.

**245388 15/157** Application by the current applicant within the townland of Rahtcraggaun approximately 1km to the southwest of the current appeal site. Permission for dwelling garage proprietary waste water treatment system was overturned on appeal. Grounds of refusal on basis of rural housing policy, visual impact, traffic hazard and prejudice to public health.

**17/407** Outline permission granted 3 January 2018 to Declan and Catherine O Regan for 4 houses at Kilncally, Shanaway road.

## 5.0 **Policy Context**

### 5.1. **National Planning Frameworks. National Policy Objective 19.**

*“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, 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;”*

## **5.2. Development Plan**

5.2.1 The Clare County Development Plan 2017-2023 (as varied) refers. The site is located within an Area Under Strong Urban Pressure.

5.2.2 CDP 3.11 New Single houses in the Countryside within ‘Areas of Special Control’ refers. In areas of special control applicant is to be assessed based on either category A, B or C. Category A - local rural person: a local rural person, in a local rural area, with a local rural housing need. Category B - persons working full time or part-time in rural areas. Category C exceptional health and/or family circumstances (exceptional health circumstances or applicant requires to reside near elderly parents or where elderly local farmers have no children)

## **5.3 Clare Rural House Design Guide 2005**

## **5.4 Natural Heritage Designations**

5.4.1 The site is not within a Natura 2000 site. The nearest such site Pouladatig Cave SAC (Site Code 000037) circa 2km to the south east of the site.

The Lower River Shannon SAC (Site Code 002165) is located circa 3.3km to the east of the site.

## **5.5 EIA Screening**

5.5.1 Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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 The Appeal**

### **6.1 Grounds of Appeal**

6.1.1 The grounds of Appeal are submitted by HRA Planning on behalf of the first party.

- Proposed development is in accordance with the provisions of the County Development Plan and specifically objective 3.11 “New Single Houses in the Countryside with areas of Special Control.”
- Decision is flawed as planner’s recommendation dismissed the material considerations and was unduly influenced by matters beyond the provisions of the development plan in referring to planning history on family lands.
- Applicant is ‘A local rural person’ seeking permission in ‘A local rural area’. Policy Objective CDP3.11 presents an express presumption in favour of granting single dwellings within special control areas where the applicant seeking permission meets the qualifying criteria of Category A.
- Applicant was born in 1982, has since then lived at his parent’s home at Shanaway Road Ennis. While the family home is now situated on zoned land it was outside the settlement boundary of Ennis up until the adoption of the Ennis and Environs Development Plan 2003.
- In relation to Board’s previous decision, PL03.245388, the Inspector’s report at 1.6 noted need for more information to clarify local rural housing need.

### **6.2 Planning Authority Response**

6.2.1 The Planning Authority response asserts that it is entirely appropriate for the Planning Authority in its determination of this application to take account of zoned lands within the settlement of Ennis owned by the applicant’s family. Decision is based on provisions of Chapter 2 Core Strategy and Chapter 3 Urban and Rural Settlement Strategy.

## 7 Assessment

7.1 From my review of the file, all relevant documents, an inspection of the site and its environs, I consider that the main planning issues for consideration in the Board's de novo assessment of the appeal may be considered under the following broad heading:

- Settlement Strategy – Planning Policy
- Visual Impact and Impact on the amenities of the area
- Servicing, Wastewater Treatment & Traffic
- Appropriate Assessment

### 7.2 Settlement Strategy – Planning Policy

7.2.1 The rural housing policy is set out within Chapter 3 Urban and Rural Settlement Strategy of the Clare County Development Plan 2017-2023. Objective CDP3.11 is the relevant objective in relation to “New Single Houses in the Countryside within areas of special control. Within the Development Plan it is the Council’s policy to facilitate the rural generated housing requirements of the local rural community whilst also directing urban generated rural housing to areas zoned for new housing development in the city, towns and villages. CDP3.11 provides that permission for a new single house for the permanent occupation of an applicant who falls within one of the Categories A, B or C and meets the necessary criteria. Category A relates refers to a “local rural person” where the site is within their ‘local rural area’ and the applicant must have a ‘local rural housing need’. Category B relates to persons working full time or part time in rural areas and category C exceptional health and/or family circumstances. In terms of definitions “*A Local Rural Person(applicant) is a person who was born within the local rural area, or who is living or has lived permanently in the local rural area for a substantial period of their life at any stage(s) prior to making the planning application. It therefore includes returning emigrants seeking a permanent home in their local rural area who meet this definition. It also*

*includes persons who were born or lived in a rural area for substantial periods of their lives but that area is now within a settlement boundary / zoned land.”*

7.2.2 The applicant has since birth 1982 (apart from period living in Australia) lived in the family home at Shanaway Road, Ennis which is approximately 2km distant from the appeal site. Whilst Shanaway Road is now within the urban area a map extract from the Ennis UDC Development Plan 1991, submitted with the appeal, shows it to be outside the zoned settlement boundary. The grounds of appeal assert that it would have been termed rural up until the adoption of the Ennis and Environs Development Plan 2003.

7.2.3 I note that “Local Rural Housing Need” is defined within the development plan as “*a person who does not or has not ever owned a house in the surrounding rural area (except in exceptional circumstances) and has the need for a dwelling for their own permanent occupation.*” I note that within the application form the applicant in response to the question “*Have you or your spouse /partner ever owned an house / apartment?*” replies in the affirmative giving limited detail as follows “*Investment property owned in partnership with the applicant’s sister*”.

7.2.3 Application details outline that the applicant has a background in the equine industry and currently runs a part time equine hobby/business in partnership with his father on Shanaway Road. It is intended to relocate this equine hobby/business to the landholding at Bushypark, a 7.5acre landholding of which the appeal site forms part. The applicant envisages that the necessary stabling and storage structures will be exempt under planning regulations and details of intended location and layout are not provided as part of the current appeal. I consider that if a local rural housing need is to be accepted based on the applicant’s intentions in the equine business, the plans with regard to stabling and other agricultural structures should form part of these considerations in the interest of proper planning and sustainable development.

7.2.4 I note that the local planner questioned the need to reside at this location on the basis that planning permission 17/407 could meet the first party housing need. This decision was outline Permission granted to Declan and Catherine O Regan (the applicant’s parents) for 4 dwellinghouses, garages and ancillary site works at Kilkacalla Shanaway Road, adjacent to the current stables and close to the family home. I note that within unsolicited additional information submitted by the applicant (Correspondence received by Clare County Council on 15<sup>th</sup> February 2019) following extension of duration of the appropriate period for consideration of the application indicates “ *The Planning*



*Permission”(P17407) “was applied for to provide a housing need for my siblings. A condition of the grant of planning permission was that the 4 houses must be connected to the sewage network located at Woodstock on Shanaway Road. However due to the high cost of providing sewage infrastructure to service the sites is it not economically possible for my siblings to construct houses on this site. And as a result, the lands are being sold to facilitate alternative housing needs for my siblings. The land on Shanaway Road is currently for sale with Paddy Browne & Co Real Estate Agents. The cost of providing sewage and water infrastructure to this site will be approximately €200,000.”*

7.2.5 I note that within the grounds of appeal the agent for the first party questions the validity of the decision of the Planning Authority on the basis of the Planner having had regard to this planning history on the family lands. I consider that it is entirely reasonable to have consideration to this planning history given the nature of the policy on ‘local housing need’. The planning history on the family lands is an element of the holistic consideration required to determine ‘genuine local housing need’. It is interesting to consider that if the applicant’s siblings will not avail of the outline permission P17407, it may be the case that these other family members may also consider themselves eligible for consideration for a one-off house in the local rural area. However, such a scenario is beyond the immediate consideration of the current case and it is assumed that all family members are not similarly involved in the equine business. Thus, it is appropriate to consider the current appeal case on its own merit. On the basis of the documentation submitted that the applicant I conclude that the applicant would qualify under the broad category of Local Rural Person as set out in Category A in the terms set out in the Clare County Development Plan 2017-2023. However, as set out at 3.2.6 Site Suitability of the County Development Plan policy considerations qualification to apply for a rural house in an area under urban influence “represents only one element in the assessment of an application for dwelling(s) in the countryside. Other considerations relating to siting, design, environment, heritage, amenity and traffic considerations are also of paramount importance in the consideration of any development.”

### **7.3 Visual Impact and Impact on the Amenities of the Area.**

7.3.1 The site is located within the Low Drumlin Farmland landscape as set out within the Landscape Character Assessment for the County and within the Western Corridor Working Landscape. It is an objective of the Development Plan CDP13.3B “That selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design are directed towards minimising

visual impact.” I note the elevated nature of the appeal site relative to lands to the east and consider that the proposed dwelling by reason of its siting and design would represent a prominent feature in the landscape which would seriously injure the visual amenities of the area and set an undesirable precedent for similar such proposals. Given the topography, the site affords extensive views to the east and the proposed dwelling would be unduly visible and prominent. The proposal involves extensive cut and fill to facilitate the construction which I consider would render the proposal to be visually obtrusive and detrimental to the rural amenities of the area. I also note that the chosen location within the landholding represents the more elevated prominent position and I consider that refusal is warranted on grounds of negative visual impact. I note the applicants stated intention to provide stabling /agricultural structures on the landholding and consider that the cumulative visual impact of same should be considered in the interest of proper planning and sustainable development.

#### **7.4 Servicing - Wastewater Treatment and Traffic**

7.4.1 I note that the submitted site suitability assessment indicates that the trial hole excavated to 1.6m below ground level at which point bedrock was encountered. Soil profile is noted to comprise granular topsoil leading at .2m to sandy silt with boulders. A T value of 11.19 was recorded. I note that it is proposed to provide a treatment unit incorporating a raised soil polishing filter not the site. Based on the details provided it appears that it is technically feasible to provide for wastewater treatment on the site in accordance with EPA Wastewater Manual standards.

7.4.2 As regards traffic safety the site abuts a narrow minor local road and whilst the achievement of sufficient sightlines is feasible it will involve the set back of much of the existing front boundary which would be detrimental to rural amenity.

#### **7.5 Appropriate Assessment**

7.5.1 Having regard to the nature and scale of the proposed development and nature of the receiving environment no Appropriate Assessment issues arise and it is not

considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site.

## **8 Recommendation**

Having considered the file and all submissions and having visited the site, I recommend that permission be refused for the following reasons and considerations.

## **9 Reasons and Considerations**

It is an objective of Clare County Council CDP 13.3B that selection of appropriate sites in the first instance within the Western Corridor Working Landscape, together with consideration of the details of siting and design are directed towards minimising visual impact. The proposed development by reason of its elevated siting, layout and design would result in a visually prominent and obtrusive development, which would adversely affect the character of the area and seriously injure the rural and visual amenities of the area. The proposed development would be at variance with the design objectives and guidelines as set out in the Clare County Development Plan 2017-2023 and the Clare Rural House Design Guide 2005 and would therefore be contrary to the proper planning and sustainable development of the area.

---

Bríd Maxwell  
Planning Inspector  
26<sup>th</sup> July 2019