



An  
Bord  
Pleanála

## Inspector's Report ABP-304354-19

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<b>Development</b>	Two-storey four-bedroom house, single-storey garage, wastewater treatment system and vehicular access
<b>Location</b>	Ballynacleigh, Carrick-on-Shannon, County Leitrim
<b>Planning Authority</b>	Leitrim County Council
<b>Planning Authority Reg. Ref.</b>	P.19/25
<b>Applicant(s)</b>	Tony & Phina Dunne
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First-Party
<b>Appellant(s)</b>	Tony & Phina Dunne
<b>Observer(s)</b>	Steve Holmes
<b>Date of Site Inspection</b>	26 <sup>th</sup> June 2019
<b>Inspector</b>	Colm McLoughlin

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## 1.0 Site Location and Description

- 1.1. The appeal site is located in the rural townland of Ballynacleigh, approximately 1km southeast of the town boundary to Carrick-on-Shannon in south County Leitrim. The surrounding area comprises rolling agricultural fields, bordered by mature hedgerows and trees, interspersed with rural housing.
- 1.2. The site comprises c.0.54ha of agricultural land, in use for bovine grazing, accessed by a single-lane local road (L-3655-0). The local road network serving the site connects with the N4 national road, approximately 750m to the northeast of the site. With the exception of the western site boundary, which is not marked on the ground, the site boundaries are marked by mature lines of trees and hedgerows, supplemented by post and wire fencing. The site comprises 50m frontage onto the local road and the ground levels rise steadily by approximately 8m from the front of the site to the rear of the site, replicating the topography in the immediate area. An overhead electricity powerline crosses the site along a north-south axis. There is a Recorded Monument (Ref. LE031-042), understood to have formed an 'enclosure', situated adjacent to the northern corner of the site.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - construction of a four-bedroom detached two-storey house with a stated gross floor area (GFA) of 254sq.m;
  - construction of a detached single-storey garage with a GFA of 26sq.m;
  - installation of a packaged wastewater treatment system, including polishing filter;
  - vehicular access;
  - connection to a group water scheme;
  - all associated groundworks and landscaping.
- 2.2. In addition to the standard planning application documentation and drawings, the application was accompanied by a site assessment report addressing on-site

disposal of effluent, an Appropriate Assessment Screening Report and a letter addressing the applicants' local housing needs.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. The Planning Authority issued a notification of a decision to refuse permission for the proposed development, for three reasons referring to the following:

Reason No.1 – unsuitable soil conditions for on-site wastewater treatment;

Reason No.2 – failure to comply with local housing needs policy;

Reason No.3 – inappropriate house design and siting.

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

3.2.1. Planning Report

The report of the Planning Officer (March 2019) noted the following:

- the site is within an 'area of high visual amenity' with 'low capacity' for rural housing based on the provisions of the Leitrim County Development Plan 2015-2021;
- one of the applicants has resided in the town of Carrick-on-Shannon for 14 years and their stated urban links are not sufficient to meet rural housing need criteria outlined within policy 17 of the Development Plan;
- the siting and design of the proposed house is unacceptable, as is the extensive loss of hedgerow proposed along the front boundary;
- a buffer zone from the development to the Recorded Monument to the northeast is required;
- the site is not suitable for the discharge of effluent to ground.

3.2.2. Other Technical Reports

- District Engineer (Roads) – no objection, subject to conditions;
- Environment Engineer – refuse permission;

- Water Services Engineer – no objection, subject to conditions.

### **3.3. Prescribed Bodies**

- The Arts Council – no response;
- The Heritage Council – no response;
- An Taisce – no response;
- Department of Culture, Heritage and the Gaeltacht – no objection, subject to conditions;
- Fáilte Ireland – no response;
- Irish Water – no response.

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

3.4.1. None received.

## **4.0 Planning History**

### **4.1. Appeal Site**

4.1.1. The applicants and the Planning Authority refer to formal preplanning that was undertaken in November 2017 regarding proposals for a house on the appeal site (under Ref. PL57/3003). Matters raised by the Planning Authority during this preplanning referred to the need to consider wastewater treatment, traffic safety, the proximity to designated sites and the proposed house design and siting. Recent planning applications for development on the appeal site include the following:

- Ref. P.06/1141 – permission granted by the Planning Authority in December 2006 for a house, garage, effluent treatment system and vehicular access, subject to a condition restricting occupancy;
- Ref. P.12/05 – an extension of duration for permission Ref. P.06/1141 was refused in April 2012, as the applicant had not satisfied the Planning Authority that revised EPA standards regarding wastewater treatment could be met and that an adverse impact on designated sites would not arise

## **4.2. Surrounding Sites**

- 4.2.1. The most recent planning applications in the immediate area primarily relate to minor domestic-scale developments that are not of particular relevance to this appeal.

## **5.0 Policy & Context**

### **5.1. National Guidance**

#### National Planning Framework – Project Ireland 2040

- 5.1.1. Objective 19 of the National Planning Framework outlines that within areas under urban influence, single housing in the countryside will be facilitated based on the core consideration of a demonstrable economic or social need to live in the rural area.

#### Sustainable Rural Housing Guidelines for Planning Authorities

- 5.1.2. The Guidelines provide criteria for managing rural housing requirements, whilst achieving sustainable development. Planning Authorities are recommended to identify and broadly locate rural area typologies that are characterised as being under strong urban influence, stronger rural areas, structurally weak or made up of clustered settlement patterns. The Guidelines also outline how rural-generated housing need to reside in these areas should be defined in the Development Plan and examples of categories of persons that may be used to define same are provided. The appeal site is located in an area 'under strong urban influence', as set out under Section 5.2 below. Appendix 3 to the Guidelines outlines that the key Development Plan objective in relation to housing in rural areas under strong urban influence should be to facilitate genuine rural-generated housing needs and to direct urban-generated housing to neighbouring towns.

### **5.2. Leitrim County Development Plan 2015-2021**

- 5.2.1. The policies and objectives of the Leitrim County Development Plan 2015-2021 are relevant. Section 5.1.4 of the Plan outlines the specific criteria to be used when assessing the acceptability or otherwise of one-off rural housing in the County, including the potential environmental, visual, heritage, traffic and socio-economic impacts. Map 4.3 of the Plan identifies the appeal site as being within a rural area

with 'low capacity/low availability' for housing, which are areas adjoining towns and villages that are under pressure from residential development. Within such areas policy 17 of the Plan states that housing will only be facilitated where an applicant can demonstrate that they fit into at least one of the following categories:

- 1) They are currently living in the Low Capacity area, in the immediate vicinity of the proposed site and can demonstrate a need to continue living in the area, other than in their current residence, with their proposed dwelling, as their permanent place of residence;
- 2) Can demonstrate that they are originally native to the Low Capacity Area and wish to return to this area for family or social reasons and wish to live there, with their proposed dwelling as their permanent place of residence.

5.2.2. Applicants must also be willing to enter into an occupancy agreement. The site is located in the South Leitrim drumlins and Shannon basin landscape character area, and also within an 'area of high visual amenity'. In such areas, the Plan outlines that an applicant must demonstrate a very high standard of site selection, site layout and design and the Planning Authority must be satisfied that the development could not be accommodated in a less-sensitive location.

5.2.3. The Plan refers to the 'Design Guide for the Siting and Design of Single Houses within the Leitrim Countryside', which includes detailed technical and development management guidance for rural housing.

5.2.4. The Plan requires proposals for wastewater treatment serving one-off rural housing to comply with the 'Code of Practice - Wastewater Treatment and Disposal Systems serving Single Houses (p.e. ≤10) (EPA, 2009)'. The Plan refers to guidance contained within the Planning System & Flood Risk Management: Guidelines for Planning Authorities (2009) and states that development should not be subject to an inappropriate risk of flooding.

### **5.3. Natural Heritage Designations**

5.3.1. The nearest designated site to the appeal site is the Annaghmore Lough Special Area of Conservation (SAC) (Site Code: 001626), which is located approximately 14.5km to the south.

## **5.4. Environmental Impact Assessment - Preliminary Examination**

- 5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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**

- 6.1.1. The issues raised in the first-party appeal against the decision of the Planning Authority to refuse permission, can be summarised as follows:

#### Rural Housing Policy

- one of the appellants was granted planning permission for a house on the appeal site in December 2006 (Ref. P.06/1141) and at the time they were deemed to satisfy rural housing needs;
- the applicants have historical ties to this area, which has experienced population decline and increased housing vacancy in recent years;
- the decision of the Planning Authority contradicts core objectives of the Development Plan and the Planning Authority was overly onerous in their interpretation of Development Plan policy;
- the site was acquired with the intention of residing in the area. Additional correspondence, stated to be from local residents and confirming that they do not object to the subject proposals, is appended to the appeal;
- the Planning Authority did not attempt to qualify whether or not the appellants could meet local housing need criteria and the appellants wish to confirm that they would be willing to accept an occupancy condition in the event of a permission arising;



## Wastewater Treatment

- site improvement works in line with Annex F of the EPA Code of Practise were undertaken in April 2019 to address permeability, porosity and to hydraulically isolate the percolation area;
- as identifiable from the photograph appended to the grounds of appeal, no water ingress was noted in the trial hole and bedrock was not encountered;
- the original trial hole may have been inadvertently excavated too close to an interceptor drain and as a result, when inspected by the Planning Authority, the trial hole was likely to have been inundated with surface water from this interceptor drain. Further site improvement works have been and can be undertaken to address this;
- the Planning Authority erred in their assessment and should have sought clarification on wastewater treatment proposals;
- the appellants also propose to install low flush toilets, to partially use of a reed and willow bed system, to undertake additional monitoring of water quality and to further engage with the Planning Authority on a solution;

## Design & Siting

- revised house and site layout plans, addressing siting and design concerns raised by the Planning Authority, are included with the grounds of appeal;
- the proposed revised house type would be single-storey and would be less obtrusive than the original two-storey proposal, while the house would be located lower on the site and would be less visible and more complementary to the immediate landscape character and neighbouring housing;
- design elements required within the Planning Authority's Design Guide would be adhered to and the revised site layout plan proposes minimal loss of roadside planting, while accommodating the necessary sight visibility at the site entrance;

## Other Matters

- clearing of roadside drains would address flooding concerns and there are no records of the site itself or the road serving the site having previously been subject to flooding;
- risks to biodiversity would not arise;
- the proposed development would not interfere with the adjacent recorded monument;
- traffic safety concerns do not arise.

## **6.2. Observation**

6.2.1. An observation in support of the proposed development was received from a resident of the Ballynacleigh area and this can be summarised as follows:

- one of the appellants is genuinely from the area and further correspondence from another local resident and a parish priest is attached to provide additional confirmation of same;
- other houses in the area, which are served by individual wastewater treatment systems, are not known to cause pollution to the local environment.

## **6.3. Planning Authority Response**

6.3.1. The Planning Authority's response to the grounds of appeal can be summarised as follows:

- the Planning Authority acknowledged that site improvement works had taken place prior to the assessment of the proposals and that permissions within the area dating from the 2000s suggest that soils in the area would fail both P-tests and T-tests;
- the EPA Code of Practice states that a site cannot be deemed to have passed the on-site assessment if the recommendation includes significant site improvement works;
- the site is in an area that is under pressure from the neighbouring town of Carrick-on-Shannon, and the appellants are understood to be from the built-

up area of Attirory on the south side of Carrick-on-Shannon and the appellants have not demonstrated that their original homeplace is in the low capacity area immediate to the site;

- there was no onus on the Planning Authority to afford significant discretion to the appellants when considering the subject proposals;
- the revised design and siting of the dwelling on site is acceptable to the Planning Authority.

## **7.0 Assessment**

### **7.1. Introduction**

- 7.1.1. In December 2006, the Planning Authority granted planning permission to one of the appellants for a house on the appeal site (Ref. P.06/1141). This permitted development was not commenced and the permission has since lapsed. Revised house plans and a proposed site layout plan for the subject development, albeit not to scale, were included with the grounds of appeal and the Planning Authority does not object to the design, siting and visual impact of these revised proposals. While recognising the 'area of high visual amenity' in which the house would be situated and the restricted views of the house from the immediate area, I am satisfied that the proposed development would not impact on the visual amenities of the area given the reduced scale and the modern vernacular design of the proposed house, the revised lower position of the house on site and the immediate site context, including extensive screen planting to field boundaries and the backdrop of the hill to the north. I also note the sight visibility and low traffic speeds achievable along the local road fronting the site. The Planning Authority does not object to the vehicular access proposed to serve the development and I am satisfied that the access would be appropriate to serve the development. Furthermore, the Department of Culture, Heritage and the Gaeltacht does not object to the principle of this development and has requested conditions be attached in the event of a permission, given the proximity of a Recorded Monument (Ref. LE031-042) less than 20m to the north of the appeal site boundary. I am satisfied that with the attachment of conditions, the proposed development would not reasonably impact on traffic safety or

archaeological heritage. Consequently, I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Rural Housing Policy;
- Wastewater Treatment.

## **7.2. Rural Housing Policy**

7.2.1. Map 4.3 of the Leitrim County Development Plan 2015-2021 identifies the appeal site as being within a 'low capacity/low availability' rural area, which is under pressure from the urban area of Carrick-on-Shannon for housing. Within such areas the Plan states that housing will be facilitated subject to compliance with policy 17. Policy 17 of the Plan specifically outlines that applications for rural housing in 'low capacity/low availability areas' must demonstrate that 1.) the applicant is currently living in or immediate to the low capacity area and that they need to continue living in the area or 2.) the applicant is originally from the low capacity area and is returning for family or social reasons. Objective 19 of the National Planning Framework outlines that in areas such as this, housing will be facilitated based on the core consideration of the applicants having a demonstrable economic or social need to live in the area, while the Sustainable Rural Housing Guidelines for Planning Authorities outlines that only genuine rural-generated housing needs should be facilitated in these areas and urban-generated housing should be directed to neighbouring towns.

7.2.2. Information provided by the appellants within their letter of local need accompanying the planning application and the map appended to the grounds of appeal refers to their current residence as being 'Cnoc na Sí, Attirory', in the built-up area of Carrick-on-Shannon, approximately 1.3km to the north of the appeal site. The grounds of appeal highlight that planning permission for a house on the appeal site was previously granted to one of the appellants in December 2006 (Ref. P.06/1141) and that the Planning Authority deemed that they had complied with local housing needs policy at the time. It is also asserted that the appellants have extensive ties with the area and correspondence from local residents is attached to the appeal to confirm that they do not object to the subject proposals.

- 7.2.3. The appellants current residence is not part of the immediate 'low capacity area'. The grounds of appeal assert that there is a degree of flexibility provided for in the interpretation of rural housing policy in the Development Plan. In response to this the Planning Authority state that the extent of flexibility provided for in the Plan would not go as far as facilitating the subject proposals, particularly given the present residence of the appellants within an urban zoned area. I am satisfied that the appellants have not demonstrated that they fit into category 1 referred to in policy 17 of the Development Plan and exceptional circumstances to overcome same have not been provided.
- 7.2.4. In relation to category 2 of policy 17, the appellants must initially demonstrate that they are originally native to the low capacity area and that they wish to return to this area for family or social reasons. Within their letter of local need, one of the appellants has outlined that they previously went to school within the area and within the grounds of appeal they provide additional details of their connections with the area, including their connections with the stated previous owner of the appeal site. I recognise the observation to the appeal referring to one of the appellants' connections with the area. However, I am satisfied that substantive documentary evidence definitively confirming that one or the other of the appellants are originally native to this low capacity area has not been provided.
- 7.2.5. In conclusion, the proposed development would not comply with national policy and policy 17 of the Development Plan, as the appellants' housing need to reside in this 'low capacity/low availability area' has not been definitively substantiated. Permission for the proposed development should be refused for this reason.

### **7.3. Wastewater Treatment**

- 7.3.1. Planning permission (Ref. P.06/1141) on this site was granted in December 2006 for a house to be served by an on-site wastewater treatment system with secondary and tertiary treatment and a raised percolation area. According to the Planning Authority concerns were raised by the applicant's representative at the time regarding the high potential for the site to fail standard percolation tests (T-test and P-test) based on similar tests undertaken on neighbouring sites. In response to this it was proposed to undertake various site improvement measures as part of this previously permitted development to facilitate an appropriate means of wastewater treatment.

- 7.3.2. The subject proposals provide for the installation of a packaged wastewater treatment system to be supplemented by a soil polishing filter. Surface water interceptor drains are stated to be already in situ and further interceptor drains up-gradient of the percolation area are to be excavated. There is approximately a 1 in 8 slope upwards from the front roadside boundary to the rear of the site. The flood maps for the area (floodinfo.ie) reveal low to high potential for fluvial flooding on lands immediately to the southeast of the local road (L-3655-0) serving the site.
- 7.3.3. Assessment of the wastewater treatment system and the characteristics of the appeal site was undertaken by the Environment Department of the Planning Authority. The Environment Department noted that during visits to the site in March 2019 the entire site was wet underfoot, it featured a large number of rushes and surface ponding was evident. It was noted by the Environment Department that the holes excavated for the percolation tests were waterlogged and the dilatant, plastic and sticky gley soils typical of this area and evident on site, did not correlate with the silty clay/pebble soils referenced in the site assessment report and photographs included with the planning application. The Environment Department concluded by referring to the River Basin Management Plan 2018-2021, which require improvements to the existing 'at risk' waterbodies in the catchment to 'good' status. Photographs included with the Planning Officer's report show flooding of the percolation and trial holes, dilatant, plastic and sticky gley soils, water ponding, saturated soils and flooding in the neighbouring area to the south and concluded that discharge to ground at this site is not feasible.
- 7.3.4. The site is underlain by a regionally-important aquifer (Rk) with 'low' vulnerability. Vegetation on site primarily comprising grasses. The site assessment report states that a 2.1m-deep trial hole was examined in October 2018 and a silty clay was noted to a depth of 0.4m and a gravelly silt with high pebble content and cobbles was encountered at 0.4m to 0.8m depth. The water table and bedrock was not encountered. Percolation tests undertaken for the proposed development revealed an average T-value of 40. The EPA 'Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses' states that where the T-value is between 3 and 50, as per the subject assessment, the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater.

- 7.3.5. The site assessment report refers to the fact that improved on-site drainage and importation of soils had been undertaken to the proposed percolation area in order to provide an indicative P-test. Tests for these soils revealed an average P-value of 31. To identify if the site is suitable for a secondary treatment system with polishing filter at ground surface or overground, a P-value of between 3 and 75 is required. The grounds of appeal assert that additional investigation works were undertaken in April 2019 to further improve the site characteristics for wastewater treatment, and this additional testing revealed that the water table and bedrock was not encountered to a depth of 5.2m.
- 7.3.6. Whilst the proposed treatment system is technically capable of providing a good quality effluent, I have several concerns regarding the proposal. The evidence presented indicates extensive ponding and saturation of soils throughout the site depending on seasonal variations and irrespective of the extent of 'site improvement works'. Table 6.2 of the EPA Code of Practice requires a minimum depth of 0.9m unsaturated subsoil below the percolation pipes to bedrock and the water table. In March 2018 the Environment Department of the Planning Authority noted the water table to be less than 150mm below ground level. The appellants have not established that the polishing filter bed, would provide sufficient percolation medium above seasonal groundwater levels to attenuate the effluent prior to discharge to ground. Consequently, I am satisfied that there would be insufficient depth of unsaturated permeable subsoil below the base of the percolation pipes in the polishing filter for the proposed secondary treatment system. I also note that it is proposed to install the percolation pipework running generally against the gradient on sloping ground, whereas Section 11.3.2 of the EPA Code of Practice outlines that on sloping sites the pipework should be installed parallel to the contours to aid distribution of the treated effluent.
- 7.3.7. In conclusion, having regard to the ground, soil and subsoil conditions that occur on this sloping site, and given the extent of seasonal water ponding and soil saturation evident on site, I have concerns that the site can be satisfactorily drained, notwithstanding the proposed use of a packaged treatment system and soil-polishing filter. I consider that the proposed development would pose an unacceptable risk to ground water, and would be prejudicial to public health. Accordingly, permission should be refused on these grounds.

## 7.4. Flood Risk

- 7.4.1. Having reviewed the Office of Public Work (OPW) flood maps for this area (floodinfo.ie), the site itself would not appear to be within the low to high risk area for flooding (flood zones A & B), but the local roads serving the site would appear to be within an area at high risk of fluvial flooding. A site specific flood risk assessment was not provided with the application and the Board may wish to consider this as a new issue. While I recognise the existing housing in the area that is served by the subject local roads and the seasonality of flood risk, it is not clear whether or not safe access and egress can be continuously provided to the proposed development, with particular reference to future changes in risk. Notwithstanding this context and the absence of a site specific assessment, considering the substantive reasons for refusal set out above, I am satisfied that it would not be necessary to refuse permission for the proposed development for reasons relating to flood risk.

## 8.0 Appropriate Assessment

- 8.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and the proximity to the nearest European site, 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.

## 9.0 Recommendation

- 9.1. I recommend permission be **refused** for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

1. The site of the proposed development is located within an area under strong urban influence, as set out in the 'Sustainable Rural Housing Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in April, 2005 and in an area where housing is restricted to persons demonstrating social and economic local need, in



accordance with the Leitrim County Development Plan 2015-2021. Having regard to the proximity of the subject site to the town of Carrick-on-Shannon and having regard to the documentation submitted with the application and the appeal, the Board is not satisfied that the applicants have a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicants do not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this rural location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy, and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the ground, soil and subsoil conditions for the site and the extent of seasonal water ponding and soil saturation evident on site, the Board is not satisfied that the site is suitable for the treatment and disposal of domestic foul effluent in accordance with the 'Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)', 2009 and subsequent clarifications issued by the Environmental Protection Agency. The proposed development would, therefore, be prejudicial to public health.

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Colm McLoughlin  
Planning Inspector

2<sup>nd</sup> August 2019