



An
Bord
Pleanála

Inspector's Report

ABP-304413-19

Development	Dwelling house and garage, with effluent treatment system, new entrance from public road and all associated site works.
Location	Ballykelly, Broadford, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	19112
Applicant(s)	Gillian Durack
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Kieran McCann
Observer(s)	None
Date of Site Inspection	19 th July 2019
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The subject site is a rural field in the townland of Ballykelly, 2.8km southwest of Broadford, Co. Clare.
- 1.2. The site is 0.352ha in size and currently in agricultural use. Access is from a minor local road, which has a speed limit of 80kph. The carriageway is approx. 3m in width with no footpaths or public lighting.
- 1.3. The site is located in an elevated landscape and the area is characterised by agricultural farmland and forestry to the south. There are four existing dwellings in the immediate vicinity of the site, including the applicant's family home, her brother's house and her sister's house. There is a significant pattern of linear one-off dwellings on the northern access road to the site.
- 1.4. The appeal site is located on a hill side and is sloping in nature. The site falls gently away from the road for a depth of approx. 30m. The site falls significantly in the westerly direction beyond this point. The site and is bound by agricultural lands to the south and west. The applicant's sisters house is located to the north.

2.0 Proposed Development

- 2.1. The proposed development will comprise the following:
 - Construction of a one and a half storey dwelling,
 - Construction of a detached domestic garage,
 - Provision of a sewerage treatment system,
 - All associated site works.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 12 no conditions. The relevant conditions are noted below:

- Condition 2 required the dwelling to be occupied as a permanent place of residence by the applicant.
- Condition no. 3 relates to finish floor level.
- Condition no. 4 refers to the retention of the roadside boundary save at the vehicular entrance.
- Condition 5 relates to external finishes.
- Condition 6 relates to undergrounding of services.
- Condition 7 relates to the private well.
- Condition 8 relates to surface water disposal.
- Condition 9 relates to the type and maintenance of the waste water treatment system to be installed on site.
- Condition 10 relates to site landscaping.
- Condition 11 relates to the use of the domestic garage.
- Condition 12 relates to development contribution.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Area Planners report (11th April 2019) noted that the site is not located in an area of “Special Planning Control” where the policy permits an application for a single house by persons who seek a dwelling as their principle private residence. It is noted that the applicant is from the area and the site is on the family landholding. Design and siting were considered satisfactory subject to a reduction in finish floor level. The concerns raised by the observer, overlooking and right to a view were not considered relevant. Sightlines and disposal of effluent were considered satisfactory. It was recommended that permission be granted subject to conditions.

3.2.3. Other Technical Reports

Area Engineer - In his report dated 27th March 2019 the Area Engineer notes that appropriate sightlines should be provided, and surface water shall not discharge onto the public road.

3.3. Prescribed Bodies

None

4.0 Planning History

Site

None

Adjoining

11/649 – Permission granted in 2011 for a dwelling house to Regina Durack (applicant's sister) to the immediate north of the site.

07/1779 – Permission granted in 2007 for a dwelling to Noel Durack (applicant's brother) on the opposite side off the road to the northeast of the site.

5.0 Policy Context

5.1. National Policy

National Planning Framework, (2018)

Sustainable Rural Housing-Guidelines for Planning Authorities (2005)

EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009)

5.2. Development Plan

5.2.1. Clare County Development Plan 2017-2023

5.2.2. The subject site is located within an area designated as 'New single houses in the countryside outside the 'Areas of Special Control'.

Housing

Policy Objective DP3.8: To ensure that the countryside continues to play its role as a place to live, work and visit having careful regard to its carrying capacity and environmental sensitivity.

Policy Objective CDP3.12: New Single Houses in the Countryside outside the 'Areas of Special Control'

It is an objective of the Development Plan: Within the parts of the countryside outside of the 'Areas of Special Control' i.e.:

- Outside of the Areas under Strong Urban Pressure;
- Outside of Heritage Landscapes;

- Not accessed from a Scenic Route.

To permit an application for a single house by persons who seek a dwelling as their principal private residence and will, therefore, contribute to the social and economic well-being of the area.

5.2.3. Section A1.3 Residential Development standards

- A1.3.1 Rural Residential Development refers to Siting and Design, Road Frontage, Plot Size and Waste Water Treatment Systems.

5.2.4. Landscape

The landscape is defined in the Development Plan as '*Settled Landscape*'.

5.2.5. Objective CDP13.2: Settled Landscapes states:

It is an objective of the Development Plan: To permit development in areas designated as 'settled landscapes' that sustain and enhance quality of life and residential amenity and promote economic activity subject to:

- Conformity with all other relevant provisions of the Plan and the availability and protection of resources;
- Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;
- Regard being given to avoiding intrusions on scenic routes and on ridges or shorelines.

Developments in these areas will be required to demonstrate:

- That the site has been selected to avoid visually prominent locations;
- That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads;
- That design for buildings and structures reduce visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.

5.2.6. Sightlines

Section A1.9.2 refers to Sight Distance Requirements.

Water

Section 8.4 refers to Water and Wastewater Services

Objective CDP8.27 - Waste Water Treatment and Disposal Associated with Development in Un-Serviced Areas. Effluent Treatment Plants to comply with the EPA guidelines

5.3. Natural Heritage Designations

- 5.3.1. The site is not located within or directly adjacent to any Natura 2000 sites. Danes Hole, Poulnalecka SAC (site code 00030) is located 0.6km west of the site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development 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 appeal submission has been prepared by Leahy Planning Ltd. on behalf of the appellant. The appellant's property is located immediately opposite the site. The principle grounds of appeal can be summarised as follows:
- It is set out that the applicant does not have a housing need to live at this location and that she runs a crèche some 40km from the site. In addition to the family home two other family members have already been accommodated on the family landholding.
 - The notion that the possession of an original agricultural holding can justify all members of family being permitted to build on family land is not justified and is contrary to the settlement strategy of the development plan to promote the development of small town and villages.
 - In terms of policy objective 3.8 in relation to carrying capacity and environmental sensitivity; the site accesses onto a substandard road (3m wide) where two cars cannot pass. In addition, the overreliance on wastewater treatment units in close proximity to one another calls into question ground water protection.

- The proposed wastewater treatment system is located in an area of “Karst with rock very close to the surface” while the area to which the percolated material will flow is classed as one of “Extreme Vulnerability”. The treatment system involves a pumping system and the creation of raised percolation trenches. The sloping nature of the site is such that the gradient of the percolation area is greater than 12% (one in 8) – para 6.5 EPA Code of Practice.
- It is set out that certification of adequacy and composition of water supply should have been addressed during the planning process and not as a condition.
- Concern is expressed regarding the location of the vehicular entrance directly opposite the appellants dwelling and the consequence loss of amenity by noise and interference with privacy. The appeal suggests the relocation of the house and/or entrance.

6.2. Applicant Response

- The applicant is the daughter of the landowner and was born and reared in the area. It is set out that she intends on opening a Montessori School in the local village.
- The development is in compliance with relevant local and national policy and has the effect of halting population decline in the area.
- Contrary to the third-party submission the site is in an area of classified with high groundwater vulnerability in an area of free draining soils. The site assessment was carried out in accordance with the EPA Code of Practice and having regard to the undulating ground levels; the site assessor recommended an advanced wastewater treatment system. With regards to the concentration of wastewater treatment systems in the vicinity of the site, the development will be the fifth house within a 150m radius of the site.
- Reference is made to a study published in the Journal of Contaminant 2015 entitled ‘*The impact of onsite wastewater from high density cluster developments on groundwater quality*’. It is set out that the study recommends that plot size is a more useful criterion as opposed specifying a specific site density when assessing impact on groundwater vulnerability. It is set out that the development is a low-density development and there is no overconcentration of wastewater treatment plants.

- It is set out that the EPA CoP 2009 recommends that treatment plants and percolation areas are not constructed on gradients of more than 12% - it does not matter that treated effluent flows within steeper gradients. Notwithstanding same, it is proposed that the wastewater treatment plant and percolation area are not to be constructed on a gradient of more than 12%.
- Reducing the finish floor level of the house is inconsequential as the effluent is to be pumped and is upslope of the FFL.
- The planning condition regarding details of the proposed well is a standard condition and in any case the applicant's sister house to the north of the site is also served by a well that met with required standards.
- The area in question is sparsely populated and there are only 5 other houses on this road.
- There is very little traffic on the road. Adequate sightlines are achievable to the north but not the south. This would require the removal of the roadside boundary. The applicant has chosen to retain the boundary having regard to the limited traffic on the road.
- The site was gifted to the applicant by her late father and it is set out that the remainder of the landholding does not have road frontage.
- The design, layout, mature boundary hedge and the road will ensure adequate separation between the appellant's house and the proposed dwelling. The turning movements associated with the proposed vehicular entrance opposite the appellant's entrance would be minimal. There will be no loss of residential amenity as a consequence of the development.

6.3. **Planning Authority Response**

The planning authority in their response reiterate the policy objectives applicable to the site as set out in the planner's assessment.

6.4. **Further Responses**

None

7.0 **Assessment**

7.1. The main issues of the appeal can be dealt with under the following headings:

- Rural Housing Policy
- Services - Water Supply and Waste Water

- Sightlines and Road Network
- Design and Visual Impact
- Other Matters
- Appropriate Assessment

The issues of Design and Visual Impact is considered a **New Issue** in the context of the appeal.

7.2. Rural Housing Policy

- 7.2.1. The site is located in a rural area which has been identified as 'New single houses in the countryside outside the 'Areas of Special Control' in the Clare County Development Plan 2017-2023. Objective CPD 3.12 of the Development Plan sets out that it is an objective of the Council to facilitate the development of individual houses in the open countryside in 'New single houses in the countryside outside the 'Areas of Special Control' Areas' subject to an application for a single house by persons who seek a dwelling as their principal private residence and will, therefore, contribute to the social and economic well-being of the area and compliance with normal planning and environmental criteria and other applicable standards. The applicant is the daughter of the landowner seeking to build a permanent home on the family landholding. In this instance the applicant complies with the provisions of the Development Plan.
- 7.2.2. Objective 19 of the National Planning Framework sets out that in providing for the development of rural housing, 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. Part two of the objective states that in rural areas not under urban influence, the provision of single housing in the countryside can be considered based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.
- 7.2.3. On the basis of the location of the site in an area identified as 'New single houses in the countryside outside the 'Areas of Special Control' Area, I am satisfied that the applicant has satisfied compliance with the settlement strategy policies of the Development Plan.

7.3. Services - Water Supply and Waste Water

- 7.3.1. It is proposed to drill and **private well** on site to service the house. The appellant has raised concerns regarding the fact that the planning authority conditioned the well in

the absence of certification of adequacy and composition of the water supply. In this regard, I note the drilling of a domestic well is exempted development in accordance with Class 44 of the Planning and Development Regulations 2001 (as amended).

- 7.3.2. It is proposed to install a packaged **wastewater treatment** system and polishing filter with discharge to ground water. The treatment system is located approx. 7m north of the house with a percolation area located approx. 10m north of the house. Table 6.1 of the 'EPA Code of Practice for Waste Water Treatment and Disposal Systems Serving Single Houses' sets out minimum separation distances. The proposed system reaches recommended separation distances from the new house.
- 7.3.3. The site is located in an area identified with a "Extreme" vulnerability classification in the GSI Groundwater maps and is located within an area defined as a "Poor" category Aquifer, representing a GWP response of R2¹ under the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009) (Annex B2).
- 7.4. The trial hole assessment submitted by the applicant encountered no bedrock/ water table at a depth of 2.1m. No trial holes were available for inspection, although the ground was firm underfoot and there was no evidence of waterlogging on the site. The submitted site characterisation records a T-test value of 13.58 min/25mm, which is within the acceptable range for a septic tank (Table 6.3) and would indicate good percolation.
- 7.4.1. It is proposed to pump the effluent to a packaged treatment system and polishing filter. The appellant contends that the sloping nature of the site is such that the gradient of the percolation area is greater than 12% (one in 8) and contrary to the EPA Code of Practice. The cross section submitted with the site characterisation report indicates a level difference of 1.3m between the house and the polishing filter. The slope is gradual across the site at this location running in a north/south direction. Section 11.3.2 *Site works* of the EPA Code of Practice states that on sloping sites (slope >1:20 or 5%) the pipework should be installed parallel to the contour to aid distribution of the treated effluent. This is the case in this instance. Furthermore, I am satisfied that the slope does not exceed 1:8 (or 12%) over the site of the treatment system and polishing filter.
- 7.4.2. I am satisfied on the basis of the above that the site is suitable for the installation of packaged treatment system and polishing filter.

7.5. Sightlines and Road Network

- 7.5.1. Sightlines have not been established at the entrance. The minimum requirement on a local road where the speed limit is 50kmph is 70m as set out in section A1.9.2 of the Clare County Development Plan 2017-2023. Site inspection indicated that the site is located between a series of bends in the public road, and whilst I acknowledge the ambient speed at this location will not exceed 50kmph, 70m sight distance is not achievable in both directions. The removal of the roadside boundary in order to achieve sightlines is not justified, in my opinion, and will serve to further expose the site and increase traffic speed.
- 7.5.2. The local road fronting the site is a minor local road approx. 3m in width. The access road to the site is seriously substandard in terms of vertical and horizontal alignment. The restricted width of the access road does not allow for two vehicles to pass and as a result one vehicle would have to reverse and navigate the poor road alignment in order to find a suitable place for both cars to pass. This represents a serious traffic hazard having regard to the number of bends along this stretch of road. Furthermore, site inspection indicated that the public road to the south of the site is impassable for a car due to the surface carriageway and the depth and number of potholes.
- 7.5.3. Having regard to the restricted width and poor vertical and horizontal alignment of the public road serving the site and notwithstanding the failure of the applicant to adequately address sightlines at the proposed entrance, I am not satisfied that the public road has the capacity to accommodate additional development. The development should be refused for this reason.

7.6. Design and Visual Impact

- 7.6.1. The site occupies a prominent hillside position overlooking Lough Gar and Doon Lough to the south and the Ahaclare River valley to the west. The proposed dwelling reflects a dormer type dwelling with a two-storey gable ended projection to one end. The maximum ridge height is 7.3m. The dwelling is positioned towards the southeast of the site where the levels differences across the site are at their minimum. The site falls significantly to the west of the site.
- 7.6.2. Whilst, I note no issue has been raised with the design and visual impact of the dwelling, I consider the design, in particular, the singular block form and height fails to address the site context. The cross-section drawings submitted would indicate that the house will be constructed on level ground. This will require significant manipulation of

the existing site levels to accommodate the house. No details have been provided in this regard. The design makes no attempt to address the natural topography of the site, and the associated cut and fill necessary to accommodate the development would represent serious destruction and scarring of the landscape. I do not consider the manipulation of the rural landscape to accommodate a dwelling an acceptable design approach.

7.6.3. I consider the development contrary to policy objective CDP13.2: *Settled Landscapes* which states that site selection should avoid visually prominent locations and that site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads.

7.6.4. It should be noted that the site is not located within any identified scenic or amenity designation. However, the elevated site location and the design of the house would represent a visually prominent feature in the landscape and should be refused for this reason.

7.7. Other Matters

7.7.1. With regards the third-party concern regarding the location of the vehicular entrance directly opposite his dwelling and the consequence loss of amenity by noise and interference with privacy, I note the appellant's property has no defined roadside boundary and the front of the house is open to the public road. I consider this an issue for the third party to address and not the applicant. I am satisfied that development would not seriously injure the amenities of the neighbouring property by reason of location of the vehicular entrance.

7.8. Appropriate Assessment

7.8.1. The proposed development is not directly connected with or necessary to the management of any European site.

7.8.2. The Planning Authority carried out an Appropriate Assessment Screening report at application stage and it was concluded that the proposed development will not have a significant effect on the Natura 2000 network and a Stage 2 Appropriate Assessment is not required.

7.8.3. The site is neither in nor near a Natura 2000 site. The closest Natura 2000 site to the appeal site is Danes Hole, Poulnalecka SAC (site code 00030) at 0.6km. There is no obvious direct pathway from the appeal site to the above site, nor any other Natura 2000 sites beyond.

7.8.4. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the distance to the nearest European Sites and the lack of an apparent pathway to same, it is reasonable to conclude on the basis of the information available on the file, which I consider adequate in order to issue a screening determination, that the development, individually or in combination with other plans or projects would not be likely to have a significant effect on the above listed European sites, or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

I recommend that permission be refused for the reasons stated in the attached schedule.

9.0 Reasons and Considerations

1. Having regard to the location of the proposed development on an elevated site visible in a wider landscape and to policy objective CDP13.2: *Settled Landscapes* of the Clare County Development Plan, 2017-2023, it is considered that the proposed house, by reason of its design and failure to address the site topography, would not be appropriate for this location. The proposed development would seriously injure the visual amenities of the area and would, accordingly, be contrary to the proper planning and sustainable development of the area.
2. The site is located on a minor road which is seriously substandard in terms of width and alignment. The traffic generated by the proposed development would endanger public safety by reason of a traffic hazard and obstruction of road users.

Irené McCormack
Planning Inspector

1st August 2019