



An
Bord
Pleanála

Inspector's Report

ABP-304533-19

Development	Construction of a house, garage and septic tank.
Location	Garrykennedy, Nenagh, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	18/60/1513
Applicant(s)	Pat McGrath
Type of Application	Outline permission
Planning Authority Decision	Refuse outline permission
Type of Appeal	First Party
Appellant(s)	Pat McGrath
Observer(s)	None
Date of Site Inspection	11 th July 2019
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.312ha, is located on the edge of the small settlement of Garrykennedy, on the shores of Lough Derg in Co. Tipperary. The applicant is a son of the landowner. Access to the site is from the head of a cul de sac laneway, which currently serves as access to 4 no. houses.
- 1.2. The access is within the 50kph speed restriction zone associated with the settlement. There are no public footpaths and there is no public lighting in the area. The cul de sac laneway serving the site is wide enough for two vehicles to pass at a number of places. There is a blind, sharp bend on the cul de sac. Sight distance at the junction of the cul de sac laneway and the road network of the settlement (the L6055) is reasonable in either direction. The surface of the laneway is good.
- 1.3. The site slopes downhill from west to east, and constitutes a small, grassed field to the rear of a dormer bungalow. There is a small shed located in the southwestern corner. There is an hard-core access to the site running along the side of the dormer bungalow to the north – the boundary with which is a timber post & rail fence with 2.5m high, trimmed Leyland cypress hedge. On the other three sides, the site abuts agricultural land – the boundaries being tumble-down stone walls with mature hedgerows: within which are some fine mature deciduous trees – lending the site a secluded aspect. The site was dry under foot on the date of site inspection.

2.0 Proposed Development

- 2.1. Outline permission sought on 20th December 2018, to construct a two-storey dwelling-house, detached garage and septic tank – with access from an existing cul de sac laneway. Water supply is to be from the public mains, and surface water is to be discharged to a soakpit.
 - 2.1.1. The application is accompanied by the following documentation of note-
 - Letter of consent from Patrick McGrath Senior (the landowner) to the making of the outline planning application – dated 4th December 2018.
 - Site Suitability Assessment Report – dated 5th November 2018.
- 2.2. Unsolicited additional information was received by the PA on 24th April 2019, as follows-

- Affidavit from applicant's father in relation to lands owned by him in the area and bequeathed to his son and daughter
- Farming Certificates obtained by the applicant in 2014 & 2015.
- The applicant has been working overseas for a number of years (as an electrician), and now wishes to return home to build an house – to work part-time on the land and part-time as an electrician.
- Letter from the applicant outlining plans for the landholding – a snail farm.

3.0 Planning Authority Decision

By Order dated 2nd May 2019, Tipperary County Council issued a Notification of decision to refuse outline permission for two reasons which can be summarised as follows-

1. Backland location would seriously injure the amenities and depreciate the value of property in the vicinity and create an undesirable pattern of development in the area.
2. Indication of right-of-way across laneway to access the development has not been submitted.

4.0 Planning History

Ref. 18/60/0212: Application for outline permission to construct an house on this site, by Pat McGrath, was withdrawn on 13th April 2018.

Ref. 5123157: Permission refused on 24th January 2001, to Patrick Francis McGrath, to erect a dormer house and garage on this site.

Ref. 5123104: Approval granted to Tom Phelan on 15th June 2001, to construct a dormer house on site immediately to the north of the appeal site. This house would appear to be the one on the site to the north – in the ownership of the applicant's father.

5.0 Policy Context

5.1. Development Plan

The relevant document is the North Tipperary County Development Plan 2010-2016 (as varied). Garrykennedy is indicated as being a Local Service Centre. The site is outside the development boundary of the settlement.

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.

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.

5.2. Natural Heritage Designations

The site is neither within nor immediately abutting any nature conservation area. The closest such is the Lough Derg (Shannon) SPA (Site code 004058) – located some 310m to the north-northwest, as the crow flies.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal from John Joe Lewis Architectural Services, agent on behalf of the applicant, Pat McGrath, received by An Bord Pleanála on 27th May 2019, can be summarised in bullet point format as follows-

- The house immediately to the north belongs to the applicant's father, and has been bequeathed to the applicant's sister.
- None of the owners of adjoining property have objected to this development.
- Tipperary County Council has granted permission for backland development in this area in the recent past.
- The applicant's father obtained right-of-way to pass along the cul de sac access lane, when he purchased the property in 1987.

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

- Land Registry documentation indicating that the applicant's father was granted right-of way over a 14' wide laneway (marked X-Y) on attached map.
- Affidavit of the applicant's father (dated 4th April 2019), in relation to the house on the site and the land being willed to his son, Patrick McGrath Junior, and consenting to the making of the application and the use of the cul de sac laneway for access.

6.2. Planning Authority Response

The response of Tipperary Co. Council, received by An Bord Pleanála on 7th June 2019, indicates that the PA has no further comment to make.

6.3. Observations

None received

7.0 Assessment

The principal issues of this appeal relate to development plan policy, drainage, traffic safety and right-of-way access to the site.

7.1. Development Plan Policy

- 7.1.1. Garrykennedy is indicated as being a Local Service Centre within the North Tipperary County Development Plan. The site is outside the development boundary of the settlement, and for this reason alone, would represent a disorderly form of development which would contribute to suburban sprawl on the edge of the settlement. The site must, therefore, be regarded as a rural one. Policy SS4 of the Plan deals with housing in the rural area of the county. The applicant would appear to come with the category of persons for whom a house in the rural area can be considered. The dormer bungalow to the immediate north of the site is in the ownership of the applicant's father – but is to be willed to the applicant's sister. The applicant himself is a returning emigrant, who plans to work part-time as an electrician and part-time as a snail farmer. The two reasons for refusal of outline permission did not make reference to the ineligibility of the applicant for a house in the rural area of the county.
- 7.1.2. The site is located within a Primary Amenity Area of the county – one which extends along the eastern shore of Lough Derg. Policy LH2 seeks to protect the visual amenity and character of such areas. The site is at the head of a cul de sac, and so will not be visible from any road: it is a backland form of development and is well-screened and is not elevated. However, the suburbanisation of such areas – even on the edge of settlements such as Garrykennedy, cannot be regarded as maintaining the character of the Primary Amenity Area.

7.2. Layout & Design

- 7.2.1. Outline permission was refused on the grounds of unacceptability of backland development. I would not see that the development of a house to the rear of another one – particularly where the other house is in the same family ownership – would seriously impact on residential amenity. The dormer bungalow to the north is well-screened by a high hedge. The appeal site itself is secluded and surrounded by mature hedgerows with attractive mature trees. There will be no overlooking or loss of amenity for neighbouring residents. The applicant notes that other residents of the cul de sac have not objected to the development. I would be satisfied that a two-storey house on this site would not be detrimental to the residential amenities of the neighbours. As this is an outline application, the final design of any house on the site would be decided at full permission stage.

- 7.2.2. I would not consider that a development such as this one, on a secluded site of this size, would result in devaluation of property in the vicinity. There is no reason why such a development would establish a precedent for other similar developments – particularly where each such development would have to be judged on its merits.
- 7.2.3. The granting of permission for a development such as this one, will result in calls for the uneconomic extension of public services and infrastructure in the area: particularly public footpaths, public lighting and sewers. Permission should be refused, as the development represents a haphazard and unplanned extension to the settlement of Garrykennedy, which cannot be considered as sustainable.

7.3. **Access**

- 7.3.1. Access to the site is from the head of a cul de sac, which currently serves four houses. This area is subject to a 50kph speed restriction. There are no public footpaths and there is no public lighting in the area. I have elsewhere in this report commented that the continued, unplanned expansion of the settlement will lead to demands for provision of such public infrastructure. Sight distance at the junction of the cul de sac with the L6055 is reasonable in either direction – where traffic must necessarily travel at slow speeds owing to the gradient, narrowness for the road and its twisting nature. The cul de sac contains places where two cars can pass with ease. There is, however, a blind bend on the cul de sac, which constitutes a traffic hazard. Additional traffic to and from the appeal site would increase this traffic hazard. The applicant does not have control over the land in this area – to enable removal of the hazard. Permission should be refused for this reason.
- 7.3.2. During consideration of the application, there was concern that the landowner may not have right-of-way access to the site along the length of the cul de sac laneway. The 1st Party appeal submission would appear to indicate that the applicant's father does have right-of-way along the laneway. This is not strictly a planning matter, and the granting of outline permission could in no way be considered to establish a right-of-way along a road, where none existed.

7.4. **Water**

- 7.4.1. Water Supply

Water supply is stated to be from the public mains. The application was referred to Irish Water for comment. It would appear from the file, that no response was received.

7.4.2. Surface Water

There are no watercourses on any site boundary. Surface water is to be discharged to soakways. The site was dry under foot on the date of site inspection by this Inspector. I would see no difficulty with the arrangement proposed.

7.4.3. Foul Effluent

The application was accompanied by a Site Suitability Assessment, the conclusion of which was that the site was suitable for installation of a septic tank and percolation area. The bedrock aquifer beneath the site is indicated as being 'Poor', whilst the vulnerability is indicated as being 'Extreme'. The location of the effluent treatment for the dormer bungalow to the north has not been indicated on drawings submitted. There would not appear to be any public sewer for the settlement of Garrykenny (at least in the vicinity of the site). The result is that houses in the area are likely to all be served by septic tanks. The concentration of private effluent treatment units is not conducive to the protection of groundwater quality – particularly for sites in such proximity to Lough Derg. Haphazard expansion of the settlement (dependent upon private effluent treatment) does not constitute proper planning and sustainable development in terms of effluent disposal. Permission should be refused for this reason.

7.4.4. Flooding

The site slopes downhill from west to east. There is no evidence of any flooding or waterlogging on the site. There is no likelihood of flooding within the site or on adjoining lands, arising from the construction of a house on this site.

7.5. **Other Issues**

7.5.1. Development Contribution

As outline 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 outline permission, then an appropriate condition should be attached, requiring payment of a development contribution (when permission was

sought), in accordance with the Development Contribution Scheme in force for the county.

7.5.2. 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.

7.5.3. Archaeology

There is no reference made to any archaeological appraisal of the site. There are no recorded monuments in the immediate vicinity. Having regard to the limited extent of the development, an archaeological monitoring condition would not be required in this instance.

7.5.4. Occupancy Condition

If the Board is minded to grant outline permission, it would be appropriate to attach an occupancy clause, where a rural house is stated to be required to meet the housing need of the applicant in this particular area, in order to allow him to carry out his snail-farming project.

7.5.5. Appropriate Assessment

The application was screened for appropriate assessment by TCC. Having regard to limited nature of the proposed development; the separation distance from the nearest European site; and the absence of any pathway to connect the site with the Lough Derg (Shannon) SPA, 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 an European site.

8.0 **Recommendation**

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

9.0 Reasons and Considerations

1. 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 outside the development boundary of the settlement of Garrykennedy, it is considered that the proposed development would contribute to the suburbanisation of the surrounding countryside which would interfere with the character of the landscape of this Primary Amenity Area, would conflict with the policies of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development, outside of the settlement boundary of Garrykennedy, would result in the demand for the provision of uneconomic services and infrastructure to serve the development, which would be contrary to the proper planning and sustainable development of the area.
3. The additional traffic movements generated by the development would constitute a traffic hazard, arising from the presence of a blind bend on the access cul de sac.
4. The Board is not satisfied that the concentration of development in this area served by private effluent treatment systems would not result in contamination of groundwater in the area, and so would be prejudicial to public health.

**Michael Dillon,
Planning Inspectorate.**

24th July 2019.