



An
Bord
Pleanála

Inspector's Report

ABP-306128-19

Development	Construction of a dwelling, site entrance, site boundary, wastewater treatment system
Location	Coosheen , Corbally , Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	19803
Applicant(s)	Clement Cusack
Type of Application	Outline
Planning Authority Decision	Refuse
Type of Appeal	First / Third Party
Appellant(s)	Clement Cusack
Observer(s)	None on file
Date of Site Inspection	18/02/2020
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located approx. 3km north of the west Clare seaside village of Kilkee. The site is on the eastern side of a country road (L-2024) running north from the N67. The L-2024 road has expansive coastal views and a large number of one-off rural houses.
- 1.1.2. The subject site is elevated, rising from the road front (western boundary) to the eastern rear boundary. The northern boundary of the subject site drops steeply, to a site of three detached dwellings.

2.0 Proposed Development

- 2.1. On the 21st October 2019, outline planning permission was sought for the construction of a single storey dwelling and garage (120sq.m.) on a site of 0.203ha. The application was accompanied by a site characterisation form.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 28th November 2019, the Planning Authority issued a notification of their intention to REFUSE permission for the following three reasons:
 - 1 Having regard to the location of the site in a Heritage Landscape and adjoining a designated Scenic Route, and having further regard to the visually prominent nature of the site and the views available from the north and south towards the south, the Planning Authority considers that the proposed development would represent a prominent feature in the receiving landscape. The proposed development would therefore be contrary to Objective CDP13.5 and Objective 13.7 of the Clare County Development Plan 2017-2023 (as varied) and would seriously injure the visual amenities of the area.
 - 2 The subject site is located in the countryside, within an 'Area of Special Control' which is identified as a 'Heritage Landscape', where it is an objective of the Clare County Development Plan 2017-2023 (as varied) as set out under Development Plan Objective CDP3.11, to permit a new single house for the permanent occupation of an applicant subject to demonstrating compliance with the "local rural person", "local rural area" and "local rural housing need"

criteria. Based on the information received to date and in the absence of evidence to the contrary the Planning Authority considers that the applicant does not comply with the criteria as set out in Categories 'A', 'B' and 'C' of CDP3.11 of the plan. Accordingly, the proposed development would materially contravene an objective of the Clare County Development Plan 2017-2023 (as varied), 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 Having regard to the finished floor level of the proposed dwelling relative to that of the residence on the adjacent lands to the north, the Planning Authority considers that the proposed development would seriously injure the amenities of the occupants of the adjacent dwellings by reason of overlooking of their private amenity areas. The proposed development would therefore result in an unacceptable impact on residential amenities and depreciate the value of property in the vicinity and as such would be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

- 3.2.1. **Planning Report:** Applicant resided in Kilkee, is not a 'local rural person' but may be an 'established rural landowner'. Proposed development does not comply with Objective CDP3.11. Road serving proposed dwelling is single track but no traffic hazard would arise. Existing dwellings are not visible from southern approach road. Subject site is elevated and proposed dwelling would be visually prominent. Proposed development would be contrary to Objective CDP13.5 and 3.7. Proposed dwelling would overlook and overshadow dwellings to the north. Recommendation to refuse permission.

4.0 **Planning History**

- 4.1.1. **PL03.120863:** Outline planning permission was REFUSED for the construction of a private dwelling, garage and septic tank

1. The site of the proposed development is located in an area of High Development Pressure and a Visually Vulnerable Area as designated in the current Development Plan for the area. It is the policy of the planning authority to conserve the natural scenic qualities that exist by concentrating development within existing settlements and designated residential clusters other than development which meets the housing needs of local people. This policy is considered reasonable. It is considered that the applicant does not come within the scope of the housing need criteria in the Development Plan. The proposed development would contravene materially the objective of the planning authority and would lead to the demands for the uneconomic provisions of further public services and facilities in an area where these are not proposed.
2. It is considered that the proposed development would be visually obtrusive and prejudicial to the amenities of the area and would give rise to undesirable ribbon development along the public road. The proposed development would, therefore, be contrary to the proper planning and development of the area

5.0 Policy Context

5.1. Sustainable Rural Housing Guidelines for Planning Authorities

- 5.1.1. The guidelines refer to criteria for managing rural housing requirements whilst achieving sustainable development. Among the policy aims identified for sustainable rural housing are;
 - Ensuring that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated.
 - Managing pressure for overspill development from urban areas in the rural areas closest to the main cities and towns such as the gateways, hubs and other large towns.
 - The planning authority should establish if the proposal is intended to meet a genuine rural housing need.
- 5.1.2. According to Map 1 Indicative Outline of NSS Rural Area Types the subject site is located in an area which is classified as being an **Predominantly Dispersed**

Settlement Area. Areas exhibiting these characteristics are generally associated with the western seaboard of counties such as Donegal, Mayo, Galway, Clare and some parts of Kerry and many parts of the Gaeltacht where there are comparatively fewer village or smaller town type settlements compared with other rural areas; instead there tends in those areas to be a prevalence of housing clusters, groups of clusters and occasionally linear development.

5.1.3. The guidelines stress that development driven by cities and larger towns should generally take place within their built-up areas or in areas identified for new development through the planning process. Appendix 3 of the Guidelines state that the key development plan objectives in these areas should be on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan. In addition, policies will also normally include references to:

- The types of situations considered as constituting rural generated housing. (See also Section 3.2.2.),
- Measures that will be put in place to facilitate the availability of an appropriate level of housing options in smaller settlements for other housing requirements,
- The criteria that will be applied by the planning authority generally in assessing rural generated housing proposals e.g. in relation to evidence of an applicant's links to the area in question, and
- The measures to be adopted to ensure that development permitted to meet the requirements of those with links to the rural community continues to meet the requirements for which it was permitted.

5.1.4. The Guidelines require that new houses in rural areas are sited and designed to integrate well with their physical surroundings and generally be compatible with:

- the protection of water quality in the arrangement made for onsite wastewater disposal facilities
- the provision of a safe means of access in relation to road and public safety and

- the conservation of sensitive areas such as natural habitats, the environs of protected structures and other aspects of heritage.

5.2. Clare County Development Plan 2017-2023

- 5.2.1. **Chapter 3** deals with Urban and Rural Settlement Strategy. The aim of the Settlement Strategy is to ensure that future development is directed in a balanced plan-led manner to rural and urban areas throughout the county as appropriate.
- 5.2.2. **Section 3.2.5** refers to Single Houses in the Countryside and sets out how single houses will be accommodated in the rural areas outside of the boundaries of the towns, villages and clusters. A distinction is made between rural generated housing and urban generated housing. Regard is also had to the Sustainable Rural Housing - Guidelines for Planning Authorities (DoEHLG). These Guidelines constitute Ministerial Guidelines under Section 28 of the Planning and Development Act 2000 (as amended).
- 5.2.3. The subject site is located within an designated as an “Area of Special Control”. **Objective CDP3.11** states that it is development plan objective for new Single Houses in the Countryside within the ‘Areas of Special Control’ i.e. Areas under Strong Urban Pressure, Heritage Landscapes and Sites accessed from Scenic Routes to permit a new single house for the permanent occupation of an applicant who falls within one of the Categories A or B or C and meets the necessary criteria. To ensure compliance with all relevant legislation as outlined in Objective CDP2.1 and have regard to the County Clare House Design Guide, in particular with respect to siting and boundary treatment.
- 5.2.4. The site is located in a Heritage Landscape, directly adjoining a designated Scenic Route. **Objective CDP13.5** refers:
- It is an objective of the Development Plan: To require that all proposed developments in Heritage Landscapes demonstrate that every effort has been made to reduce visual impact. This must be demonstrated for all aspects of the proposal from site selection through to details of siting and design. All other relevant provisions of the Development Plan must be complied with. All proposed developments in these areas will be required to demonstrate:
- That sites have been selected to avoid visually prominent locations;
 - That site layouts avail of existing

topography and vegetation to minimise visibility from scenic routes, walking trails, public amenities and roads; • That design for buildings and structures minimise height and visual contrast through careful choice of forms, finishes and colour and that any site works seek to reduce the visual impact of the development.

- 5.2.5. In relation to the Scenic Route, **Objective CDP13.7** refers: It is an objective of Clare County Council: a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community; b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact; c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

5.3. **Natural Heritage Designations**

- 5.3.1. The Kilkee Reefs SAC is 0.6km to the north of the subject site.

5.4. **EIA Screening**

- 5.4.1. Having regard to nature of the development comprising a single dwelling 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 applicant has appealed the decision of the Planning Authority to refuse outline permission. The grounds of the appeal can be summarised as follows:
- The subject site was purchased in 1999/2000. Outline planning permission was refused for a dwelling.
 - Planning permission was granted by Clare County Council on two sites adjoining the subject site, with four houses subsequently built. It is submitted that these dwellings contravened the County Development Plan and SR6-1991.
 - The applicant submits that the Planning Authority should have assessed his application in the same manner, with full planning permission granted.

- The applicant has lived in a mobile home in the area for 40no. years and seeks to build a home for retirement. The proposed dwelling would be a '50s style cottage of 90sq.m, with smooth plaster white-washed external walls, wooden windows and slate roof.
- The Planning Authority's conclusion that the proposed dwelling would be a prominent feature is not accepted. The proposed dwelling would 0.3m above the road level, the FFL would be 0.5m above road level and the overall height would be 6m. The ground level at the rear of the site is 9m above the road level. The total height of the proposed dwelling would be 3m below the skyline.
- It is submitted that the proposed dwelling would be similar to the adjacent development, thereby eliminating overlooking, not creating a prominent intrusion on the landscape and not detracting from the visual amenities of the area.
- The applicant has lived in temporary accommodation in the area for 40 no. years, having had an interest in the land since 1999. The applicant qualifies as a 'Local Rural Person'.
- A refusal of permission would reduce the value of the land and end the applicants desire to retire to this part of west Clare.
- The Board is requested to grant permission.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response to the first party appeal is as follows:

- Details submitted with the application indicate that the applicant resided in Kilkee from 1990 to 2018. As Kilkee is a designated 'small town' in the settlement hierarchy, the applicant does not qualify as a 'local rural person'.
- The applicant has indicated that the site was purchased in 1999 thereby designating him as an 'established rural landowner. No evidence to support same has been submitted. The Planning Authority consider that the application does not comply with Objective CDP3.11 of the development plan.
- The existing dwellings on the scenic route have a significantly lower FFL and are not visible from the southern approach road. The subject site is visible from the north and would be a visually prominent feature. The proposed development

would be contrary to Objectives CDP13.5 and 13.7 of the development plan and would have a negative impact on the visual amenities of the area.

- The FFL of the proposed dwelling is higher than the ridge level of the dwellings to the north. Given the significant difference in levels, the proposed dwelling will overlook and may cause overshadowing of properties to the north. This would have a negative impact on residential amenities of the surrounding area.
- The Board is requested to refuse permission.

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Rural Housing Policy
- Visual Impact
- Appropriate Assessment

7.2. **Rural Housing Policy**

7.2.1. The subject site is located in a Heritage Landscape (see Map C, volume 2 of the Clare County Development Plan), to which policy CDP3.11 applies. The development plan states that to permit a new single house for the permanent occupation, an applicant must be category A,B or C. A being a Local Rural Person, B being a person working full or part time in a rural area and C being someone with exceptional health and / or family circumstances. An applicant must qualify as one of the applicants **and** the site must be within their local rural area **and** they must have a local rural housing need.

7.2.2. The applicant submits that they are Category A – a local rural person who is an established rural landowner since before 1999. The Local Authority did not accept this claim as no evidence has been submitted to substantiate it. No evidence has been submitted to the Board to substantiate the claim of Category A.

7.2.3. The second test is that the site must be within 10km of their place of birth or an area to which ties are demonstrated. The applicant has lived in Kilkee, a designated small

town for 40 no. years and therefore the subject site is not within their “local rural area”. The third test is a demonstrable local rural housing need. An applicant who satisfies a ‘Local Rural Housing Need’ is defined 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. The applicant has not presented such a case.

- 7.2.4. Within national guidance rural generated housing is defined as being housing needed in rural areas within the established rural community by persons working in rural areas or in nearby urban areas. The Applicant has not provided details of a need to live in this area nor details of employment which would define the housing need as urban or rurally generated. It is considered that the applicant has not demonstrated compliance with policy CDP3.11 of the development plan or the Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005

7.3. **Visual Impact**

- 7.3.1. The subject site sits on a designated scenic route (see map 13A of the development plan). The development plan states that it is not proposed that this should give rise to the prohibition of development along these routes but development, where permitted, should not seriously hinder or obstruct these views and should be designed and located to minimise their impact. To that end, policy CDP13.7 states that It is an objective of Clare County Council: a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community; b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact; c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.
- 7.3.2. The subject site has expansive and unobstructed views towards the Cliffs and the sea. It is considered that the visual impact of further ribbon development in this area, on a site that this significantly elevated above the ridge heights of surrounding dwelling, would be significantly adverse. It is considered the proposed development which would break the skyline on this scenic route, would be contrary to policy CDP13.7.

7.4. Appropriate Assessment

- 7.4.1. I note the proximity of the subject site (0.6km) to the Kilkee Reefs SAC. The NPWS describe the site as a 12km long site stretching from Ballard Bay to Castle Point, north of the River Shannon Estuary on the Co. Clare Coast. The reefs are exposed to the full force of Atlantic swells from the west. A small shallow bay, Moore Bay, to the east of the subject appeal site, offers some shelter from wave action and a beach is present. The bedrock is Carboniferous millstone grit and flagstone. A few small islands are included, the largest being Bishop's Island. The site is a Special Area of Conservation (SAC) selected for the following habitats listed on Annex I / II of the E.U. Habitats Directive: [1160] Large Shallow Inlets and Bays, [1170] Reefs and [8330] Sea Caves
- 7.4.2. The NPWS site synopsis refers to the reefs, noting that they are very exposed to wave action and support excellent examples of communities for this habitat. The SAC is described as having has good examples of exposed reef communities that contain species worthy of conservation. The purple sea urchin *Paracentrotus lividus* is abundant in shallow pools on the shore. In the infralittoral zone there are scarce species of sponge, sea fan and nudibranch. The erect and encrusting sponges, anthozoans and nudibranchs in the circalittoral are of particular interest. Species richness can be high: 86 species were recorded by BioMar in the upper infralittoral reef north-east of Ilaunonearaun and 76 species were recorded in the lower eulittoral reef at Duggerna Rock. While poorly documented the site has examples of submerged marine caves that are presumed of good quality and largely undisturbed. Exposed littoral sediment communities and sheltered infralittoral reef communities add habitat diversity to the area. This site is of conservation importance as it has excellent examples of reefs and includes examples of a shallow bay and marine caves, all habitats listed on Annex I of the E.U. Habitats Directive.
- 7.4.3. The conservation objectives for the management of the large shallow inlets and bays is "to maintain the favourable conservation condition of the inlets and bays". The target for the favourable conservation condition of the inlets and bays is to have the permanent habitat area stable or increasing subject to natural processes and to conserve the distribution of the following community types in a natural condition: sediment community complex, exposed intertidal and subtidal reef community complex.

- 7.4.4. The conservation objectives for the management of the reefs is also to maintain their favourable condition. Similar to the objectives for the bay, the targets for the favourable conservation condition of the reefs are to have the permanent habitat area stable or increasing subject to natural processes, to see the distribution of the reefs stable or increasing subject to natural processes and to conserve the distribution of the following community types in a natural condition: sediment community complex, exposed intertidal and subtidal reef community complex.
- 7.4.5. The significant effects of the proposed development on the SAC would be contaminated foul, surface or waste water entering the waterbody. As the proposed development is for outline planning permission only. site specific details have not been submitted. It is not possible As per all guidance, a precautionary approach must be taken and where uncertainty exists. However, given the substantive reasons for refusal outlined above and the outline nature of the application, it is not considered reasonable to include AA as a reason for refusal.

8.0 Recommendation

- 8.1.1. I have read the submissions on file, visited the site, and have had due regard to the provisions of the Clare County Development Plan 2017 – 2023 as amended, and all other matters arising. It is considered that the proposed development does not comply with national or local policy on residential development in rural areas. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area. I recommend permission be refused for the following reasons

- 1 The site of the proposed development is in a rural location in an area designated as a Heritage Landscape and adjoining a designated Scenic Route, in an area where housing policy CDP3.11 applies and identified as such in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005. It is considered that the applicant does not come within the scope of the criteria for housing need necessitating a dwelling at this location. The proposed development would, therefore, conflict with the provisions of the guidelines and with the policy of the planning authority and

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

- 2 The proposed development of a single dwelling on the highest point of a site, elevated above all surrounding development and at a point that would break the skyline is considered to be detrimental to the high scenic amenity of the area. It is considered that the proposed development by reason of its elevated position would interfere with a view of special amenity value (or which it is necessary to preserve). The proposed development is considered to be contrary to policy CDP13.7 of the development plan and therefore is contrary to the proper planning and sustainable development of the area.

Gillian Kane
Senior Planning Inspector
10 March 2020