



An  
Bord  
Pleanála

## Inspector's Report ABP-306178-19

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<b>Development</b>	Construction of a two-storey dwelling house, detached domestic garage, waste water treatment system, percolation area, entrance, and all ancillary site works.
<b>Location</b>	Friarstown, Roxborough, Ballysheedy, Co. Limerick
<b>Planning Authority</b>	Limerick City & County Council
<b>Planning Authority Reg. Ref.</b>	19/771
<b>Applicant(s)</b>	Mark Feighery
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant, subject to 15 conditions
<b>Type of Appeal</b>	Third Party -v- Decision
<b>Appellant(s)</b>	Donal C Ryan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	12 <sup>th</sup> March 2020

**Inspector**

Hugh D. Morrison

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports.....	5
4.0 Planning History.....	5
5.0 Policy and Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations .....	6
5.3. EIA Screening .....	6
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Applicant Response .....	7
6.3. Planning Authority Response .....	8
6.4. Observations .....	8
6.5. Further Responses.....	8
7.0 Assessment.....	8
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15
10.0 Conditions .....	<b>Error! Bookmark not defined.</b>

## 1.0 Site Location and Description

- 1.1. The site is located 2.3 km to the south of Junction 2 on the M20, the Dooradoyle Junction, in a locality known as Friarstown. To the north of this site lies Limerick Golf Club and a small established residential estate known as Friarstown Park. The surrounding road network is accompanied by extensive ribbon development. Friarstown Road (R511) passes on a N/S axis to the east and Scoil an Spioraid Naoimh lies between this regional road and the site.
- 1.2. The site itself is of regular shape and it extends over an area of c. 5.26 hectares, which comprises several field divisions denoted by hedgerows. This site is relatively level and it is presently down to grass. The northern boundary abuts the above cited residential estate, while the eastern boundary abuts the above cited school and the rear boundaries of two one-off dwelling houses to the south of this school. The more northerly of these dwelling houses is accompanied by a track between it and the school, which affords an agricultural means of access from Friarstown Road to the site. The southern and western boundaries abut further fields. All of these boundaries are denoted by means of agricultural fences and hedgerows, except for the eastern one, where the boundary with the school is denoted by means of a high wire mesh fence and the boundary with the said dwelling houses is denoted by means of a timber post and rail fence.

## 2.0 Proposed Development

- 2.1. The proposal would entail the construction of a four-bed, two-storey dwelling house (397 sqm). This dwelling house would be sited in a position towards the NE corner of the site. It would be of rectangular form under a double pitched roof. Its northern, southern, and western elevations would, variously, be accompanied by a porch, a sunroom, and a utility room.
- 2.2. The proposed dwelling house would be accessed off the end of the cul-de-sac, to the north, which serves Friarstown Park. It would be served by a detached domestic garage to the east and a waste water treatment system and a percolation area to the south east. This percolation area would be sited c. 90m from the dwelling house in a position to the rear of the above cited more northerly of the two dwelling houses to the east of the site.

## 3.0 Planning Authority Decision

### 3.1. Decision

Following receipt of further information, permission granted subject to 15 conditions, including one that pertains to a Section 47 agreement.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Further information requested with respect to the following:

- Land Registry folio details for site and adjoining site to the E,
- First floor bedroom windows overlooking school to be omitted,
- Written consent to access the site via Friarstown Park Estate,
- Revised Section 147 agreement re. 07/1110, and
- Respond to third party objections.

#### 3.2.2. Other Technical Reports

- Irish Water: No objection, standard observations.
- Limerick City & County Council:
  - Planning & Environmental Services: Condition re. installation of WWTS and polishing filter requested.

## 4.0 Planning History

Site:

- 04/866: Outline for dwelling house: Refused.
- 05/3333: Outline for dwelling house: Withdrawn.
- PP10891: Pre-planning consultation.

Adjoining site to the E:

- 07/1110: Dwelling house: Permitted and implemented.

Adjoining site to the SE:

- 17/548: Relocation of WWTS and polishing filter to rear of dwelling house:  
Permitted.

## 5.0 Policy and Context

### 5.1. Development Plan

Under the Limerick County Development Plan 2010 – 2016, the site is shown as lying in a rural area under strong urban influence. Objective RS 01 is thus of relevance.

### 5.2. Natural Heritage Designations

- Lower River Shannon SAC (002165)
- River Shannon and River Fergus (004077)

### 5.3. EIA Screening

Under Items 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019, where more than 500 dwelling units would be constructed the need for a mandatory EIA arises. The proposal is for the development of 1 new build dwelling unit. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant threshold, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Donal C Ryan of 9 Friarstown Park, who represents the residents of Friarstown Park, begins by outlining the history of Friarstown Park, an estate that was constructed in the seventies.

Attention is drawn to the applicant's family who it is stated have constructed 5 dwellings in the area since 1985, 4 of which have been sold. Attention is also drawn to permitted application 2326/19 made by the applicant for the demolition of a habitable house and the construction of 2 new houses in its place at 139 Stillorgan Road in Dublin.

The following grounds of appeal are cited:

- Access to the site would entail crossing 0.04 hectares of land, which lie outside the applicant's control. At the application stage, the applicant submitted consent from someone purporting to be in a position to grant the same: This is contested.
- The planning history of the site and adjoining sites to the E and SE is recited and attention is drawn to the Section 47 agreement that accompanies the permission granted for the dwelling house on the said site to the E and which affects the current application site. The handling of this agreement and revisions to it are critiqued.
- The site is currently the subject of an agricultural access off the R511. The proposed percolation area would be sited under this means of access and so a new access via Friarstown Park would be used (cf. the access gate to paddock shown on the site layout plan) with adverse implications for road safety on and the amenity of this estate.

### 6.2. Applicant Response

The applicant begins by outlining his own evolving housing needs and those of his parents, due to changing work and personal circumstances, respectively. He thus

has an economic and social need for the proposed dwelling house on the subject site. He then responds to the grounds of appeal as follows:

- The 0.04 hectares at issue was thought to be in the ownership of the applicant's parents. While still registered in the name of Green Valley Homes, this firm has been dissolved and so the consent of John Butler "the primary developer" has been obtained. Likewise, the consent of LCCC was obtained as the estate has been "taken in charge".
- The issue of the Section 47 agreement has been addressed in the revised agreement.
- Agricultural access would continue as at present and there would be sufficient room for its use without over running the proposed percolation area. The proposed "access gate to paddock" was simply to facilitate the applicant's family, if it was to have a pony on the paddock. This gate could be omitted by condition if it is of continuing concern.

### 6.3. **Planning Authority Response**

None

### 6.4. **Observations**

None

### 6.5. **Further Responses**

None

## 7.0 **Assessment**

- 7.1. I have reviewed the proposal in the light of national planning guidelines, the CDP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:



- (i) Rural Settlement Policy,
- (ii) Legalities,
- (iii) Amenity,
- (iv) Access,
- (v) Water, and
- (vi) Stage 1 Screening for AA.

**(i) Rural Settlement Policy**

7.2. Under the CDP, the site lies within a rural area that is deemed to be under strong urban influence. Thus, the applicant for the proposed dwelling house on this site must be able to demonstrate that he has a local need under Objective RS 01 of this Plan. The relevant criteria are thus as follows:

- (a) The application is being made by a long-term landowner or his/her son or daughter, or*
- (b) The applicant is engaged in working the family farm and the house is for that persons own use, or*
- (c) The applicant is working in essential rural activities and for this reason needs to be accommodated near their place of work, or*
- (d) The application is being made by a local rural person(s) who for family and/or work reasons wish to live in the local rural area in which they spent a substantial period of their lives (minimum 10 years).*

7.3. National planning guidelines address the question of candidature for a new rural dwelling house most recently under National Policy Objective (NPO) 19 of the National Planning Framework (NPF), which states the following:

*Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment and elsewhere: In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.*

- 7.4. The applicant has submitted a letter that summarises his connections with the locality of the subject site and his personal circumstances that underlie his quest to return there. This letter is supported by further letters and documentary evidence of his attendance at local schools in his youth. It is also accompanied by a letter of consent to the making of the application from his mother who is the landowner.
- 7.5. The applicant has not engaged explicitly with the above cited criteria. Instead he bases his case for being a candidate for a rural dwelling house upon his connection with the locality dating from his youth. He resided in both a dwelling house within Friarstown Park and one elsewhere within the locality and he attended local schools.
- 7.6. The applicant has not stated what his employment is and yet he contends that he has an economic need to reside on the site. He has stated that such residency would yield a social benefit insofar as he would be in a position to support his parents. No indication of their needs has been submitted in this respect.
- 7.7. I consider that, based on the information before me, the applicant has not demonstrated that he has either an economic and/or a social need to reside on the site and so, under NPO 19 of the NPF, he is not a candidate for a rural dwelling house.
- 7.8. I note that the applicant's mother owns the site and the adjoining dwelling house to the south east. *Prima facie* criterion (a) of Objective RS 01 may thus be applicable. However, under Section 3.9.3 of the CDP, a long-term landowner is defined as "a person who has owned a minimum of 10 hectares in the rural area for a minimum period of 15 consecutive years." The applicant has not demonstrated that his mother would come within this definition and so his candidature, under this criterion, has not been established. I note too in this respect that it appears to fail the economic and social need tests of NPO 19 and so it may not be relevant, as the NPF takes precedence over the CDP.
- 7.9. I, therefore, conclude that the applicant is not a candidate for a dwelling house on the site.

**(ii) Legalities**

- 7.10. The appellant draws attention to an extant Section 47 agreement which effectively sterilised the subject site in connection with the permission (07/1110) which was granted to the more southerly of the two dwelling houses to the south east of the

site. He also draws attention to condition no. 14 attached to the draft permission, which refers to a further Section 47 agreement that would replace the extant one. The appellant states that the extant agreement was breached by the applicant's mother insofar as she gave consent to the applicant to make the current application. He also observes, amongst several points of criticism, that the replacement agreement sterilises all the lands in her ownership, including the exact site or house plot of the currently proposed dwelling house.

- 7.11. The parties to the extant and replacement agreements are the applicant's mother and the Planning Authority. I consider that any alleged breach of an existing agreement is for the Planning Authority to attend to and that the parties can by mutual consent enter into a replacement agreement if they so wish. I consider, too, that the replacement agreement may indeed have the effect suggested by the appellant and so it needs to be reworked in the light of this and other matters raised by him.
- 7.12. I note that the submitted proposed site layout plan indicates that, while the majority of the 5.26-hectare site would be a grass paddock, the extent of the residential curtilage around the proposed dwelling house has not been shown. I note, too, that the need for clarity on this extent is of importance as it has a bearing on the associated question of the suburbanisation of the countryside and the area over which domestic exempted development could be undertaken.
- 7.13. The submitted site layout plan does show the siting of a percolation area some 90m from the dwelling house. Normally such areas are sited within residential curtilages and so the implication is that an overly extensive one is envisaged in this case.
- 7.14. In the light of the above I consider that, if the Board is minded to grant permission, then clarity on the extent of residential curtilage would be important to achieve prior to such a decision being taken, i.e. this matter would need to be the subject of a request for further information.
- 7.15. I conclude that, while the Planning Authority is at liberty to enter into a new Section 47 agreement with respect to the lands in the applicant's mother's ownership, the replacement one is flawed. I conclude, too, that, if the Board is minded to grant permission, then clarity on the extent of the proposed residential curtilage would be important to achieve.

### **(iii) Amenity**

- 7.16. The proposed dwelling house would be sited towards the north eastern corner of the site and in a position whereby its front (northern) elevation would face the end of the western cul-de-sac to Friarstown Park, an established residential estate. This dwelling house would be separated from the nearest existing dwelling houses on this estate by means of the retention of the existing mature hedgerow along the northern boundary of the site. These dwelling houses lie within their own grounds and so appreciable separation distances would exist between the propose dwelling house and them.
- 7.17. The appellant has drawn attention to a proposed access gate to the grass paddock to the west of the new dwelling house. He has also drawn attention to the siting of the proposed percolation area, which he is concerned would negate the continuation of agricultural access to the site via the existing track from Friarstown Road. In these circumstances, the proposed access gate adjacent to the new dwelling house would become the means whereby agricultural vehicles would access the grass paddock and so such vehicles would traverse the Friarstown Park residential estate with adverse implications for its amenity and safety.
- 7.18. The applicant has responded by stating that the siting of the percolation area would be consistent with the continuation in use of the existing agricultural means of access. He has also stated that the proposed access to the paddock was simply to facilitate the care of a family pony. It could however be omitted.
- 7.19. I note the above exchanges between the appellant and the applicant. The latter's response indicates that, were the percolation area to be within any residential curtilage, it would lead to a situation wherein this curtilage would overlap with the agricultural means of access. Such a scenario would be inherently conflictual and yet to place this percolation area outside the residential curtilage would be irregular and unacceptable, too.
- 7.20. During my site visit, I observed that the portion of the eastern boundary between the eastern elevation of the proposed dwelling house and the adjacent school is denoted by means of a high wire mesh fence. Accordingly, this boundary is open in feel and a highly level of visibility features across the same. Screening would thus need to be introduced to ensure that an acceptable level of privacy is available to both the

proposed domestic lawn and the school playground. A high closely boarded fence would serve this purpose, as would a hedgerow, in time, once it has matured.

- 7.21. The proposed dwelling house would be relatively large and well-lit by natural light. This dwelling house would thus afford a good standard of amenity to future residents. Externally, as noted above, the extent of the accompanying residential curtilage needs to be established. *Prime facie* there is ample scope to ensure that garden areas are of a suitable size and orientation to afford a good standard of amenity, too.
- 7.22. The proposal would, subject to screening of the eastern site boundary, be compatible with the amenities of the area. The proposed dwelling house would afford an acceptable standard of amenity to future residents. The siting of the proposed percolation area would, however, be problematic insofar as it would be relatively remote from the dwelling house and in the vicinity of an agricultural means of access.

#### **(iv) Access**

- 7.23. The proposal is for a single dwelling house and so the traffic generated thereby would be capable of being satisfactorily accommodated on the local road network through Friarstown Park from Friarstown Road (R511) to the site.
- 7.24. The proposed dwelling house would be accessed off the end of the western cul-de-sac to Friarstown Park. Such access would require utilisation of a strip of land which spans the gap between the northern site boundary and the end of the carriageway. The appellant and the applicant differ over the ownership of this strip and whether or not Friarstown Park has been “taken in charge”.
- 7.25. The Board is not in a position to arbitrate upon the aforementioned differences. During my site visit, I observed that the strip of land could, physically, be laid out to provide the needed point of access. From a legal perspective, I would draw the Board’s attention to Section 34(13) of the Planning and Development Act, 2000 – 2019, which states that “A person shall not be entitled solely by reason of a permission under this section to carry out any development.”
- 7.26. I conclude that the site would be, physically, capable of being satisfactorily accessed from Friarstown Park.

## **(v) Water**

- 7.27. The proposal would be served by a new connection to the public water mains. Irish Water has raised no objection to the same.
- 7.28. The foul and surface water would be handled variously by means of an on-site waste water treatment and a soak pit.
- 7.29. The applicant has undertaken a site characterisation exercise. He reports that the only portion of the site that is suitable for the discharge of waste water to ground water is that portion within which the proposed percolation area would be sited. He thereby explains the selection of the siting of this area, which would be c. 90m away from the proposed dwelling house, thus necessitating pumping. The percolation area itself would entail the installation above existing ground level of a tertiary stage Ecoflo Cocofilter and the removal of existing top-soil over an area of 90 sqm to a depth of 300 mm and its replacement with washed stone.
- 7.30. As discussed under previous headings of my assessment, the siting of the percolation area would be problematic insofar as it would either necessitate an overly large residential curtilage which would overlap with an agricultural means of access or it would lie outside such a curtilage and thus fail to contribute to a residential development that would be a self-contained entity. Either scenario would be unacceptable.
- 7.31. Under the OPW's flood maps, the site is not shown as being the subject of any identified flood risk.
- 7.32. I conclude that while the siting of the proposed percolation area would be capable of functioning technically, its relative remoteness from the new dwelling house would be inherently problematic.

## **(vi) Screening for Stage 1 AA**

- 7.33. The site is neither in nor near a Natura 2000 site. I am not aware of any source/pathway/receptor route between this site and the nearest such sites. Accordingly, no Appropriate Assessment issues would arise.
- 7.34. Having regard to the nature and scale of the proposal and proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that

the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. That permission be refused.

## 9.0 Reasons and Considerations

1. The site of the proposal is located within an “Area Under Strong Urban Influence” as set out in the Sustainable Rural Housing Guidelines. In addition, under National Policy Objective 19 of the National Planning Framework, it is national policy to facilitate the provision of single housing in the countryside, in areas under urban influence, based on the core consideration of demonstrable economic or social need to live in a rural area and having regard to siting and design criteria and the viability of smaller towns and rural settlements.

Having regard to the location of the subject site, within the catchment of Limerick City and proximate to smaller settlements, and also having regard to the absence of information as to (a) the applicant’s work, and (b) any social need that may require him to reside near to his parents, the Board is not satisfied that the applicant has demonstrated an economic and social need to live at this specific rural location, or that the applicant’s housing needs could not be satisfactorily met in a smaller town or settlement.

Accordingly, to permit this proposal, in these circumstances, would contravene National Policy Objective 19 of the National Planning Framework and so be contrary to the proper planning and sustainable development of the area.

2. The submitted proposed site layout plan omits to delineate the extent of the residential curtilage that would accompany the proposed dwelling house. Nevertheless, it does show the siting of an Ecoflo Cocofilter and gravel infiltration layer in a relatively remote position from this dwelling house. While the completed Site Characterisation Form explains the need for this siting within the overall site, its implications for the extent of the residential curtilage would be unacceptable, as it would either necessitate an excessive curtilage or one wherein an integral component of the proposed residential development would lie outside it. The proposal would thus either result in the suburbanisation of a rural area which would

be seriously injurious to its character and amenities or an outcome that would fail to represent well planned and orderly development. It would thus be contrary to the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

7<sup>th</sup> April 2020