



An
Bord
Pleanála

Inspector's Report

ABP-306658-20

Development	Construct a single storey dwelling house, domestic garage, entrance, waste water treatment system and percolation area and all ancillary site works
Location	Lahesseragh , Coolbawn , Nenagh
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	19600555
Applicant(s)	Colla Mc Mahon.
Type of Application	Permission.
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Christy & Breeda Cormican.
Observer(s)	None
Date of Site Inspection	26 th of May 2020
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The site at the western extremity of Co. Tipperary, close to Lough Derg. It is a remote undeveloped rural area, mainly associated with tourism and agriculture.
- 1.2. The site is 0.25 Hectares, with road frontage onto a narrow local road. There is an existing agricultural gate where the proposed entrance to the development is to be located.
- 1.3. South of the site is a forested area, and a stream forms the southern site boundary. The western site boundary is the local road. On the opposite side of the road is Lough Derg shore.
- 1.4. The north and east are open site boundaries into the remaining field area. The site is currently used for grazing, and it includes small little humps.
- 1.5. The site is elevated above the level of the road. It falls towards the road to the east and the stream to the south.

2.0 Proposed Development

- 2.1. The proposed dwelling is a monopitch single storey dwelling with three bedrooms (178sq.m.).
- 2.2. A detached garage is also proposed, with a septic tank and percolation area.

3.0 Planning Authority Decision

3.1. Decision

Tipperary Co. Co. granted planning permission for the dwelling house subject to an occupation condition.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The applicant was asked as part of F.I. for an Appropriate Assessment, and this screening was submitted along with mitigation measures

A visual impact assessment was submitted

Adequate sightlines were indicated.

3.2.2. **Other Technical Reports**

None

3.3. **Prescribed Bodies**

The Prescribed Bodies were notified of the planning application, and there were no submissions made.

Department of Culture, Heritage and Gaeltacht

A condition should be attached that mitigation measures should be imposed as outlines in the NIS regarding water quality and noise disturbance.

3.4. **Third Party Observations**

The neighbouring residents objected to the proposal on the grounds of visual impact, impact on privacy, and should be located away from SAC

4.0 **Planning History**

There is no relevant planning history.

5.0 **Policy Context**

5.1. **Development Plan**

North Tipperary Development Plan 2010 (As varied and extended).

Policy SC4:

Policy SS4: Housing in the Rural Countryside

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 need²⁰, 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.

Site is located within a **Designated Primary Amenity Area**

Primary and Secondary Amenity Areas, which include, amongst others, Lough Derg, are particularly notable by virtue of their scenic and visual quality and offer significant opportunities for tourism development and rural recreational activities. The Council will seek to ensure that a balance is achieved between the protection of sensitive landscapes and the appropriate socio-economic development of these areas. In this respect, development proposals will be required to demonstrate that they integrate and respect the visual quality of the landscape.

Policy LH2: Protection of Visual Amenity and Character of Primary and Secondary Amenity Areas

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

5.2. **Natural Heritage Designations**

There are ten European sites within 15Km of the subject site. However, the most important sites are the two adjacent to the subject site because there are direct and indirect hydrological links from the site to the Natura 2000 sites listed

Site Code 002241

Lough Derg North-east Shore SAC is across the road from the boundary of the site

Site Code 004058

Lough Derg (Shannon) SPA

5.3. **EIA Screening**

Having regard to the small scale of the proposed development, the proposed installation of a wastewater treatment system, 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**

The following is a summary of the grounds of appeal.

Unsustainable form of Development outside of Designated Settlement

The site is located in an unserviced rural area outside of a designated settlement. The area is scenic, and the applicant has not substantiated a need to live in this area. There is no reason why the applicant cannot build inside a designated settlement, and the applicant runs an Airbnb beside the family home.

The Board should note appeal reference PI92.302256, a refusal for a dwelling house in North Tipperary for a similar case to the proposal. National Policy Objective 19 is

applicable. The subject site is located outside of existing small nearby settlements that would benefit with new housing.

Unsustainable form of development within a Primary Amenity Area

The subject site is located in a pristine setting overlooking the shore of Lough Derg. There is insufficient justification for a dwelling at this sensitive location. Section 3.4 of the Tipperary County Development Plan states the site is located in a Primary Amenity Area which is sensitive to change

Adverse Visual Impact

Specific Objective SO5-14 states it is an objective of the Council to cooperate with Fáilte Ireland and Waterways Ireland in promoting the waterways and lakelands of the country. The adverse visual impact of a large one-off house on the lake shore would serve to undermine that objective.

Adverse Impact on surface and groundwaters

It is worrying that the proposed percolation area will be in close proximity to Kilbarron Stream, which flows westwards towards Lough Derg, as Natura site. The Environmental reports fail to address the proximity of the Natura site alongside the proposed development. The groundwater flow as stated north-south is questionable given the topography of the site.

Absence of wintering bird surveys

The site visit of the NIS is dated 19th of September to examine bird habitats. This cannot be relied upon for wintering birds associated with the SPA.

Absence of Ecological Assessment of adjoining woods

The site is directly adjacent to a native Irish Woodland consisting of mature oak, hazel and ash.

Inappropriate House Design

The proposed dwelling is monotonous in character and would be inconsistent with the provisions of the North Tipperary design Guide for Rural Housing.

Road Access

The road providing access to the site is narrow, and has inadequate capacity to cater for additional traffic.

6.2. Applicant Response

The applicant has responded to the appeal as follows:

- Policy SS4 -Category A (ii) is to facilitate dwellings in the open countryside from the area.
- The notifiable bodies made no comment on the application.
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- The applicant has never owned a dwelling, and has never worked for Airbnb. Her father lets out a small cabin on his own property for Airbnb. It's a glamping experience and is not owned by Tiny Homes.
- The applicant's business, is a small start up business with her father, Tiny Homes. The Airbnb reference on the web site is purely as an advertisement for their business, but not directly linked to the business.
- There is no lake view from the site, and the site is not visually obtrusive. The site is close to the lake, but it is not prominent. The site is not viewed from the lake.
- The proposal will not impact on the SPA and SAC.
- The house design is appropriate and in line with the Tipperary rural house Design. It is a minimalist single storey dwelling only 4.2metres with a monopitch roof.
- The sightlines are adequate, and deemed to be acceptable by the PA. .
- The Referred Bodies made no submissions regarding wintering birds, or the adjoining woodlands.
- The house is a minimalist single storey dwelling with a limited roof height at 4.2metres. The monopitch roof fits well into the landscape. The design is based on local influences with the use of contemporary materials and colours.

There is a mix of housing stock in the area. There is also dense screening proposed.

6.3. **Planning Authority Response**

None

7.0 **Assessment**

7.1. Having inspected the site, and considered the appeal file I consider the following items the relevant planning issues to be assessed:

- Compliance with Development Plan
- Other Matters
- Appropriate Assessment

7.2 **Compliance with Development Plan**

The relevant development plan is North Tipperary Development Plan 2010 (as varied). It is acknowledged in the Plan that local people from a rural community and who have lived for long periods in the same rural community and need a dwelling, should be considered favourably for a dwelling house in rural area.

The applicant is 22 years old and has submitted evidence that she lives at Kilbarron Quay. According to the planning application, the applicant lives at her parent's house. She does not own the site, nor does her family own the site, it is been sold to her subject to planning permission been granted.

The relevant development policy is:

Policy SS4: Housing in the Rural Countryside. *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.

Based on the evidence submitted which includes local education details and Credit Union statement, it would appear the applicant complies with Item (1) of the development plan's criteria of the local needs policy. She has lived within 10Km of the site over a period exceeding ten years. However, she did attend college in Cork, and has returned to the area to live and work on a business with her father.

Which leads onto the proximity of the subject site to Lough Derg. The subject site is located within a **Designated Primary Amenity Area**. According to the current development plan

'Primary and Secondary Amenity Areas, which include, amongst others, Lough Derg, are particularly notable by virtue of their scenic and visual quality and offer significant opportunities for tourism development and rural recreational activities. The Council will seek to ensure that a balance is achieved between the protection of sensitive landscapes and the appropriate socio-economic development of these areas. In this respect, development proposals will be required to demonstrate that they integrate and respect the visual quality of the landscape.'

According to policy statement **Policy LH2: Protection of Visual Amenity and Character of Primary Amenity Areas** *'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.'*

The setting of the site is pristine countryside. It is undulating topography which ascends eastwards away from Lough Derg. The site is currently grazing land with a stream to the south set against a small pocket of native woodland as a southern backdrop. There is an open field to the north and west. The site rises away from the stream and the public road. The designation of location as a Primary Amenity

area, is warranted in my opinion, to protect the amenity value of the Lough Derg and its hinterland.

I note the site is not visible from the lake due to overgrowth in a wetlands area between the site and the edge of the lake. There are no views from the site towards the lake due to the same overgrowth on the opposite side of the road to the site. As stated, the site rises above the level of the public road and consists of small mounds throughout its configuration, something not referred to in the planning application. The mounds may be a result of the underlying bedrock of limestone.

The proposed dwelling is a single storey monopitch dwelling with a ridge height of 4.2metres with large windows to the front with a very horizontal emphasis throughout the design. Design is a subjective planning issue, however I consider the proposed design and layout to be inappropriate for the site and location. The dwelling is 22metres in length and only 4.2metres in height with very long windows on the front elevation, placed on an ascending site. The applicant describes a dwelling design as contemporary, in my opinion the design resembles a portacabin, and bears no resemblance to any existing dwellings in the area, and it would look out of place in this unspoilt rural area and out of context on the site. The neighbouring dwelling to the north is nestled into the landscape.

The proposed dwelling will look incongruous on the landscape and detract from the rural and amenity qualities of the area. The area has a special visual amenity designation to protect the high amenity value of Lough Derg. The proposal will have an adverse material impact on the visual qualities of the area because it represents an abrupt addition onto an unspoilt countryside. Even though there is a forested backdrop to the south, of the site, the proposal will militate against the rural characteristics of the area because it is an obtrusive and alien feature on the landscape. The planning authority had no issue with the principle of a dwelling on the site provided it was positioned closer to the road. The applicant required with this requirement by way of further information in order to reduce the visual impact of the proposed development.

Lough Derg, and its shores immediately adjoin the subject site to the west. This is an area of great charm, natural beauty and heritage. One off house in the open designated countryside should be only considered in exceptional circumstance and

only if they will not adversely affect the natural beauty and charm of the area. The proposed dwelling, in my opinion, would be a blemish on the pristine countryside. To move the development forward on the site as prescribed by the PA, will make the dwelling more conspicuous and inappropriate within the setting. I recommend the Board refuse the proposed development on the basis it does not comply with Policy LH2 of the development plan. The proposed design and layout would not integrate into the landscape in terms of its shape and abrupt visual impact and would therefore create an obtrusive feature on the landscape and detract from the special visual qualities of the area.

7.3 Other Matters

There is an existing field entrance along the road frontage of the site that will form the entrance to the dwelling. Sightlines are acceptable in both directions at the entrance. The local road is narrow lined with mature hedging. In my opinion, it is adequate to cater for the traffic associated with one dwelling.

The P value of the underlying soil is 13.53 and the T value is 12, and proprietary treatment system is proposed.

7.4 Appropriate Assessment

Located alongside the subject site is Lough Derg, North east Shore SAC (002241) and Lough Derg (Shannon) SPA. The Natura 2000 site, is positioned immediately west of the subject site on the opposite side of the road, with a stream (Kilbarrow Stream) providing an indirect and proximate hydrological link along the full length of the southern site boundary.

The proposed development is indirectly connected to the SAC via the stream immediately south of the subject site.

- **Habitat Loss/ Alternation** There will be no direct habitat loss on the existing habitat as a result of the development as the existing site area is a portion of grazing area associated with a larger field. Therefore, habitat fragmentation will not arise, and this impact can be screened out.
- **Disturbance and/ or Displacement of Species** No qualifying interest (bird species) occur on the site due to lack of suitable habitat.

- **Changes in Water Quality** : Surface water emissions associated with the construction phase of the development could impact on aquatic habitats via increased silt levels in surface water run off, especially into Kilbarrow stream along the southern site boundary which has a direct link to the North east Shore SAC. The hydrological impacts are screened in.

Lough Derg North-East Shores SAC and Lough Derg Shannon SPA may potentially be impacted during the construction phases, with the introduction of an invasive species that might occur, in addition to water quality impacts due to drainage connection via the Kilbarrow Stream on the southern boundary. I will therefore move on to Stage 2 screening.

An NIS was submitted by the applicant as part of the planning application, however the document on file as presented is incomplete. The omitted issues were addressed by the applicant in the response to the third party appeal which raised concerns over the ecological impact of the proposal.

Stage 2

Lough Derg North East Shore SAC (Site Code 002241)

The subject site is partially within the stated SAC, however the main habitat associated with the SAC is located on the opposite side of the road or western site boundary. The limestone geology of the bedrock influences the habitats and species present.

The Qualifying Interests of Lough Dreg, North East Shore are as follows

Juniperus communis formations on heaths or calcareous grasslands [5130]

Calcareous fens with Cladium mariscus and species of the Caricion davallianae [7210]

Alkaline fens [7230]

Limestone pavements [8240]

Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]

Taxus baccata woods of the British Isles (91J0)

In terms of Conservation Objectives for Lough Derg North-East Shore SAC, the objective is to maintain the favourable conservation condition of Annex I habitats and or Annex II species for which the SAC has been selected.

Lough Derg (Shannon) SPA (Site Code 004058)

This is a lake on the River Shannon crossing counties Tipperary, Galway and Clare. The site is selected for the following habitats and species listed on Annex I/ II of the EU Habitats Directive:

Qualifying Interests:

Cormorant (Phalacrocorax carbo) [A017]

Tufted Duck (Aythya fuligula) [A061]

Goldeneye (Bucephala clangula) [A067]

Common Tern (Sterna hirundo) [A193]

Wetland and Waterbirds [A999]

Conservation Objective:

To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

Assessment of Likely Significant Effects

The potential impacts are as follows:

- Introduction and facilitated spread of an invasive species via construction materials or machinery which may spread to European sites;
- Disturbance of the QI of Lough Derg during construction
- Negative impact to water quality eg a pollution occurrence involving the release of suspended solids during construction and operation phases which may make its way into the Kilbarrow Stream along the southern boundary of the site.
- Potential impact to ground water quality from sewage treatment system

Unfortunately the Mitigation Measures outlined in Section 4.5 of the NIS were not included with the appeal documentation. However, I am satisfied that standard

measures during the construction phase of the proposal could be conditioned to prevent the introduction of any invasive species onto the site.

On appeal the applicant states the mitigation measures to prevent any contamination of surface waters would include the provision of a silt fence or earthen bund to be erected to prevent any silt entering Kilbarron Stream from the site. In addition, the WWTS will operated in accordance with EPA Guidelines and maintained on an annual basis.

Due to the proximity of the stream along the southern site boundary, and the boundary of the SAC on the opposite side of the road to the site, coupled with the fact the topography falls towards the SAC and Kilbarron Stream, I am not satisfied if the project will not adversely affect the integrity of the European site in view of the site's conservation objectives. In my opinion, the site is too close to the SAC and the stream, and in the unfortunate event of an overspill or contamination from the site onto the adjoining European site, it may adversely affect the integrity of the European site because given the sloping gradient towards the SAC, with an insufficient buffer area, between the site boundaries, the SAC and the stream to the south. In do not consider a berm or a silt fence can prevent a pollutant from entering the adjoining watercourse.

The Lough Derg Shannon SPA is within 10metre of the site and there were no bird species associated at the site as there is no suitable habitat present.

8.0 Recommendation

8.1. I recommend the Board refuse the propose development.

9.0 Reason and Considerations

1. The site of the proposed development is located within 'Designated Primary Amenity Area' as set out in the current development plan for the area, where emphasis is placed on the importance of protecting the visual amenity and landscape character of the area and having regard to the importance of Lough Derg as an amenity area, these objectives are considered to be reasonable. Having regard to the topography of the site, the elevated positioning of the proposed development, together with the design and layout of the proposed development, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment and would set an undesirable precedent for other such obtrusively located developments in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area
2. The Board is not satisfied, on the basis of the information provided with the application and the appeal, including the Natura Impact Statement, that the proposed development either individually, or in combination with other plans or projects would not adversely affect the integrity of European site numbers, Site Code 002241 Lough Derg North-east Shore SAC and Site Code 004058 Lough Derg (Shannon) SPA in view of the sites' conservation objectives. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

08/06/20