



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307118-20

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<b>Development</b>	Construction of a house and garage, including a wastewater treatment system, new road access and ancillary works.
<b>Location</b>	Annagh, Miltown Malbay, Co Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	19/995
<b>Applicant(s)</b>	Stacey Ryan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Stacey Ryan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	21/07/2020
<b>Inspector</b>	Gillian Kane

## **1.0 Site Location and Description**

- 1.1.1. The subject site is located on the southern side of the local country road L2106, approx. 50 east of the junction with the N67. Spanish point is approx. 1.5km northwest of the subject site and Miltown Malbay is approx. 3km north-east.
- 1.1.2. The subject site and the wider area are flat, with expansive views towards the coast to the west. Spanish Point to the north and west is developed, however the subject road has sporadic one-off housing.

## **2.0 Proposed Development**

- 2.1.1. On the 19<sup>th</sup> December 2019, planning permission was sought for the construction of a dwelling house and garage (216sq.m.) with wastewater treatment system on a site of 0.75ha.
- 2.1.2. The application was accompanied by a site characterisation form and documentation relating to housing need and connection to the area.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 24<sup>th</sup> March 2020 the Planning Authority issued a notification of their intention to REFUSE permission for the following reasons:
  - 1 Having regard to the provisions of the Code of Practice issued by the Environmental Protection Agency on “Wastewater Treatment and Disposal Systems serving Single Houses” (2009), the Planning Authority is not satisfied that wastewater generated by the proposed development can be treated or dispersed on this site, having regard to the ground conditions at the site and the presence of surface water drains within the site. It is considered that the proposal, notwithstanding the use of a proprietary wastewater treatment system, represents an unacceptable risk to the environment due to the potential for ponding of treated effluent at the percolation area and consequent impacts on the surface drainage network due to overland flow to the drainage network. The proposed development would therefore conflict with the provisions of the Code of Practice of the Environmental Protection Agency, would result in a risk of environmental pollution, and would therefore be prejudicial to public health.

- 2 The subject site is highly visible from the N67 which is a scenic route that is designated in the Clare County Development Plan 2017-2023, as varied. Having regard to the scale and siting of the proposed development, the open and exposed nature of the proposal site and the views available towards the site from the adjacent Scenic Route, the Planning Authority considers that the proposed development would constitute a visually obtrusive and prominent feature on the landscape that would detract from the views and prospects obtained from the adjoining N67 Scenic Route. The proposal would be contrary to the objective for Scenic Routes as set out in CDP13.7 of the Clare County Development Plan 2017-2023, as varied, would seriously injure the visual amenities of the area and would therefore be contrary to the proper planning and sustainable development of the area.
- 3 The Planning Authority is not satisfied that the roadway entrance is adequate in terms of traffic safety due to the lack of adequate sight distances along the public road and as such the proposed development is likely to endanger public safety by reason of traffic hazard and therefore would be contrary to the proper planning and sustainability of the area.
- 4 The subject site is located in the countryside, within an 'Area of Special Control' which is an area under 'Strong Urban Pressure' where it is an objective of the Clare County Development Plan 2017-2023, as varied, as set out under Development Plan Objective 3.11, 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. Having regard to the documentation submitted with the application to date, the Planning Authority is not satisfied that the applicant complies with the criteria as set out in CDP3.11 of the plan. Accordingly, the proposed development would materially contravene an objective of the 2017-2023 Clare County Development Plan, 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.

### 3.2. **Planning Authority Reports**

- 3.2.1. **Environment Section:** site has serious issues with water logging, saturated ground conditions and is not adequate for wastewater treatment. Recommendation to refuse permission on public health grounds.
- 3.2.2. **Planning Report:** Applicant has not demonstrated that they qualify as a local rural person. Adequate sightlines have not been demonstrated. Notes and concurs with recommendation of Environment Section to refuse permission on public health grounds. Proposed dwelling will occupy a prominent position with very little screening available. Contrary to Objective CDP13-7. Recommendation to refuse permission for 4 no. reasons.

### 3.3. **Prescribed Bodies**

- 3.3.1. **TII:** The Authority will rely on the Planning Authority to abide by official policy in relation to development on / affecting national roads.

### 3.4. **Third Party Observations**

- 3.4.1. Planning report has a handwritten note stating "Cllr Joe Garrihy 19/2/2020" under the heading "Representations". Email dated 19/02/2020 from Cllr.

## 4.0 **Relevant Planning History**

- 4.1.1. No planning history on the subject site.

## 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 **Area under Strong Urban Influence**.

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” namely an area under strong urban pressure. **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
- CDP13.7: Scenic Routes:** 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 Mid-Clare Coast SPA site code 004182 and the Carrowmore Point to Spanish Point and Islands SAC site code 001021, are the nearest Natura sites located approx. 0.2km away.

### 5.4. **EIA Screening**

- 5.4.1. Having regard to nature and scale of the development and the location of the site 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. An agent for the applicant has appealed the decision of the Planning Authority to refuse permission. He states that the decision is not in accordance with section 7.14 of the 2007 Guidelines as the main reasons and considerations are not stated, are not clear and unambiguous.
- It is submitted that the first reason of refusal is a compilation of issues with no specific reasons regarding wastewater or ground conditions. It is submitted that the subject site is capable of dispersing treated effluent through a polishing filter. A non-statutory code of practice cannot be a reason for refusal.
  - It is submitted that installation of WWTS is frequently the cause of failure of systems. The Applicant has agreed to professional supervision of all elements of construction of the waste water system.
  - The site characterisation form recognises that percolation / dispersal is not ideal, with a T value of 70, a clay loam soil and low level of top soil. Site tests on adjoining sites (P11/584 and 13/533) showed T values of 57 and 27 respectively. It is submitted that the Planning Authority should have requested further information.

- The Planners EIA and AA assessment declares that there is no real likelihood of significant effects on the environment, yet the assessment also states that the proposal represents an unacceptable risk.
- The environmental report submitted to the Planner neglects to note that the main drain had recently been cleaned. The eastern drain has not been maintained as cattle migrate from adjacent fields through the shallow drain. Over compaction of the land is likely to be the result of heavy agricultural machinery.
- The Planning Authority's requirement for a 200sq.m. polishing filter is not substantiated. It is submitted that the EPA CoP has conflicts. The proposed dwelling has been designed for a loading rate of 9l/m<sup>2</sup>/d, requiring a polishing filter of 33sq.m. or 66 linear metres of 500mm wide trench. It is submitted that the proposed dwelling will likely never have a permanent occupancy of 5persons.
- The Planning Authority's second reason for refusal fails to address the policy for scenic routes that applies to the subject site CDP13.6. The proposed dwelling will be seen only for 50m. The ridge will not break the skyline while it will be higher than the adjacent dwelling, it will be no higher than the other three dwellings.
- The proposed dwelling will screen the view of an existing dwelling from the R482 approaching the N67. It is submitted that screening is not common, with open flat landscape and clusters of dwellings. It is submitted that people will have no reason to look inland as the views are outwards to the sea / beach / coast.
- The proposed dwelling would be the last in a line of 5 no. dwellings on the L2106. It is submitted that there is no reasonable alternative.
- The proposed dwelling does not conflict with CDP13.7. The proposed dwelling has been designed to minimise visual impacts. The relevant policy applicable to the proposed development is CDP13.6
- The Planning Authority's third reason for refusal does not state where the proposal is lacking regarding sightlines. The subject road is a tertiary road with a design speed of 85kph. It is submitted that the traffic warning sign advising of a junction with a major road is in the wrong place and if it were in the correct place, traffic at the subject site would be travelling slower. It is submitted that the Planning Authority has unreasonably applied national route sight distances to the



proposed development. The TII submission is rejected as being not applicable. It is submitted that sight distances of 90m is sufficient.

- The Planning Authority's fourth reason for refusal states that the proposed development is a material contravention without the Planning Authority satisfying itself that it is. The Planning Authority should have requested further information.
- It is submitted that the applicant is a local rural person working 10km from the subject site, living in Ennis. Her childhood home is in Miltown Malbay, 2km from the subject site.
- The Board is requested to grant permission.

## 6.2. **Planning Authority Response**

- Site is in an area under 'Strong Urban Pressure'. In the appeal, an Eircode is given as being the location of the applicants former home. No map or other identified was provided to the Planning Authority. The address in question is 2.1km northeast of the application site and is in a rural location outside of any settlement. It would appear that the applicant would comply with the criteria set out in CDP3.11.
- In relation to the other reasons for refusal, the appeal does not demonstrate that the reasons for refusal can be overcome. The Planning Authority is satisfied that the reasons stand and requests the Board to refuse permission.
- The submission is accompanied by a report from the Environmental Scientist, stating that the site is not suitable due to the inherent characteristics of the site. The report states that these cannot be overcome by engineering solutions.

## 6.3. **Observations**

- 6.3.1. None on file

## 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
- Suitability of Site for wastewater disposal
- Traffic

## 7.2. Rural Housing Policy

- 7.2.1. The subject site is located in an area designated as being under Strong Urban Influence in the Sustainable Rural Housing Guidelines for Planning Authorities. This national guidance on rural housing states that in areas under a strong urban influence the key objective should be to facilitate the housing requirements of the rural community whilst directing urban generated development to cities towns and villages. 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. Urban generated housing is defined as housing sought by persons living and working in urban areas. The Applicant has not provided details of a need to live in this area.
- 7.2.2. Section 3.2.5 of the development plan states that in rural areas under strong urban pressure, genuine housing requirements of the local rural community will be facilitated subject to satisfactory site suitability. Urban generated housing shall be directed to areas zoned for new housing development in urban centres, towns and villages. Categories A, B and C are defined as Local Rural Person, Person working full or part-time in rural areas and those with exceptional health and / or family circumstances respectively. The appeal submission states that her work place is in the town of Ennistymon – a minimum of 18km from the subject site.
- 7.2.3. The applicant being from Mullagh and not providing evidence of any exceptional circumstances, is assessed under Category A, the criteria for which are as follows:  
The applicant must come within the definition of a ‘Local Rural Person’, **and** the proposed site must be situated within their ‘Local Rural Area’ **and** the applicant must have a ‘Local Rural Housing Need’. The plan defines a ‘Local Rural Person’ (applicant) as a person who was born within the local rural area, or who is living or has lived permanently in the local rural area for a substantial period of their life at any stage(s) prior to making the planning application. The ‘Local Rural Area’, for the purpose of this objective, is defined as the rural area generally within a 10km radius

of where the applicant was born, living or has lived (for a substantial period of their life as per 'local rural person'). 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. As noted above, the applicant does not have a rural housing need.

### **7.3. Visual Impact**

- 7.3.1. The subject site is located approx. 50m east of the designated scenic route N67. Section 13.5 of the development plan states that the Council recognises that in some areas the land adjoining these scenic routes has relatively limited capacity (both environmentally and in terms of scenic amenity) to accommodate individual houses in significant numbers. In such areas, the Council will aim to protect sensitive areas from injurious development, while providing for development and change that will benefit the rural community. There is a need to protect and conserve views adjoining public roads throughout the County where these views are of high amenity value. In conserving views, 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.
- 7.3.2. The subject site has expansive and unobstructed views towards the Coast. It is considered that the visual impact of further ribbon development on this scenic area, would be significantly adverse. The flat open nature of the landscape at this location is such that the proposed development would be visually obtrusive. It is considered that the proposed development is contrary to policy CDP13.7 which seeks to protect sensitive areas from inappropriate development.
- 7.3.3. The Appellant submits that policy CDP13.6 is the applicable policy for the proposed development. Policy CDP13.6 of the development plan refers to Seascape Character Areas and states that it is an objective of the development plan to a) To require all proposed developments within Seascape Character Areas to demonstrate that every effort has been made to reduce the visual impact of the development. This must be demonstrated by assessing the proposal in relation to: • Views from land to sea; • Views from sea to land; • Views along the coastline. b) To ensure that

appropriate standards of location, siting, design, finishing and landscaping are achieved.

- 7.3.4. Figure 13.3 of the development plan indicates that the subject site may be within seascape character area 5 Malbay. Although a degree of caution is recommended given the lack of detail in the figure. The subject proposed development has not demonstrated that “every effort has been made to reduce the visual impact of the development.” Nor has the proposal been assessed in relation to views from land to sea, from sea to land and along the coastline. It is considered that the proposed development has not demonstrated compliance with policy CDP13.6.

#### **7.4. Suitability of Site for Wastewater disposal**

- 7.4.1. The appellant queries the assessment of the Environmental Scientist of the Council, stating that the subject site is suitable for discharge and that installation of the proposed WWTS will be supervised by the applicants agent.
- 7.4.2. The Environmental Scientist of the Council responded to the first party appeal, in a submission to the Board dated 11 June 2020. The report states that the subject site is heavily waterlogged, that extensive drainage would be required to aid water movement from the land and that the soils saturation and water logging are such that movement is slow. Photographic evidence gathered demonstrated that there was little water movement vertically in the subsoil due to oversaturated soil / subsoil which results in overland flow to the open drains. The report states that is this happens with rainwater, this will happen with effluent. Therefore the site cannot meet the CoP as it cannot achieve adequate attenuation of effluent and hydraulic transmission safely into groundwater. The Environmental Scientist states that these issues cannot be solved through engineering as they are inherent characteristics of the site. The report states that there is no option to discharge to surface water and is a site needs to rely on this suggestion, it indicates that the site is not suitable to discharge to grounds.
- 7.4.3. It is considered that the subject proposal has not demonstrated that effluent generated by the proposed dwelling can be safely treated and disposed of. I concur with the concluding assessment of the Environmental Scientist that if a site is considered unsuitable, it is not appropriate to permit wastewater discharge which would eventually create a public health risk.

7.4.4. The two planning applications referred to by the appellant as creating a precedent are from 2013 (P13/533) and 2011 (11/584) respectively. In both cases further information was requested, although permission was ultimately granted. The 2013 application was for the retention of a constructed dwelling. It is considered the nature of development and the length of time that has elapsed since those applications are such that they are not comparable. Further, every application is decided on its own merit and the Board is not bound by any decision made by a Planning Authority.

## 7.5. Traffic

7.5.1. Drawing no. PP-01-00 submitted with the planning application shows sightlines of 62.10m to the west and 89.97m to the east of the proposed entrance. Section A1.9.2 of the development plan requires a sight distance of 160m on roads with a design speed of 85kph, such as the subject road. The appellants submission that “90m is ample and safe in such circumstances” is not accepted. The proximity of the subject site (approx. 50m) to a heavily trafficked national route and the proliferation of existing entrances on this section of country road, is such that any additional traffic movements could endanger public safety by reason of traffic hazard.

## 8.0 Recommendation

8.1. I recommend permission be REFUSED for the following reasons and considerations:

- 1 The site of the proposed development is in a rural location in an area under strong urban pressure, 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 where it is national policy to distinguish between urban generated and rural generated housing need. On the basis of the documentation submitted with the planning application and the appeal, it is considered that the applicant does not come within the scope of the criteria for a housing need necessitating a dwelling at this rural location in an Area Under Strong Urban Pressure and in an Area of Special Control. The proposed development would, therefore, be contrary to the provisions of the Ministerial guidelines and be contrary to the policy of the planning authority. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 2 It is an objective of Clare County Council CDP 13.7 to protect sensitive areas from inappropriate development and 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. The proposed development by reason of its siting, scale, layout and design would result in a visually prominent and obtrusive development on an elevated ridge line, which would adversely affect the character of the area and seriously injure the rural and scenic amenities of the area. The proposed development would be at variance with the design objectives and guidelines as set out in the Clare County Development Plan 2017-2023 and the Clare Rural House Design Guide, 2005 and would, therefore, be contrary to the proper planning and sustainable development of the area.
- 3 Having regard to the provisions of the Code of Practice issued by the Environmental Protection Agency on “Wastewater Treatment and Disposal Systems serving Single Houses” (2009), the Planning Authority is not satisfied that wastewater generated by the proposed development can be treated or dispersed on this site, having regard to the ground conditions at the site and the presence of surface water drains within the site. It is considered that the proposal, notwithstanding the use of a proprietary wastewater treatment system, represents an unacceptable risk to the environment due to the potential for ponding of treated effluent at the percolation area and consequent impacts on the surface drainage network due to overland flow to the drainage network. The proposed development would therefore conflict with the provisions of the Code of Practice of the Environmental Protection Agency, would result in a risk of environmental pollution, and would therefore be prejudicial to public health.
- 4 It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a road at a point where sightlines are restricted in both the east and western directions and in close proximity to a heavily trafficked national route.

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Gillian Kane  
Senior Planning Inspector

10 August 2020