



An
Bord
Pleanála

Inspector's Report

ABP-307500-20

Development	Construction of dwelling, entrance, driveway, treatment system, percolation area, and garage
Location	Ballyclerihan , Clonmel , Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	19601354
Applicant(s)	John Lyne
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Patrick and Norah Ryan.
Observer(s)	None.
Date of Site Inspection	2nd of November 2020
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is located in a rural part of Co.Tipperary west of Ballyclerihan village (1.8km) , which is approximately 8Km North west of Clonmel. The site is the corner of a large agricultural (tillage) field, and it is 0.32Ha.
- 1.2. The local road serving the site is off Darcy's Cross, and is only 3metres in width with mature hedgerows aligning both sides of the boreen. The site is approached by a series of third-class roads leading off the Clonmel/ Cashel Regional Road (R688)

2.0 Proposed Development

- 2.1. The proposed development is a two storey four bedroom dwelling (280sq.m.) with an entrance driveway, wastewater treatment system private borehole and a detached garage (35sq.).

3.0 Planning Authority Decision

3.1. Decision

Tipperary granted planning permission for the proposed dwelling subject to 15No. conditions on 5th of June 2020.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

- The applicant complies with local needs, and this is not ribbon development.
- The dwelling does not comply with the Rural Housing Design Guidelines
- Access/ Sightlines acceptable
- Evidence of high water table

3.2.2. *Other Technical Reports*

Roads: No surface water from the site or driveway should go onto the public road.

Third Party Submissions

Third parties submitted objections to the proposal at the planning application stage citing concerns about the applicant's local need for a dwelling, archaeological, drainage and house design.

3.3. Prescribed Bodies

Department of Culture, Heritage and the Gaeltacht had no objection to the proposal and examined the results of the archaeological testing and recommended 4No. conditions be attached to a decision to grant permission.

4.0 Planning History

There is no relevant planning history associated with the subject site.

5.0 Policy Context

5.1. Development Plan

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 need¹⁹, 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.

Policy LH16: Archaeology and Cultural Heritage

It is the policy of the Council to safeguard sites, features and objects of archaeological interest, including monuments on the Sites and Monuments Record (SMR), the Record of Monuments and Places (as established under Section 12 of the National Monuments (Amendment) Act, 1994) and archaeological remains found within Zones of Archaeological Potential (ZAPs) located in historic towns and other urban and rural areas. In safeguarding such features of archaeological interest, the Council will seek to secure the preservation (i.e. preservation in situ or in exceptional circumstances preservation by record) and will have regard to the advice and recommendation of the Department of Arts, Heritage and the Gaeltacht.

Where developments, due to their location, size or nature, may have implications for archaeological heritage, the Council may require archaeological assessment to be carried out. This may include for a requirement for a detailed Visual Impact Assessment of the proposal and how it will impact on the character or setting of adjoining archaeological features. Such developments include those that are located at or close to an archaeological monument or site, those that are extensive in terms of area (1/2 ha or more) or length (1 kilometre or more), those that may impact the underwater environment and developments that require an Environmental Impact Statement.

Appendix Tipperary Rural Housing Design Guidelines

5.2. Natural Heritage Designations

The Lower River Suir SAC is within 15Km of the subject site.

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

Patrick and Norah Ryan have taken this third party appeal against the decision to grant planning permission for the one off rural dwelling.

6.2 *Proximity to an Archaeological Site*

Ballyclerihan was formerly a political frontier. There is an ancient church, and the remains of a castle and a fortified enclosure which is of medieval importance, and the subject site could be rich in archaeological remains.

There is a Preservation Order on the adjoining road and it should have been extended to include the adjoining lands which were part of the original settlement. There is a reference in Samuel Lewis 1837 there was a siege and a battle in the proximity and there may be artefacts on the site. There are reports quoted and aerial photographs too would suggest the site is of greater archaeological importance than the report on the planning file.

Aerial Photos taken by Cambridge University in the 1960s show a medieval village on the eastern side of the road. The nearby church ruin and area of 14-15 hectares is protected by Tipperary Co. Co.

Within the subject site, anomalies detected by a geophysical survey show two parallel linear patterns indicative of a former ditch pattern. The survey shows that settlements structures extended both sides of the road. Evidence of a large circular structure is visible in the field north of the site.

The site of a Medieval Castle is a mile west of the modern village of Ballyclerihan, yet the archaeological report on the planning file does not refer to it. Evidence of a castle can be found in the stones used in farm stone walls which include cut stone, again indicating the historical importance of the area in the site vicinity.

The science of archaeology continues to develop more powerful and efficient tools which allow an area such as the application site to be examined in greater detail. The geophysical anomalies indicate the location of a most likely a prehistoric pathway or medieval trackway. The archaeological trenching carried out on site by the applicants agent, was carried out where there was a high volume of topsoil

placed on the site 25 years ago. The trenches would have penetrated the topsoil only.

Midway along the road to the east is a site known locally as 'The Humps' where there was a medieval site that was destroyed during the Cromwellian period. This site is directly across the road from the subject site as it is listed of international importance.

The main ground of appeal is that the site is archaeologically significant and within the boundary of an original medieval settlement, and the anomalies within the site are significant archaeological features. The report on file is non-conclusive, and the survey is faulty and should not be taken as evidence based.

In addition, the conditions attached to the permission are too general and should not be considered as sufficient to permit a one-off dwelling in a rural area on a site with significant archaeological interest.

6.3 Conflict with Tipperary's Policy

Policy LH16 Archaeology and Cultural Heritage in the current County Development Plan (as outlined under Development Plan section of this report). The proposed development is in conflict with the stated policy.

6.4 The Proposed Dwelling is Out of Character with Vernacular Buildings

It is Council policy to facilitate new development which integrates and respects the character, sensitivity and the value of landscape in accordance with the County Character Landscape Assessment.

The proposed development makes no attempt to integrate into its environment, it is a large suburban style dwelling and it is located on an exposed hillside with no natural screening to the north, west or south. It conflicts with the topography which raises the profile of the structure to 9.6 metres on its exposed northern side.

The proposed east facing bay window increases the profile and visual size of the building to create an unnecessary complicated roof. The house is incompatible with its surroundings and would be visually obtrusive.

The Reporting Planner was concerned about the scale and the design of the dwelling, the applicant did not reduce the massing and scale of the house. The windows are horizontal in appearance and make the house look suburban. A portion

of the site cannot be landscaped, and with the scale of the development, it is difficult to see how the landscaping can reduce the appearance of it.

The house does not comply with the Tipperary County Council's Rural design Guide, and there is a large paved area proposed, with no attempt to soften the visual impact of the dwelling given its sensitive location.

Given the scale of the dwelling and the size of the windows, the proposal will result in light pollution during the winter months.

There is a lack of services in the area. A new borehole is required. The dwelling is 600metres from nearest services, and Irish Water refuse to extend the mains, and the site will require ESB and phone lines degrading the landscape further, and the laying of underground cables will be difficult as the road width is only 2.88metres.

6.5 **Drainage of the Site and Surface Water**

There is a history of an elevated water table on the site and it is unsuitable for a dwelling. The Site Assessment raised a significant concern regarding the surface water run-off northwards close to the wastewater treatment plant. The proposals were revised to a soakaway to the west of the site with no soil assessment. There is evidence of winter ponding on the site. The location of the proposed soakaway is not downgradient of the polishing filter as required by the EPA guidelines, and the proposal is not in line with EPA codes.

The site suitability report stated the trial holes contained mottled water, and one of the holes collapsed on the day of testing, presumably due to the saturation. Site suitability was carried out in December and test results would have been worse in February.

Disposal of Wastewater

The proposed polishing filter and wastewater treatment is to be located on sloped land, and the house is to be built on an artificial plateau. Liquids will move too fast and the pipes will get blocked. The proposal should have been designed and configured to the rear of the dwelling which would have enabled the surface water discharge to the soak pit.

The groundwater vulnerability in the area is classified as extreme. The watercourses in the area have been installed for agricultural use. The drains are not suitable for

the reception of household wastewater due to the high-water table, and this could result in ground water contamination. The drawings do not indicate the slope of the site and how the land will drain.

6.6 Noncompliance with Local Needs Policy

The proposal conflicts with development plan policy P-CS11. The applicant has not demonstrated a need to live in the area. The applicant is not connected with agriculture, and he has failed

6.7 Applicant Response

- The main issue would appear to be the proximity to the Recorded Monument (TS076-016), which is over 250metres form the site. The site does not contain any features relating to the National Monument.
- Mary Henry is a highly qualified and well respect archaeologist who prepared the report for the applicant in accordance with best practice. There was a Geophysical Survey of the site carried out with an excavation licenced obtained from the National Monuments Service. The results were lodged with the appropriate authorities, and the planning authority granted permission in accordance with the requirements of the Department of Culture, Heritage and the Gaeltacht.
- The applicant was born and reared in Ballyclerihan and lived there for 32years and evidence has been submitted on the planning application to prove this. He rents in the village. His parents live 4km from the site. He is a Medical Scientist in the laboratory of South Tipperary Hospital, and needs to live locally.
- There are mature hedgerows to the north and east of the site providing screening. Several changes were carried out to the proposed house design. The planning authority deemed the dwelling to be compatible with the site and location.
- The site suitability report was carried out in December 2019 during a wet winter, and it demonstrates clearly the site is suitable for effluent treatment

and disposal. Some of the photographs are misleading and are taken at locations 530metres form the site.

6.8 Planning Authority Response

The issues relating to archaeology were fully examined by the planning authority, and it was considered based on the reports and proposed mitigation measures the proposal can proceed. The proposal was examined by the relevant Prescribed Bodies, who recommended Conditions 13 and 14 of the decision to Grant Permission.

The site has been tested to the EPA Code of Practice 2000, and the drainage characteristics came within the parameters of the EPA Guidelines.

The planning authority is satisfied the applicant meets with Policy SS4 Category A of the development plan in terms of local needs policy.

The planning authority does not consider the proposal will visually adversely affect the landscape character of the area.

7 Assessment

7.1 The appeal will be assessed under the following headings:

- Compliance with the Development Plan Policies
- Design and Layout
- Drainage
- Archaeology
- Other Matters
- Appropriate Assessment

7.2 Compliance with Development Plan Policies

The relevant current development plan is the South Tipperary Development Plan 2009, which was extended in 2017. The relevant section relating to Local Needs 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 need¹⁹, 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.

The applicant John Lyne has demonstrated he was born and reared Ballyclerihan. His parents reside 4Km from the subject site. He has been an intrinsic part of the local community for over ten years, and currently resides at Donaghmore Crossroads which is south of the subject site (in close proximity to the subject site). He works in Clonmel town in the laboratory of Clonmel hospital. I accept his work is not rural based, however, the development plan policy does not require the applicant to work in a rural area but be intrinsic to the area, and based on the evidence he submitted which included birth certificates, school reports, proof of current address, I consider he meets with the requirements of Category A of Policy SS4 of the development plan.

7.3 Design and Layout

The subject site is located within an unspoiled countryside off a tree lined boreen (3metres in width). The immediate area has an abundance of sites of historical significance. There is a National Monument in close proximity to the site, there is also a large medieval village site on the opposite side of the road to the subject site, and a ringfort within the overall landholding south of the site. The existing farm buildings are discreet and traditional in form. The land is in arable use. The general topography is gently undulating with the subject site rising from the rear to the front boundary. Although the area does not hold any Landscape Amenity designations, I do consider the immediate vicinity of the site to be noteworthy in visual terms and rural amenity.

The subject site has a mature boundary to the north and a mature roadside boundary ditch along the eastern axis.

The proposed two storey dwelling is setback 41.5metres from the edge of the road into the site. The proposed dwelling is a large bulky two storey dwelling spread across the site with a detached garage to the north. It has a stone feature on the front façade, and the fenestration has a horizontal emphasis. In my opinion, the design is a garish design response to this visually sensitive location, and it will appear obtrusive and incongruous on the landscape. The site is exposed and elevated to the south and west, and the overall design will be totally out of character with the rural setting and environment and peculiar to the existing pattern of development in the area. The propose dwelling does not respect the topography of landscape, and it does not respect existing rural buildings in the vicinity. The *Tipperary Rural House Design Guide* contained in the Appendix of the Plan is comprehensive. It states the scale and form of a proposed dwelling should complement its setting, its visibility in the landscape, and its relationship to nearby buildings, this applies to both modern and traditional designs. The proposed dwelling does not comply with this basic design requirement. The dwelling is a boxy irregular formation with horizontally proportionated windows. In my opinion, the house design is suburban in appearance and not appropriate in an unspoilt rural setting, which will militate against the preservation of the unspoilt rural environment and create a discordant feature on the landscape.

7.4 Effluent Treatment and Drainage

The Site Suitability report submitted with the application indicates a T Value of 38 and a P value of 34. The trial holes indicated mottling at 1.4metres. It is recommended in the report that surface water should not flow towards percolation area, and that all run off should be diverted to a separate outlet. A soil polishing filter is also recommended.

Given the contours of the site and the location of the proposed percolation area/ polishing filter, I am not convinced a soakaway system as proposed to the front and south of the site will function correctly given that both soakaways are positioned uphill of the adjoining polishing filter, and uphill of proposed dwelling. I would be concerned about this issue as the site has an underlying high-water table, and the archaeological report stated winter ponding was evidences on the site. However, I do not consider this issue is justification to refuse the proposed development, it requires further technical consideration by the applicant.

7.5 Archaeology

The aerial maps of the overall area and OS maps reveal the general vicinity of the site is rich in archaeological sites and monuments. There are five archaeological interest sites in close proximity to the proposed site. The planning application was accompanied by a Geophysical Assessment which has indicated the possible presence of a former ditched trackway on the site which may be associated with the deserted medieval settlement in close proximity to the site. The Archaeological Report on file recorded the findings from 3No. trenches dug out on site and their location was influenced by the results of the Geophysical Survey. Two Anomalous Areas were tested. The archaeological testing revealed no deposits of archaeological provenance. The results also revealed the site area has been filled in with topsoil during recent times. There was no evidence of a trackway as per the Geophysical Assessment, identified within Trench 3.

A number of mitigation measures are recommended should the development proceed which substantially relate to the positioning of the proposed driveway.

On appeal, the third party submission attempts to dispute the findings of the archaeological report, it strongly opposes the form of investigations carried out and also claims the testing and baseline studies were insufficient by quoting old reports and referring to older aerial photography and mapping of the area. In response to this I quote the Prescribed Body responsible for such issues ' *The Department of Culture, Heritage and the Gaeltacht acknowledges that the applicant has complied with the archaeological requirements as recommended by Ms Henry (the report author, a qualified archaeologist).*

7.6 Other Matters

The Sightline lines in both directions at the proposed entrance are acceptable.

There is no public water supply serving the area, and a private borehole is proposed.

As stated earlier, the subject area is unspoilt countryside that requires access from narrow local roads on approach from the Clonmel- Cashel Regional Road within 8km of Clonmel town. The local road serving the site is only 3metres wide and provides access to farms and landholdings not one-off housing. There are no public services in the area, and the proposal could set an undesirable precedent for similar

developments in the area. Although I accept the applicant has demonstrated intrinsic links to the area, there has been no justification for selecting this random site in an unspoilt elevated rural area, and the inappropriate design will ultimately detract from the rural environment and visual qualities of the area.

7.7 Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1 I recommend permission be refused for the proposed development.

9.0 Reasons and Considerations

1. The site of the proposed development is located within an unspoilt rural area of Tipperary, where emphasis is placed in the current development plan on the importance of designing within the landscape to minimise visual intrusion as set out in the Tipperary Rural House Design Guidelines, which Guidelines are considered to be reasonable. Having regard to the topography of the site, the elevated positioning of the proposed development, together with its height, bulk and design, the overall scale and the removal of the front boundary wall and hedging, it is considered that the proposed development by reason of its design and layout 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 prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would constitute random housing development in a rural area lacking certain public services and community facilities and served by a poor road network. The proposed development would, therefore, give rise to demands for the provision of further public services and community facilities and accordingly would be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

3rd November 2020