



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307575-20

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<b>Development</b>	Construction of detached house with garage, septic tank and percolation area.
<b>Location</b>	Newpark , Dualla , Cashel, Co Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	19601246
<b>Applicant(s)</b>	Norah Moloughney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Norah Moloughney
<b>Observer(s)</b>	none
<b>Date of Site Inspection</b>	16 <sup>th</sup> October, 2020.
<b>Inspector</b>	Stephen Kay

## **1.0 Site Location and Description**

- 1.1. The appeal site is located on a local road c.5km to the north east of Cashel. The site is approximately 1km to the north of the junction with the R691 and c.1.5km to the north of the village of Dualla.
- 1.2. The site is currently in agricultural use and has a gentle fall from west to east in the direction of the road. The site has road frontage of approximately 75 metres and the majority of this frontage has a mature hedgerow. There is an existing double access at the southern end of the frontage. A hedgerow forms the northern boundary and to the south and west, the site is bound by an agricultural access road with timber post and rail fencing. The existing double entrance serves the appeal site and the adjoining agricultural access to the south.
- 1.3. The field immediately to the south of the site is undeveloped and in agricultural use and that to the north is occupied by a house. In total, there are 5 no. existing houses located between the appeal site and the bend in the road approximately 200 metres to the north.
- 1.4. The stated area of the site is 0.85 ha.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the construction of a detached two storey house on the site with detached garage to the side. The stated floor areas of the house and garage are 228 sq. metres and 42 sq. metres respectively.
- 2.2. The development is proposed to be connected to the public water supply and the house would be served by a septic tank and percolation area.
- 2.3. Access to the site is proposed to be via the existing vehicular access point at the south east corner of the site.

## 3.0 Planning Authority Decision

### 3.1. Further Information

Prior to the issuing of a Notification of Decision, the Planning Authority requested further information on the following two issues:

1. Further details as to how they comply with the requirements of **Policy SS8** of the plan regarding ribbon development given that there are already 5 no. houses over a 250 metre stretch of the local road to the north of the site and that further development will only be permitted in such circumstances where the applicant has a demonstrated housing need (i.e. are a farming landowner or son or daughter of one or that the site is a gap site) and that the house is for their own occupation.
2. That the Planning Authority note that the applicant is already the owner of a house and that while there are recognised personal circumstances that give rise to the application, that the documentation submitted does not adequately address or support this need. Additional supporting documentation is requested.

The following is a summary of the information submitted in response to this request for further information:

- The response of the first party sets out how there are 3 no. dwellings within 250 metres of the site to the north and therefore the proposal would not constitute ribbon development. Stated that there are a further two houses approved but not constructed to the north but that only one of these is within 250 metres of the appeal site.
- Submission of a letter from Patrick Moloughney that sets out the applicants housing need. This letter confirms that Mr Moloughney is separated from the first party and now living in the UK (documentary information that shows UK residency submitted).

### 3.2. Decision

Permission was refused for two reasons that can be summarised as follows:

1. That the site is located on L-5406-0 at a location where there are already 5 no. existing and permitted houses on this side of the local road on a stretch within 250 metres of the site. Having regard to the information submitted, it is considered that the applicant has not demonstrated a clear housing need being either that the applicant is a farming landowner or their son or daughter or that the site is a gap site and that the applicant does not therefore comply with the requirements of Policy SS8 of the development plan.
2. That by virtue of the fact that they own a dwelling in the area, the applicant has failed to demonstrate how they comply with the provisions of Policy SS4 of the plan which seeks to facilitate individual dwellings in the open countryside for person(s) who have a demonstrated housing need and where the dwelling is for their own occupation. The proposed development would therefore materially contravene Policy SS4 of the plan and would be contrary to the proper planning and sustainable development of the area.

The attention of the Board is drawn to the fact that Reason for Refusal No.2 makes reference to material contravention of Policy SS4.

### 3.3. Planning Authority Reports

#### 3.3.1. Planning Reports

The initial planning report on file states that there is no objection in principle to the design and layout of the proposed development, however the fact that the applicant states that they own an existing dwelling is noted and while documentation regarding their personal circumstances have been submitted, it is concluded that the information submitted does not fully substantiate the claim made. Further information on this issue is recommended. A second report subsequent to the submission of a response to further information recommends refusal of permission consistent with the Notification of Decision which issued.

### 3.3.2. Other Technical Reports

Area Engineer – No objection subject to conditions.

### 3.4. Prescribed Bodies

None.

Note the application was referred to Irish Water but no response was received.

### 3.5. Third Party Observations

None.

## 4.0 Planning History

There is no planning history relating to the appeal site. The following relates to adjacent sites:

Tipperary County Council Ref. 18/601209 – Permission granted for the construction of a two storey house on site to the north of the current appeal site at Newpark, Dualla, Cashel, Co. Tipperary.

Tipperary County Council Ref. 18/601253 – Permission granted for the construction of a dwelling, driveway, septic tank/ percolation area and all associated site development works on lands to the north of the appeal site.

Tipperary County Council Ref. 00/1362 – Permission granted by the Planning Authority to Pat Moloughney for the construction of a house. This site is located to the south west of the appeal site and fronts onto the local road to the south west.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant development plan is the *South Tipperary County Development Plan, 2009* (as varied). The site is located within an area that is identified as open countryside in the plan.

The rural housing policy is set out in Chapter 3 of the plan and section 3.4 states that *It is a key aim of this Plan (as varied) is to achieve the following:*

- 1. To facilitate people who are from a rural community and who have lived for long periods within a rural community, and are in need of a dwelling, to construct that dwelling within their rural community, and*
- 2. To promote the growth and viability of the rural villages within the county.*

The following policies are specifically noted:

**Policy SS4** relates to housing in the rural countryside and states that it is policy 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. Categories of housing need are set out including Category A – Local Rural Person which is defined as *‘a person who has lived in the rural area within 10km of the proposed site for a minimum and continuous 10 year period.’*

**Policy SS8** relates to Ribbon development and provides that the council will resist further development where 5 houses in total exist or where are permitted within any continuous 250 metre section of road and will only facilitate additional development in such situations where persons have a demonstrated housing need and are seeking to provide a home for their own occupation. A housing need is demonstrated by being wither a farming landowner or their son or daughter and where there is no alternative site available or the site is a ‘gap site’.

**Appendix 5** of the Plan contains a rural housing design guide.

The site is located in an area identified as Open Countryside on Figure 3.4 of the Plan and outside of the identified Primary Amenity Areas.

## 5.2. Natural Heritage Designations

The appeal site is not located within or in close proximity to any European sites. The closest such site to the appeal site is the Lower River Suir SAC site (site code 002147) which is located c.8 km to the west of the appeal site at the closest point.

## 5.3. EIA Screening

Having regard to the nature and limited scale of the development and the separation of the site from the nearest sensitive receptor, 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 main issues raised in the first party grounds of appeal:

- That the applicant satisfies the requirement of Policy SS8 (Ribbon development) as she has demonstrated a housing need.
- The applicant has a clear housing need on account of the separation agreement and the applicant therefore clearly complies with Policy SS8 of the plan. The fact that a separation has occurred and that there is a housing need is confirmed by the solicitor's letter submitted to the Planning Authority. A copy of this letter is submitted with the appeal as Appendix 7 and the rural housing supporting documentation is appended at Appendix 6.
- That the legal letter submitted clarifies that the applicant does not own a home / house already. The house referred to by the Planning Authority is in joint

ownership and is due to be sold as part of the separation agreement. This was clearly set out to the Planning Authority at pre application stage.

- That the applicant meets the requirements of Policy SS4 regarding housing in the rural countryside as the applicant does not own a home in her own right.
- That the applicant has resided in the local area for over 25 years, has a demonstrated housing need and is seeking to provide a home for their own occupation.
- That the circumstances of the applicant were the subject of discussion at pre application meeting with the council where it was indicated that the applicant would be deemed to have a housing 'need' if separated from their former partner but that legal documentation confirming the separation would be need to be submitted to substantiate this position.
- That the personal circumstances regarding housing was clearly set out by the applicant in the response to further information submitted.

## 6.2. Planning Authority Response

There is no record on the appeal file of a response to the grounds of appeal.

## 7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this case:

- Principle of Development and Compliance with Rural Housing Policy,
- Design and Layout,
- Site Servicing,
- Other Issues,
- Appropriate Assessment.



## 7.2. Principle of Development and Compliance with Rural Housing Policy

- 7.2.1. The appeal site is located within an area that is identified as open countryside in the *South Tipperary County Development Plan, 2009* (as varied). The rural housing policy is set out in Chapter 3 of this plan and the most relevant policies to the assessment of the subject appeal and having regard to the wording of the reason for refusal issued by the Planning Authority are Policies SS4 and SS8.
- 7.2.2. **Policy SS8** relates to Ribbon development and provides that the council will resist further development where 5 houses in total exist or where are permitted within any continuous 250 metre section of road and will only facilitate additional development in such situations where persons have a demonstrated housing need and are seeking to provide a home for their own occupation. A housing 'need' for the purposes of this policy is demonstrated by being wither a farming landowner or their son or daughter, and where there is no alternative site available or the site is a 'gap site'. The issue of ribbon development was raised in the request for further information issued by the Planning Authority and the response received from the first party contended that the proposal would not result in ribbon development on account of the fact that there are 3 no. dwellings within 250 metres of the site to the north and a further two houses approved but not constructed to the north but that only one of these is within 250 metres of the appeal site. It was therefore contended by the first party that the proposal would not constitute ribbon development.
- 7.2.3. From an inspection of the submitted plans, GIS and inspection of the vicinity of the site, I agree with the Planning Authority that the assessment undertaken by the first party regarding existing and permitted adjoining houses and submitted in response to the further information request, is not accurate. To the north, there are currently 4 no. houses located along the 250 metre stretch of road immediately north of the appeal site and there is an extant permission (Ref. 18601253) for a fifth. The proposed dwelling would add to these five and result in a continuous run of development along the section of the road. Furthermore, the appeal site is not a 'gap site' and the first party does not come within the definition of a person with a demonstrated housing need where an exemption could be facilitated in accordance with the wording of Policy SS8 as the first party is not a farmer or son or daughter of

a farmer and has not clearly demonstrated that there are no other alternative sites available. For these reasons, the proposed development is in my opinion contrary to Policy SS8 of the Plan. As set out in 7.3 below under the heading of Design and Layout, I also consider that the extent of existing housing in the area is such that an additional dwelling would result in the creation of a suburban pattern of development and have an overall negative impact on the visual amenities and rural character of the area.

7.2.4. Policy SS4 relates to housing in the rural countryside and states that it is policy 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. Categories of housing need are set out including Category A – Local Rural Person which is defined as *‘a person who has lived in the rural area within 10km of the proposed site for a minimum and continuous 10 year period.’* The footnotes to this policy, (footnote 19) indicate that *‘persons who already own / have been permitted a house in the rural area will generally be considered to have no rural housing need...’*.

7.2.5. As per the information available on file, the circumstances of the first party are that she is a long term resident of the local area, having lived in New Park Dulla since 1992. Documentary information indicating an address in the New Park area has been supplied for 2013 (bank statement) and 2017 (electricity bill), and the content of a solicitors letter submitted with the application states that the first party has resided in the area since 1992. The first party therefore in my opinion meets the definition of a *‘local rural person’* as per Category A of Policy SS4. The issue at question however is the extent to which the first party has a *‘demonstrated housing need’* as per the first part of Policy SS4 and specifically how they can meet this requirement when they still have a share in an existing house in the local area. The Planning Authority have determined that the circumstances of the first party are such that they do not have a housing need as there is uncertainty, and a degree of confusion in the submissions of the first party, regarding what will happen with the existing house in respect of which the first party is part owner. A strict interpretation of the information presented would indicate that the first party does not meet the requirements of Policy SS4 as they do still have an interest in a house in the local area. Alternatively however, the application and appeal documents set out how the sale of the first

party's current house is part of a separation agreement, with the proceeds of sale going towards providing new accommodation for both parties, including the first party. This position is supported by a letter from Patrick Moloughney, submitted as part of the further information response on file that sets out the applicants housing need. This letter confirms that Mr Moloughney is separated from the first party and now living in the UK (documentary information that shows UK residency has been submitted).

- 7.2.6. While I have an appreciation for the position of the first party, the circumstances of this case are however such that she does have a current interest in a house that is in the local rural area. Any potential for discretion in the application of the policy is restricted by the fact that the Reason for Refusal cited by the Planning Authority makes reference to the fact that the proposal would materially contravene the provisions of Policy SS4. In my opinion, none of the criteria set out in s.37(2) of the Act are clearly satisfied in this instance. Specifically, the fact that the first party currently owns a home in the local area means that the assumption provided for in the Sustainable Rural Housing Guidelines that rural generated housing would be accommodated in all areas is not clearly applicable in this case. Similarly, while it is possible to make arguments both ways on the application of Policy SS4, the application of the policy by the Planning Authority in this case is not in my opinion such that it is clearly an error of fact or interpretation of the policy. In part, the issue arises as the court order in this case appears to be very prescriptive in that the current application is being made prior to the sale of the original family home and also in that the current appeal site is presented as the only option available to meet the housing requirements of the first party.
- 7.2.7. Related to the above, the lack of clarity around the compliance of the first party with the requirements of Policy SS4 combine with the fact that the proposed development would exacerbate the existing pattern of one off development in this location to mean that the proposal would not in my opinion be consistent with the rural housing policies of the development plan and with the proper planning and sustainable development of the area.

### **7.3. Design and Layout**

- 7.3.1. The design of the proposed dwelling is a large two storey detached house with a stated floor area of 228 sq. metres and overall height to ridge of 9.68 metres. A detached garage with a stated floor area of 42 sq. metres is also proposed. The scale of house is very large and, while it is consistent with a number of recently constructed houses located to the north on the same road, and is not located such that it would be excessively visually prominent or visible in the surrounding landscape, the localised impacts would in my opinion be significant.
- 7.3.2. The proposed development would result in a continuous run of site frontages over a section of local road in excess of 300 metres in length and would in my opinion be such as to have a negative impact on the visual amenities of the local area and to lead to a concentration of wastewater treatment systems in the localised area. I consider that the extent of existing housing in the area is such that an additional dwelling would result in the creation of a suburban pattern of development and have an overall negative impact on the visual amenities and rural character of the area.

### **7.4. Site Servicing**

- 7.4.1. The house is proposed to be connected to the public water supply network and a septic tank is proposed. The application was referred to Irish Water for comment however no response was received. It is however assumed that subject to a connection agreement being obtained that connection to the public water supply should be feasible.
- 7.4.2. With regard to drainage, the results of the site suitability tests undertaken on site indicate that the site is suitable for disposal of effluent to a septic tank. Specifically, the result of the T test is 24 and the site is R1 in the response matrix with a moderate vulnerability and a regionally important aquifer. As per the EPA code of practice, the use of a septic tank is acceptable in such locations.
- 7.4.3. The trial hole was filled in at the time of inspection of the site, however the general conditions observed on site were consistent with the results indicated in the Site Assessment Report. Specifically, the site is large, is gently sloping and does not

show any clear indications of slow percolation or a high water table. The fact that there are already at least 12 no. houses within a c.250 metre radius of the appeal site is however noted, and the potential for any issues with regard to ground conditions to be exacerbated by the concentration of treatment systems in a localised area is also noted.

- 7.4.4. Surface water is proposed to be disposed of on site and given the scale of the site, and the ground conditions as recorded in the Site Assessment and observations on site, it is considered that this can be accommodated satisfactorily within the site.
- 7.4.5. Access to the site is proposed to be via a new vehicular entrance at the south east corner of the site where the existing double agricultural entrance is located. Details of the proposed access and sightlines are indicated on Drg. No.P1905.C03. The existing gate pier and wing wall are proposed to be retained and a new gate added. Sightlines at the entrance are in excess of 90 metres in both directions and the access proposals are considered to be acceptable.

## 7.5. **Appropriate Assessment**

- 7.5.1. The Lower River Suir SAC (site code 002137) is located approximately 7km to the west of the appeal site at the closest point and to the west of the M8 motorway. There is no clear hydrological connection between the appeal site and this SAC. For this reason, and having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

## 8.0 **Recommendation**

- 8.1. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

## 9.0 Reasons and Considerations

1. Policy SS4 of the *South Tipperary County Development Plan, 2009 (as varied)* seeks to facilitate individual dwellings in the rural countryside for person(s) who are an intrinsic to the rural area, who are seeking to provide housing for their own occupation and who have a demonstrated housing need. While the first party is a long established resident of the local rural area, it is considered that they have failed to clearly demonstrate a housing need on account of their existing interest in a dwelling in the local rural area and such that they do not comply with the requirements of Policy SS4 of the Development Plan. The proposed development would therefore be contrary to Policy SS4 of the *South Tipperary County Development Plan, 2009 (as varied)* and would be contrary to the proper planning and sustainable development of the area.
2. Policy SS8 of the *South Tipperary County Development Plan, 2009 (as varied)* seeks to resist further development where 5 no. houses exist or are permitted on any continuous 250 metre section of road except where the applicant has a demonstrated housing need, defined in the plan as a farmer or his or her son or daughter or where the site is a 'gap site'. This policy is considered reasonable. The appeal site is located such that there are 5 no. existing and permitted houses located in a continuous frontage of approximately 250 metres immediately north of the site, and such that the proposed development would comprise a sixth house in this location, and where the site is not a 'gap site' and the circumstances of the applicant are not such that they meet the requirements of Policy SS8. Taken in conjunction with existing (and permitted) development in the vicinity, the proposed development would therefore give rise to an excessive density of development in an unserved rural area, would contravene the policy of the planning authority, as expressed in Policy SS8 of the current Development Plan, to restrict ribbon development and would,

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

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Stephen Kay  
Planning Inspector

20<sup>th</sup> October, 2020