



An
Bord
Pleanála

Inspector's Report

ABP-307943-20

Development	Construction of a house
Location	Rathronan, Clonmel, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	20/563
Applicants	Ciara McCarthy & Robert Hannon
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Parties v Refusal of Permission
Appellants	Ciara McCarthy & Robert Hannon
Observer	Brian McCarthy
Date of Site Inspection	17.11.2020
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located on a local road approx. 1.5km north of Clonmel in south east Co. Tipperary.
- 1.2. There are a number of bends in the local road in the immediate vicinity of the site. The site comprises a field area with two small stables to the rear. The ground levels are significantly higher than the public road and the existing agricultural access has a relatively sharp gradient. Ground levels on site slope downwards in a west to east direction. There is a patchy hedgerow boundary to the east side boundary and a hedgerow along the rear boundary. There is a timber fence along the west side boundary with a narrow passage retained between it and a parallel hedgerow in the site of the adjacent house (the applicant, Ciara McCarthy's, family home). There is a timber fence along the roadside boundary, similar to the roadside boundary of the adjoining house to the west, with trees inside the front boundary line. There are a number of one-off houses in the vicinity, generally one and a half or two storey in scale. The finished floor level of the adjacent house to the east is significantly lower than the ground levels on site. There is a two storey house and sheds on the opposite side of the road.
- 1.3. The site has an area of 0.26 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for a house, garage, septic tank and percolation area and to close the existing access and construct a new access.
- 2.2. The proposed house has a floor area of 220sqm and a height of approx. 8 metres. It is externally finished in plaster and limestone with blue/black slate.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Permission was refused by the planning authority for the following reason.

1. Policy HSG 10 of the Clonmel and Environs Development Plan 2013 seeks to facilitate individual houses on lands zoned Environs where an applicant can demonstrate eligibility under the criteria, as set out under Policy HSG 10. In order to satisfy the eligibility criteria the applicant must:

(a) Be a farmer of the land or a direct descendant of the farmer of the land. The Planning Authority is not satisfied, having regard to the information submitted as part of this application that the applicants have demonstrated that they satisfy the above requirements of Policy HSG 10.

Having regard to the foregoing, the proposed development is considered contrary to Policy HSG 10 of the Clonmel and Environs Development Plan 2013, as varied. The proposed development would contravene the stated policies and objectives of the Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. The Planning Report forms the basis of the planning authority decision. After the planning officer examined the application and supporting drawings and documentation and having considered the impacts of the proposed development and the relevant policies of the Clonmel and Environs Development Plan 2013, as varied, it was recommended that permission be refused.

3.2.2. Other Technical Reports

Area Engineer – Comments made in relation to the existing roadside boundary and vehicular access and works required to provide a safe new vehicular access.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3.4.1. A submission was received from Joe & Elaine Broderick, Rathronan (on the opposite side of the road). The main points made can be summarised as follows:

- There is no problem with the planning application, in principle, but there are several concerns that should be considered.
- Access and egress from the farmyard is difficult. The proposed entrance should be designed to have a wider splay and possibly set back more. Additional detail in relation to the proposed entrance is requested.
- Though acknowledging there is no right to a view, the submitters would like to see the house set back further to the south east to retain some view of the Comeragh Mountains and to maintain a certain amount of privacy for the house and farmyard.
- The site is well within 100 metres of the submitters' working farmyard contrary to the content of Item 16 of the Planning Application Form. Normal noise, smell and odours from the farmyard has previously been an issue for Ciara McCarthy's parents and has created undue stress for the submitters.

4.0 Planning History

4.1. Two applications are referenced in the grounds of appeal. These are:

P.A. Reg. Ref. 96/614 – Outline permission was granted in 1997 for a house, garage and septic tank.

P.A. Reg. Ref. 06/889 – Outline permission was granted in 2006 for a house, garage, treatment system and entrance in 2006.

5.0 Policy Context

5.1. South Tipperary County Development Plan 2009-2015 (as varied)

- 5.1.1. This Plan is in place until such time as a single County Development Plan is prepared for Tipperary subsequent to the preparation of the Regional Spatial and Economic Strategy (RSES). Section 1.6 (Relationship with Town Development Plans) states that Town Development Plans, including the Clonmel and Environs Development Plan 2013-2019, will remain the statutory plans for these areas until a review and preparation of local area plans for these towns take place.

5.2. Clonmel and Environs Development Plan 2013

- 5.2.1. The site is in an area zoned 'Environs – To protect lands for the future expansion of Clonmel' under the Plan. This land use is the dominant land use within the Plan boundary in terms of area and is located primarily north and east of the built-up area of the town. Residential development is open for consideration in this zoning.
- 5.2.2. Section 6.10 (Housing – Individual Houses in the Environs) states 'Environs' land is considered to be a 'pressure area' for development and the purpose of the land is to allow for the continuation of rural and agriculture practices but also to safeguard the land for the future expansion of Clonmel in a co-ordinated and orderly fashion at appropriate periods. The development of individual houses will be facilitated provided the future use of the land to service Clonmel is not compromised and applicants satisfy Policy HSG 10. Policy HSG 10 (Individual Houses in the Environs) states
- 'It is the policy of this Council to facilitate individual houses on lands zoned Environs where the proposal is for an individual house and the applicant can demonstrate eligibility under the following criteria;
- (a) the application is being made by a farmer of the land or a direct descendent of a farmer of the land and
 - (b) the house is for that persons own use; and
 - (c) the applicant has a housing need; and
 - (d) the house design, siting and layout is in accordance with the Rural Design Guide for Individual Houses in the Countryside and

(e) the proposed development will not prejudice the potential future development of the landholding; and

(f) the proposed development is not in an area at risk of flooding.

(g) the waste water treatment discharge and surface water runoff shall be demonstrated to be sufficient to avoid deterioration in river water quality for houses located near to the River Suir’.

5.2.3. Section 9.14 (Development Management Guidelines – Housing in the Environs) sets out minimum standards for a house in the Environs area.

5.3. **Natural Heritage Designations**

5.3.1. The closest Natura 2000 site is Lower River Suir SAC approx. 3.2km to the south.

5.4. **EIA Screening**

5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, 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 stage, and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The main points made can be summarised as follows:

- The applicants wish to continue to live and work in the area. There is a severe shortage of new builds. There is an opportunity to build a house, freeing up a rental house in the town.
- Ciara McCarthy’s parents live alone adjoining the site and the proposed house would provide security of care for her parents.

- There is an opportunity to build an environmentally friendly, passive house with a BER A rating.
- Outline permission has been granted for two previous applications on site.
- The reason for refusal appears to contradict Section 7.15 – ‘Refusals arising from development plans or local area plans’ of the Development Management Guidelines (2007) which states that ‘a brief reference to an objective or policy statement is not, therefore, adequate as a reason for refusal if it is not made clear what the objective is, how it would be contravened by the proposed development, and why that contravention would be contrary to the proper planning and sustainable development of the area’. The proposed development meets the intent of sustainable development of the area and conforms in principle with the core strategy to drive regional growth by providing a large and skilled population base etc. The applicants have the capacity in their employment to fulfil highly skilled roles, benefitting the local economy and society.
- The site is a perfect fit for a ‘gap site’ as set out in the Tipperary County Development Plan in relation to ribbon development but there is no such exception in the outdated Clonmel and Environs Plan. This contradicts Section 9 of the Development Plan Guidelines (2007) which states that a planning authority must make a development plan every six years for the whole of its area. Waiting an unreasonable amount of time for an updated plan has serious consequences for the applicants such as hampering ability to avail of government incentives or constructing a house prior to getting married and starting a family.
- Requiring an applicant to be a descendant of a farmer excludes a large percentage of the local urban population. One of the applicants is the daughter of the landowner but is being prohibited from attaining planning permission because her parents are not farmers despite having grown up in and having a career in the locality. The applicants query whether the omission of an exception for a situation such as this was intentional or an oversight.
- The Planning Report states the purpose of the land includes safeguarding it for the future expansion of Clonmel. The applicants argue that given the 2013-

2019 timeframe the current Plan is based on, the application is now part of the future co-ordinated expansion of Clonmel referred to.

6.2. Planning Authority Response

6.2.1. The planning authority considers that the reason for refusal is reasonable with regard to Policy HSG 10 of the Clonmel and Environs Development Plan 2013, as varied, and requests the Board to uphold the decision for the stated reason.

6.3. Observations

6.3.1. An observation has been made by Brian McCarthy, the applicants' agent and father of the applicant, Ciara McCarthy. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- The background to the third party submission received on the planning application is set out.
- The District Local Engineer does not appear to be aware of a legal agreement with the Council. Kerbs were constructed on the opposite side of the road without permission which reduced the road width and caused vehicles to hit the stone wall of the site resulting in stones being dislodged onto the road. The Council paid for the removal of the wall. The observer agreed to the land take but held the area containing the existing field gate. It was agreed with the Council Area Engineer in 2013 that this area be interchangeable for a relocated entrance upon making a new planning application. It cost the observer €6,000 for wall removal, planting and fencing. Should the Council not honour this legal agreement future legal redress shall be sought. Documentary detail in this regard accompanies the observation.

6.4. Further Responses

6.4.1. None.

7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Zoning / Policy HSG 10
- Vehicular Entrance
- Site Layout and House Design
- Wastewater Treatment
- Appropriate Assessment

7.1. Zoning / Policy HSG 10

- 7.1.1. Compliance with the zoning objective and Policy HSG 10 is the primary issue with this planning application. It comprises the planning authority's reason for refusal and is a focus of the grounds of appeal. The site is contained within the plan boundary of the Clonmel and Environs Plan 2013. It is zoned 'Environs' and a house is open for consideration. Section 6.10 sets out the criteria for eligibility for a house in this zoning. Policy HSG 10 states that an applicant must be a farmer of the land or a direct descendant of a farmer of the land.
- 7.1.2. The applicants consider the Clonmel and Environs Plan to be redundant and outdated. There are currently two separate County Development Plans in place for Tipperary: the North Tipperary Plan (2010) and the South Tipperary Plan (2009). Tipperary County Council was established in 2014, amalgamating North and South Tipperary County Councils. The two Plans had their lifetimes extended. The lifetimes of town plans, including the Clonmel and Environs Development Plan 2013, were also extended and will remain the statutory plans for these areas until a review and preparation of Local Area Plans for these towns take place. A new County Development Plan could not be made until the RSES for the Southern Region was made. This was adopted in January 2020. It is expected the new County Development Plan will be adopted in 2022. Therefore, while the normal six-year plan period has

elapsed, the Clonmel and Environs Development Plan 2013 remains the relevant plan. Planning applications are considered in the context of the plan in place at the time of making the decision.

- 7.1.3. A number of other issues are also set out in the grounds of appeal. Two previous applications for outline permission were granted on site. Planning applications are considered in the context of the plan in place at the time of making the decision and therefore these previous grants are not relevant to the current application. Ciara McCarthy's family home is adjacent to the site and her parents are the landowners. Policy HSG 10 excludes reference to a landowner. Therefore, notwithstanding Ciara McCarthy's link to the area, the plan does not facilitate applicants in these circumstances. The grounds of appeal refer to Section 7.15 of the Development Management Guidelines for Planning Authorities (2007). The purpose of the 'Environs' zoning objective is to allow for the continuation of rural and agricultural practices and to safeguard the land for the future expansion of Clonmel in a co-ordinated and orderly fashion. Therefore, the Council adopted Policy HSG 10 to accommodate some housing within the environs area but restricted who could be positively considered for a house because it is a pressure area for development. The policy requires that the application be made by a farmer of the land or a direct descendant of the farmer. Ciara McCarthy's parents are not farmers; therefore, the applicants do not comply with the policy.
- 7.1.4. Having regard to the foregoing, the applicants do not satisfy the criteria set out in Policy HSG 10 of the Clonmel and Environs Development Plan 2013, for an individual house in the 'Environs' area, and permission should be refused on this basis.

7.2. Vehicular Entrance

- 7.2.1. The Area Engineer's report relates, in detail, to the roadside boundary and sightlines. The observation also refers to this issue.
- 7.2.2. The Area Engineer's report notes the site's ground levels, the gradient of the existing access driveway, the nature of the roadside boundary, the fence line, the trees along the roadside boundary and the ESB pole and cable stay. The report considers that the new access into the site will need to be level with the edge of the public road for a minimum distance of 5 metres. The existing roadside earth bank will need to be

removed in order to obtain sightlines at 2.4 metres set-back from the public road. Setting back the roadside boundary would require the removal of the timber post and fence line to the front of the site. The safety of the existing trees to the front may be compromised by a storm event given the necessity to set back the earth berm possibly almost as far back as the trees. The ESB pole and its cable stay may require relocation. 90 metres sightlines are generally required. After the removal of the earth bank, the Area Engineer considers that the sightline to the west can be achieved but a sightline of only 78 metres can be achieved to the east. However, given the nature of the road, the 78 metres sightline is considered to be adequate. The Area Engineer's report recommends that a revised site layout plan and longitudinal cross-section be submitted. The planning authority Planning Report notes the recommendation.

7.2.3. The observation received also refers, inter alia, to the roadside boundary. It sets out the background to the current roadside boundary and refers to a legal agreement between the observer and the Council.

7.2.4. I consider that the content of the Area Engineer's report is reasonable, and the issues outlined must be addressed in order to provide safe access to and egress from the proposed vehicular entrance. Adequate sightlines to both sides of the proposed access must be achieved at the required set-back and it does not appear that these can be achieved while retaining the existing roadside boundary. The planning authority did not recommend a refusal on the basis of traffic safety or sightlines and I do not consider that a refusal on this basis is necessary. However, it is likely that works would be required as part of any grant of planning permission to the existing boundary to provide adequate sightlines and safe access and egress at the proposed access location.

7.3. Site Layout and House Design

7.3.1. The house footprint is 24 metres back from the roadside boundary and it has a building line similar to that of the adjacent house to the west. The finished floor level of the proposed house is below that of the house to the west but significantly higher than the adjacent house to the east. There are hedgerows along the east side and rear boundaries with a stud fence proposed along the west side boundary. The roadside boundary will likely need to be revised in order to achieve adequate sightlines.

Relocating the house footprint further to the south east, as suggested in the submission on the application, would result in limited separation distances to the side and rear boundaries and would increase the impact on the adjacent house to the east. The south west part of the existing field is excluded from the proposed site because this area contains the percolation area of the septic tank system serving the adjacent house. The ventilation pipe is visible at this location.

- 7.3.2. The proposed house is one and a half storeys in scale and is typical of houses in the vicinity. I do not consider that it would be visually incongruous or visually obtrusive. It would not result in any overbearing or shadowing impact to any house. I do not consider undue overlooking will result.
- 7.3.3. I consider the site layout and house design to be acceptable in principle.

7.4. Wastewater Treatment

- 7.4.1. The site is in an area with a regionally important aquifer with extreme vulnerability. No groundwater or bedrock was encountered in the 3.0 metres deep trial hole. Soil in the trial hole was primarily silty clay. Table B.2 (Response Matrix for On-Site Treatment Systems) of the Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) published by the EPA states that an R2² response category indicates that a system is acceptable subject to normal good practice and an additional condition as set out in the Code of Practice.
- 7.4.2. A T-test result of 39 was achieved. A P-test was also carried out and a result of 37 was achieved. The trial hole was not open for inspection, but I consider the results are consistent with the grounds conditions observed on site.
- 7.4.3. Any future planning application may have an altered roadside boundary. The percolation area associated with the adjacent house to the west is contained within the south western area of the field in which the planning application is made. This area is to be fenced off and excluded from the site boundary. While the site area is likely to be adequate to accommodate appropriate separation distances to key features compliant with Table 6.1 (Minimum Separation Distances in Metres) of the Code of Practice, I consider that a revised layout would be required to satisfactorily demonstrate distances to soakaways, site boundaries and from the existing percolation area to the proposed house. Notwithstanding, I do not consider this is a

significant issue in this application given the zoning/Policy HSG 10. The percolation area (6 x 18 metres) is acceptable.

7.4.4. A septic tank system is proposed with discharge to groundwater. Table 6.3 (Interpretation of Percolation Test Results) states the site is suitable for a septic tank system. The Response Matrix (Table B.2) states that there shall be a minimum thickness of 2 metres unsaturated soil/subsoil beneath the invert of the percolation trench of a septic tank system.

7.4.5. Having regard to the foregoing, I consider a septic tank system is appropriate on site, in principle.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, remote from and with no hydrological pathway to any European site, 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 that the planning application be refused for the following reason and consideration.

9.0 **Reasons and Considerations**

1. The proposed development is located in an area zoned 'Environs' in the Clonmel and Environs Development Plan 2013 for which the objective is to protect lands for the future expansion of Clonmel. This objective is considered reasonable. Section 6.10 (Individual Houses in the Environs) of the Plan states the land zoned 'Environs' is a pressure area for development and the purpose of this land is to allow for the continuation of rural/agricultural practices but also to safeguard this land for the future expansion of Clonmel in a co-ordinated and orderly fashion at appropriate periods. It is the policy of the planning authority,

as set out in Policy HSG 10, to facilitate individual houses on lands zoned Environs where, inter alia, the applicant can demonstrate eligibility under certain criteria including that the application is being made by a farmer of the land or a direct descendant of a farmer of the land. That is not the case in this application. Therefore, the proposed development would be contrary to Policy HSG 10 of the Clonmel and Environs Development Plan 2013, would contravene materially the said zoning objective and would be contrary to the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

23.11.2020