



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308006-20

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<b>Development</b>	House
<b>Location</b>	Ballymaconna , Barefield , Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	20387
<b>Applicant(s)</b>	Jack Wall-O'Reilly
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Jack Wall-O'Reilly
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19/11/2020
<b>Inspector</b>	Gillian Kane

## **1.0 Site Location and Description**

- 1.1.1. The appeal site has a stated site area of 0.46-hectares, is located in the Townland of Ballymaconna and is located circa 1.5-kilometres to the north east of Barefield village, in County Clare.
- 1.1.2. The site itself is located off an existing laneway. Bounding the site on the south western corner is a dwelling house and on the opposite side of the laneway there is evidence of what may have been a farmstead.
- 1.1.3. The site slopes from its north eastern boundaries towards the south western boundaries in a manner that has a somewhat hollowed out appearance. At its highest point, the site has a stated 108.5 ground level. The fall in ground levels are quite significant from the north eastern boundaries of the site towards the centre of the site which has a stated ground level height of 103.5. At the proposed entrance onto the laneway the ground levels have fallen to 99.4. In addition, the northern and eastern boundaries contain mature trees and semi-mature trees. There is also a low stone wall running along the northern boundary and ranch fencing around the remaining boundaries of the site.
- 1.1.4. The surrounding area is accessed by a network of poor in alignment, restricted in width and in places poorly surfaced roads. These roads serve mainly agricultural land as well as a large number of detached one-off dwelling houses. The surrounding landscape setting is also quite intimate in its character as a result of its rolling landform and mature field boundaries which includes pockets of mature trees.

## **2.0 Proposed Development**

- 2.1.1. On the 11<sup>th</sup> June 2020, planning permission was sought for the construction of a single storey dwelling of 154sq.m. on a site of 0.48ha.
- 2.1.2. The application was accompanied by a Site Characterisation Report and a Planning Report.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 30<sup>th</sup> July 2020, the Planning Authority issued a notification of their intention to REFUSE permission for the following reasons:

- 1 Having regard to the locally elevated nature of the site, its location top the rear of the established building line, the substandard nature of the access laneway and junction with the LT-81221 local tertiary road, the height of the proposed dwelling and its backland relationship with the existing dwellings in the immediate vicinity, the seasonal nature of the screening in the area, the views available from the site towards the adjacent private rear amenity areas and the views available towards the site from the public road to the west, the Planning Authority considers that the proposed development would be out of character with the established pattern of development in the vicinity of the site, would seriously injure the visual amenities of the area by reason of visual intrusion, would seriously injure the residential amenities of neighbouring property by reason of overlooking and would endanger public safety by reason of a traffic hazard. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
  
- 2 The subject site is located in the countryside, within an 'Area of Special Control' where it is an objective of the Clare County Dec Plan 2017 -2023 (as varied) as set out under Development Plan Objective CDP3.11, 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. Based on the information received to date, and in the absence of evidence to the contrary, the Planning Authority considers that the applicant does not comply with the criteria as set out in categories 'A', 'B' and 'C' of CDP3.11 of the current county development plan. Accordingly, the proposed development would materially contravene an objective of the Clare County Development Plan 2017-2023 (as varied), and would conflict with the provision so 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. **Planning Report:** Unclear if applicant meets the local rural person criteria, objective CDP3.11. Due to elevated and backland nature of site, there will be adverse impacts on adjacent properties. Proposed development would be out of character with the established pattern of development in the area by reason of visual intrusion. Sight distances not demonstrated. Legal interest in lane to site not clear, applicant has not adequately addressed previous reason for refusal. Recommendation to refuse permission.

### 3.3. **Prescribed Bodies**

- 3.3.1. **IAA:** No observations.
- 3.3.2. **Irish Water:** Further information required, 100mm existing watermain is approx. 100m away from proposed site. Please provide details of proposed watermains to service the proposed dwelling.

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

- 3.4.1. None on file.

## 4.0 **Planning History**

- 4.1.1. **PL03.241994:** Planning permission sought by Philip O'Reilly and Pamela Wall, was REFUSED for the construction of a single storey dwelling house, for the following reason:
- 1 It is considered that the proposed development by reason of its location on an elevated backland site, served by a substandard laneway, and by reason of its design and scale and its relationship with existing dwellings in the immediate vicinity would be out of character with the established pattern of development in the vicinity of the site, would seriously injure the visual amenities of the area by reason of visual intrusion and would seriously injure the residential amenities of neighbouring property by reason of overlooking. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 4.1.2. **P.A. Ref. No. P07-303:** Planning permission was granted to **Philip O'Reilly** subject to conditions for the construction of a: (a) stable building containing 6 no. loose

stables, tack room and store; (b) a hay barn and a roofed manure pit; (c) underground precast seepage tank; (d) a sand/exercise arena together with all associated site works and services. The finished floor level of the stable building is stated to be 103. The clock tower element in the proposed stable building which raised the height of the roof structure at this point to 7.933-meters was omitted by way of condition and the ridge height of the stable building was stated as 5.466-meters. The separation distance between the stable building and the adjoining dwelling house to which this current application site relates is at its nearest point 24.084-meters; the current site area includes this dwelling house as well as an area of land to the east and no access onto the laneway was proposed.

- 4.1.3. **P.A. Ref. No. P04-410:** Planning permission, sought by Pamela Wall was **refused** for a dwelling house on this site for reasons relating to failure to demonstrate compliance with settlement strategy.

## 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. **EIA Screening**

5.3.1. 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. The applicant has appealed the decision of the Planning Authority to refuse permission. The appeal submission provides detail on the planning history of the site, stating that it was bought by the applicants parents in 2002. They subsequently built a house to the south of the site in 2007 and the applicant lived there while attending a local national school (2004-2012). That house was the subject of repossession in in 2007/2008 but the subject site was retained. The appeal states that while the house is in the possession of the applicants father, he has been attempting to retain possession since 2012. The applicants parents were refused permission to construct a dwelling on the subject site in 2012 (PL03.241994) for one reason relating to the elevated location of the site.

6.1.2. The grounds of the appeal can be summarised as follows:

#### **First Reason for Refusal**

- The FFL of the subject site is 5m higher than the house immediately to the south. The site is 45m from the house and 50m from rear yard. This is more than sufficient to protect privacy and amenity.
- The elevation of the site must be seen in the context of the very high ground behind it. The site is well screened, with sections of the site at 108.5m or 4.75m over the FFL of the proposed dwelling. The land to the north rises substantially, is heavily wooded and the proposed dwelling will not breach the skyline.
- Building lines in rural areas are debatable. The house to the south is at significantly different orientation to the house to the south-west.
- There is a disused farmhouse on the laneway. The relative location of houses was not determined by a rigid building line but rather fitting into contours, addressing prevailing wind conditions and other natural features. The building line is not relevant, particularly where the buildings are so far apart.
- The concept of 'backland' is not relevant to this rural area. There is a disused dwelling served by the lane. Backland is relevant where there is close proximity and overlooking, not the case in this instance.



- The 'seasonal nature of the screening' is presumed to refer to the substantial line of trees and hedgerow along the east side of the dwelling to the south-west. This dwelling is 102m from the proposed dwelling and the tree line is dense and extensive. Even out-of-leaf, the level of visual protection is very significant.
- There is a 2.5m high evergreen hedge along the entire side and rear of the house.
- Regarding views from the house, the dwelling to the south-west (102m) has substantial planting. The house 82m to the south-east is also surrounded by substantial hedging. The house to the south has its amenity area 50-55m from the proposed dwelling.
- A contour model of the site demonstrates that the proposed house can be seen in outline but that there will be no interference with amenity.
- The proposed dwelling has been designed so that principal viewing windows are directed towards the public part of the adjacent house. It is note that no neighbour has objected to the proposed development.
- Regarding views from the site, the public road is 135m from the site. The site has a 3m high backdrop behind it and the proposed dwelling is set into the site with a substantial embankment to the front.
- The established pattern of development in the area is dispersed, with dwellings at different levels and in different orientations. The Planning Authority's claim of visual intrusion is rejected.
- The claim of traffic hazard is rejected. The proposed development is a single dwelling using a laneway that serves a disused house. It discharges to a lightly trafficked tertiary road where widths are sufficient to allow the free flow of traffic.
- Sight distances of 70m are available in both directions, from 2.4m back from the road. the 2.4m setback is often derogated on lightly trafficked roads. The landowners have agreed to cut back growth on both sides.

### **Second Reason for Refusal**

- The subject site is in an area under strong urban pressure. The applicant complies with policy CDP3.11 as attended school in the area, his grandmother lives nearby and his best friend lives close to the site. The applicant lived in the house to the

south from 2007 to 2015 and is in temporary residence in Ballymaconna while at college in Dublin.

- The subject site complies with policy CDP3.11 as it is within 10km of the area where the applicant lived most of his life. The applicant has a rural housing need as he has never owned a house in the local rural area. His future work will be carried out from home.

### **Previous Board decision**

- In addressing the Boards previous reason for refusal, the right of way will be paved. A letter demonstrating his right to carry out such works is attached to the appeal. The narrowest point in the access is 4.3m, sufficient for two cars to pass. Pull-in bays are not required as the 93m laneway will serve only one dwelling.
- The proposed dwelling is more modest than that previously before the Board. the proposed three-bedroom dwelling of just over 150sq.m. has a floor to ridge height of 6.2m. This is 3.7m higher than the adjoining dwellings which is inconsequential given the separation distances of 45m and 102m.
- The ground to the rear of the proposed dwelling rises sharply. With the receding plans on a sloping roof, it cannot be said that the building breaks the skyline.
- The area behind the proposed dwelling is heavily treed. It is proposed to introduce two semi-mature trees that will have a finishes height of 10-12m. the proposed natural slate roof will match the rural surroundings.
- Permission was granted (Planning Authority reg. ref. 05/1376) to replace the disused dwelling to the north-west of the dwellings. The laneway is a right of way and therefore the proposed development cannot be considered to be backland development.
- The proposed development is separate from the existing house to the south, does not interfere and is not accessed through those lands. The pattern of development in the area is dispersed housing.
- The proposed dwelling is further east than the previous proposal, away from the dwelling to the south-west. Natural tree cover and the separation distance ensure there will be no overlooking.

- The Board is requested to grant permission.

## 6.2. **Planning Authority Response**

- On the basis of the information submitted in the appeal, it would appear that the applicant has resided in the area for a period in excess of seven years. Refusal reason no. 2 appears to be no longer applicable.
- Refusal reason no. 1 remains applicable. Permission should be refused for that reason.

## 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 and Residential Impact
- 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.
- 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. Policy CDP3.11 of the development plan states that in areas under strong urban pressure, new single houses for the permanent occupation of an applicant under categories A,B or C will be permitted where they meet the necessary criteria. 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.

- 7.2.3. 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.
- 7.2.4. The legal status and / or ownership of the dwelling to the immediate south of the subject site is not clear. Nor is the length of time the applicant lived at that dwelling. I note that the applicants father states that he retains possession of the house but the application form submitted to the Planning Authority states that he currently lives in Lahinch. In that application form, the applicant states that they lived at the Ballymaconna dwelling from 2007 to 2012 and then lived in Ballymaly from 2013 to 2018. This does not accord with the details provided in the appeal, wherein the applicant states that he lived in Ballymaconna from 2007 to 2015. Details of where exactly in Ballymaly or Barefield the applicant lived have not been provided. While I cannot definitively declare that the applicant is a local rural person, I note that the Planning Authority - with a much greater understanding of the local area - appear satisfied that the applicant is a local rural person within their local rural area
- 7.2.5. The final criteria of policy CDP3.11 is that the applicant must have a 'local rural housing need'. The applicant is in college in Dublin, living in Dublin 8 since 2018.

The appeal states that the applicant has an interest in software development and notes that such employment is not location specific. The applicant has not demonstrated a need to live in this un-zoned rural area under strong rural pressure. Speculation on possible future employment which is not even specific to the subject area does not qualify as a rural housing need. The provision of a one-off dwelling in an area in an un-zoned rural area under strong urban pressure must only occur where the applicant can definitively demonstrate a need to live at the subject site. The applicant has provided no such reasoning. I am satisfied that the applicant does not have a rural housing need.

- 7.2.6. Both national and local policy are clear, one-off housing in an area under strong urban influence must be where the applicant has an established housing need and a rurally generated housing need. The applicant has not demonstrated a rural housing need at the subject location. I am satisfied that the Applicant has not demonstrated compliance with national or local policy on residential development in un-zoned rural areas under strong urban influence.

### **7.3. Visual and Residential Impact**

- 7.3.1. The subject site rises from south to north by approx. 2m. Along the northern boundary is a steep embankment which rises 3m over approx. 5m. The proposed single storey dwelling has a ridge height of 6.35m, over a FFL of 103m. Notwithstanding the two semi-mature trees proposed for the peak of the embankment and the proposed 2m high beech hedge, it is considered that the proposed dwelling would have a significant visual impact when viewed from the public road and from the rear of the existing houses in the area. The existing level of screening of the subject site is minimal. Its elevated location results in a wide area of visibility.
- 7.3.2. It is considered the proposed dwelling would overlook the private amenity area of the dwelling to the immediate south. The proposed southern elevation of the dwelling includes a large corner section of glazing and an outdoor terrace. I note the site layout plan for the proposed dwelling states that there is cypress hedging on the southern boundary, however this was not in place on the date of my site visit. It is considered that the proposed development would unduly impact the residential amenity of the dwelling to the immediate south of the subject site. The separation

distance between the two dwellings is not sufficient to overcome the difference in ground levels.

#### **7.4. Traffic**

- 7.4.1. The proposal to pave the laneway with tarmac or other surface is not acceptable. The introduction of an impermeable surface for a distance of 93m on a laneway that serves other lands, including agricultural lands, would be seriously injurious. Further, it does not address the concerns of the Board in PL03.241994 regarding side boundaries. That permission has lapsed on the disused site to the north-west does not mean that the laneway would serve only a single dwelling. The previous Board inspector noted that permission had been granted for that site (Planning Authority. reg ref. 05- 1376) including significant upgrade works to the laneway. These works were not carried out. I am satisfied that the Boards previous reason for refusal regarding the substandard nature of the laneway stands.

#### **7.5. Appropriate Assessment**

- 7.5.1. Having regard to the nature and small scale of the proposed development, it is considered that no appropriate assessment issues arise, and that the proposed development would not 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 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 considered that the proposed development by reason of its location on an elevated backland site, served by a substandard laneway, and by reason of its design and scale and its relationship with existing dwellings in the immediate vicinity would be out of character with the established pattern of development in the vicinity of the site, would seriously injure the visual amenities of the area by reason of visual intrusion and would seriously injure the residential amenities of neighbouring property by reason of overlooking. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Gillian Kane  
Senior Planning Inspector

15 December 2020