



An
Bord
Pleanála

Inspector's Report

ABP-308340-20

Development	Construction of dwelling with attached garage, entrance, packaged wastewater treatment system with percolation area.
Location	Woodcockhill , Cratloe , Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	20405
Applicant(s)	Edwin Omoruyi
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Bernard Ross & Sarah Ross
Date of Site Inspection	10 th December 2020
Inspector	Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.235 hectares, is located to the north west of Limerick City and close to the border between Co. Clare and Co. Limerick at Woodcockhill. The appeal site is located on the western side of the LP3106. The appeal site is agricultural land and is level in topography with a slight fall in gradient moving away from the public road. Adjoining uses include a two-storey dwelling on the site to south and a two-storey dwelling on site to the north (appellants' dwelling). Lands to the west are agricultural lands. The boundaries on site include hedgerow along the southern, eastern and western boundary and a wire fence along the northern boundary.

2.0 Proposed Development

- 2.1. Permission sought for a two-storey dwelling with attached garage, entrance, wastewater treatment system and associated site works. The proposed dwelling has a floor area of 381sqm and features a pitched roof. The dwelling has external finishes including a stone finish on the front elevation, a plaster finish on the other elevations and blue/black slates on the other elevations.
- 2.2. On the 10th of July 2020 unsolicited further information was submitted that included revised plans with the dwelling reduced in floor area to 321.6m and a ridge height of 9m. This plan included a single-storey garage annex that projects forwards of the building line of the dwelling.
- 2.3. On the 08th of August 2020 unsolicited further information was submitted that included revised plans with the dwelling reduced further in floor area to 283.1sqm and a ridge height of 8.909m. The dwelling was angled on site to take account of both the building line of the dwelling to the north and the dwelling to the south.

3.0 **Planning Authority Decision**

3.1. **Decision**

Permission granted subject to 12 conditions, of note are the following conditions...

Condition no. 4: Revised layout to be submitted for agreement re-orientating the front building line of the dwelling so it is generally consistent with the front building line of the dwelling to the south of the site.

Condition no. 5: Finished floor level of the dwelling to be as per the drawings submitted on the 18th August 2020.

Condition no. 6: First floor windows on the northern and southern elevation shall be fitted with opaque glazing.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

Planning report (17/09/20): The proposal was considered to be in compliance with County Development Plan settlement strategy/rural housing policy, acceptable in regards to design, scale and visual amenities, acceptable in the context of adjoining amenities, public health and traffic safety. A grant of permission was recommended subject to the conditions outlined above.

3.2.2. Other Technical Reports

Environment (04/08/20): Conditions in the event of a grant of permission.

3.3. **Prescribed Bodies**

IAA (03/07/20): No observations.

Irish Water (24/07/20): Conditions in the event of a grant of permission.

3.4. **Third Party Observations**

3.4.1 Submission by Bernard & Sarah Ross. The issues raised are as follows...

- Not in accordance with settlement pattern and adverse impact on privacy. Overlooking from the first floor windows on the northern elevation.
- Not in keeping with existing pattern of development and potential for overshadowing due to inadequate level of separation.
- Validity issues.

4.0 **Planning History**

None on the appeal site.

On adjoining sites...

17/59: Permission granted for a two-storey dwelling on the site immediately to the north.

5.0 **Policy Context**

5.1. **Development Plan**

The relevant Development Plan is the Clare County Development Plan 2017-2023.

The appeal site is in a rural area designated as experiencing “Strong Urban Pressure” and is located in the Western Corridor Working landscape.

CDP 3.11 New Single Houses in the Countryside within the ‘Areas of Special Control’

It is an objective of the Development Plan:

A) In the parts of the countryside within the 'Areas of Special Control' i.e.:

- Areas under Strong Urban Pressure (See chapter 17);
- Heritage Landscapes (See Chapter 13);
- Sites accessed from Scenic Routes (See Chapter 13 and Appendix 5).

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 below and meets the necessary criteria.

B) 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. Note: Where the proposed site is accessed from a National route or certain Regional routes, the proposal must in addition to compliance with this objective, also be subject to compliance with objectives CDP8.4 and 8.5 as set out in Chapter 8.

CPP 3.13 New Single Houses in the Countryside

It is an objective of the Development Plan: In the case where there is a grouping of rural houses, the development of a small gap site, sufficient to accommodate only one house, within an otherwise substantial and continuously built-up frontage, will be permitted provided it respects the existing development pattern along the frontage in terms of size, scale, siting, plot size and meets normal site suitability requirements. Dwellings constructed on infill sites of this nature must be for the permanent occupation of the applicant. The siting of new dwellings in the countryside so as to deliberately create a gap site of this nature will not be permitted. In circumstances where these sites occur in 'Areas of Special Control' the provisions of Objective CDP3.11 (i.e. Local Need requirement) will not apply.

5.2 National Policy

5.2.1 Sustainable Rural Housing Guidelines (2005):

The overarching aim of the Guidelines is to ensure that people who are part of rural community should be facilitated by the planning system in all rural areas, including

those under strong urban based pressures. To ensure 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.

National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government (2018)

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence i.e commute catchment of cities and large towns and centres of employment. This will be subject to siting and design considerations. In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

5.3 Natural Heritage Designations

5.3.1 None in the vicinity.

5.4 EIA Screening

5.4.1 Having regard to nature and scale of the development, which is the construction of a dwelling, wastewater treatment system and associated 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 A third party appeal has been lodged by Bernard & Sarah Ross, Penree House, Woodcokhill Rd, Meelick, Co. Clare, V94 59R2. The grounds of appeal are as follows...

- Condition no. 4 will result in the dwelling being closer to the appellants' property and pushing the garage well past the building line. Such would have an adverse impact on the appellants' property including blocking views and sunlight.
- In relation to condition no. 12 it is stated that the plans include a single-storey living unit.
- The appellants' refer to Development Plan policy DCP 3.13 relating to new houses on infill site. The permitted development does not comply with this policy.
- The appellants question the validity of the application. The applicant was allowed to submit unsolicited further information on two occasions. The appellants who had submitted a third submission regarding the original plans submitted were not informed of such plans (informed by a Councillor). Such plans were significant further information requiring new public notices. The appellants' were allowed to make a submission on the second set of plans but were completely unaware of the third set of plans.
- The appellant states that the applicant and his spouse are previous home owners in the district of Cloonara where they built and subsequently disposed of a dwelling impacting their qualification for local housing need. This information was not provided in the application.
- The application address was incorrectly stated in in the public notices.
- The appellants question whether the manner in which drawings were submitted was intentional to mislead in relation to third parties.

6.2. Applicant Response

6.2.1 Response by the applicant, Edwin Omoruyi, Pass Rd, Meelick, Co. Clare, V94 VPN3.

- In relation to the appellants' concerns regarding condition no. 4 the applicant states that proposal provides for adequate separation from the appellants' dwelling and would be acceptable in regards over impact on residential amenity.
- The appellants' concerns regarding condition no. 12 and the proposed garage are incorrect and such is not for human habitation. The overall scale of the dwelling approved is acceptable in the context of adjoining properties and is similar in the pattern and scale of development permitted at this location.
- The applicant questions the motivation of the appeal and grounds of appeal.

6.3. Planning Authority Response

6.3.1 Response by Clare County Council

- The PA note the application of condition no. 4 re-orienting the building line to conform to the adjoining dwelling (south) and no. 12 restricting use of the garage for human habitation.
- It is stated that unsolicited further information received by the PA was not deemed to be significant under Article 35 of the Planning and Development regulations. The Board is advised that the Planning Authority did not invite or allow a third party submission outside of the public consultation period despite the claims of the appellants' a subsequent observation form the third party was not reviewed or considered.
- The proposal is an infill site and the revised plans submitted on the 18th of August reduced the overall bulk and scale of the dwelling and condition no. 12 will ensure its integration with the existing pattern of development. The visual impact of the proposal is considered acceptable.
- It is considered that the applicant complies with Rural Housing policy set down under CDP 3.13.

7.0 Assessment

7.1 Having inspected the site and the associated documents the main issues can be assessed under the following headings.

Principle of the proposed development/rural housing policy

Design, layout, pattern of development

Validity issues

Wastewater treatment

7.1. Principle of the proposed development/rural housing policy:

7.1.1 The appeal site is located in a rural area. The appeal site is in a rural area designated as experiencing “Strong Urban Pressure”. Under CDP 3.11 (New Single Houses in the Countryside within the ‘Areas of Special Control’) it is an objective of the Development Plan that in parts of the countryside within the ‘Areas of Special Control’ which include Areas under Strong Urban Pressure “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 below and meets the necessary criteria”. Category A is ‘a local rural person’ with definitions as what constitutes such, Category B is ‘Persons Working Full Time or Part-time in Rural Areas’ with definitions of such provided and category C is ‘Exceptional Health and/or Family Circumstances’. The appellants have questioned the applicant’s status in regards to rural housing need noting that he sold a property within a rural area and have not indicated such on the relevant forms used to assess this aspect of the proposal.

7.1.2 On this issue the planning report states that as the site is an infill site CDP 3.13 applies It is an objective of the Development Plan: In the case where there is a grouping of rural houses, the development of a small gap site, sufficient to accommodate only one house, within an otherwise substantial and continuously built-up frontage, will be permitted provided it respects the existing development

pattern along the frontage in terms of size, scale, siting, plot size and meets normal site suitability requirements. Dwellings constructed on infill sites of this nature must be for the permanent occupation of the applicant. The siting of new dwellings in the countryside so as to deliberately create a gap site of this nature will not be permitted. In circumstances where these sites occur in 'Areas of Special Control' the provisions of Objective CDP3.11 (i.e. Local Need requirement) will not apply. The planning assessment notes that the applicant does not own a dwelling in the area and that compliance with CDP 3.13 has been demonstrated. It does not appear that the applicant meets the criteria under CDP 3.11 and that permission has been granted on the basis of CDP 13.13 and due to the site being an infill site where the requirement for local needs does not apply. Despite being on an infill site I would be of the view that national policy under "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005, and National Policy Objective 19 of the National Planning Framework makes it clear that in relation to rural areas under urban influence, such as in the current case, it is policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area. In this case the site is in a rural area close to Limerick City and an area defined as being under strong urban pressure in the CDP and an area under strong urban influence in relation to the national guidelines. The applicant has failed demonstrate an economic or social need to live in the area as required under national policy.

- 7.1.3 I would consider that having regard to the location of the site within an area under urban influence as identified in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005, and to National Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as in the current case, which states that it is policy to "facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area...having regard to the viability of smaller towns and rural settlements", it is considered that the applicant has not demonstrated an economic or social need to live in this rural area in

accordance with national policy. The proposed development, in the absence of any definable or demonstrable need for the house, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, contravene the Ministerial Guidelines and be contrary to national policy. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.2 Design, layout, pattern of development:

7.2.1 The appellants raised concerns regarding the fact the permitted development would be out of character with the existing pattern of development, is inadequate in level of separation from the southern elevation of their dwellings, would reduce privacy due to windows on the northern elevation and cause overshadowing due its proximity. The appellants also raised concerns regarding the manner in which revised plans were submitted as unsolicited further information. This aspect of the proposal is to be addressed in a later section.

7.2.2 The appeal site is an infill site located between an existing dwelling to the south and three dwellings to the north. The dwellings in question are all two-storey dwellings with a similar building line (dwelling to the south located further back from the public road and angled slightly). The permitted development is generally in accordance with pattern and scale of development of the existing dwellings at this location. The appeal site is located at a lower ground level than the appellants' property to the north and will have a lower finished floor level as levels rise moving north. I would be off the view that the proposed dwelling has adequate regard to the pattern of development on adjoining sites and is sufficiently separated from adjoining properties so as to have no adverse impact in relation to overshadowing. The level of windows proposed on the northern elevation of the approved plans (18th August 2020) is not excessive and is to be fitted with opaque glazing, which was one of the conditions imposed. The appellants' dwelling makes the most of its southern elevation at ground floor level with windows serving the kitchen and dining area. The proposal will result in an altered outlook and view, however I would consider that the

nature and level of development proposed on the adjoining site would be acceptable in the context of residential amenities of the adjoining property.

7.2.3 Of the three set of plans submitted over the course of the applicant, the plans submitted on the 18th of August have the most regard to the amenities of the adjoining property. The scale of dwelling is reduced and its building line is angled to take account of the dwelling to the north and the dwelling to the south, which is setback further and is angled itself in relation to the public road. A condition was attached under condition no. 4 requiring such is reoriented to conform to the building line of the dwellings to the north (parallel to the public road). The appellants' note that such would move the dwelling closer to their dwelling and result in the garage annex projecting further beyond the building line of their property. I would consider that this condition is unnecessary and that layout proposed on the 18th of August 2020 is acceptable and has adequate regard to the existing building line. In regards to pattern of development, I would note that the site is a rural area and arguments about applying a rigid pattern of development are inappropriate as such erode the rural character of the area. I would acknowledged that the site is an infill site with a ribbon of development in a rural area and the overall design and scale of the approved dwelling is in keeping with that permitted on adjoining sites. I would question whether the design of the dwelling on the appeal site and the dwellings permitted on adjoining sites have adequate regard to the Council's rural housing design guide. Notwithstanding such based on existing dwellings, the overall design, scale and pattern of development of the approved dwelling (18th August 2020) is satisfactory.

7.2.4 The issue of the provision of habitable accommodation within the garage annex is raised in the appeal and the PA point out that condition no. 12 deals with such. I can see no issue in this regard. There is no provision of a separate residential unit with the single-storey portion integrated and integral to the existing dwelling.

7.3 Validity issues:

7.3.1 The appellants question the validity of the application. The applicant was allowed to submit unsolicited further information on two occasions with significantly revised plans (10/07/20 and 18/08/20). There were also two other unsolicited submissions from applicant, which were written submissions (13/07/20 and 03/09/20) The appellants who had submitted a third party submission regarding the original plans submitted were not informed of such plans (informed by a Councillor). Such plans were significant further information requiring new public notices. The PA in their response stated that the unsolicited further information was deemed not to be significant under Article 35 of the Planning and Development Regulations. I would disagree with this assessment as the plans submitted were significantly different in design and layout and should have been advertised and subject to revised public notices to ensure adequate public scrutiny.

7.4 Wastewater treatment:

7.4.1 The proposal entails installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation tests. The trial hole test notes that the water table level was encountered in the trial hole at a depth of 2.50m (trial hole depth of 2.70m depth). The percolation test result for T tests by the standard method for deep subsoils and/or water table, indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The test results indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The drawings submitted meets the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries).

8.0 **Appropriate Assessment:**

8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest 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.

9.0 Recommendation

9.1 I recommend refusal based on the following reason:

10.0 Reasons and Considerations

1. Having regard to the location of the site within an area under urban influence as identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, and to National Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as in the current case, which states that it is policy to “facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area...having regard to the viability of smaller towns and rural settlements”, it is considered that the applicant has not demonstrated an economic or social need to live in this rural area in accordance with national policy. The proposed development, in the absence of any definable or demonstrable need for the house, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, contravene the Ministerial Guidelines and be contrary to national policy. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

18th January 2021