



An
Bord
Pleanála

Inspector's Report ABP-308782-20

Development	Retention of dwelling and planning permission to complete dwelling as granted planning permission by Tipperary County Council under planning reference 04/51/1889
Location	Stonepark , Ballinderry , Nenagh, Co Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	20422
Applicant(s)	Donal Ryan and Robert Bloom
Type of Application	Retention permission and permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Donal Ryan and Robert Bloom
Observer(s)	None.
Date of Site Inspection	22 nd February, 2021

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located to the south east of the village of Ballinderry and is approximately 700 metres to the south east of the crossroads in the village. The site is bounded to the south by a local road and beyond that by the Ballyfinboy River.
- 1.2. The site is currently characterised by a partially completed bungalow sited to the rear of the site. This structure is unroofed but is completed up to wall plate height. The floor slab is complete. The immediately adjoining site to the west is characterised by a similar partially completed bungalow.
- 1.3. The application documentation states that there is a septic tank and percolation area installed on site. The location of this tank was not clearly evident at the time of inspection. During the course of the assessment by the Planning Authority revised proposals for the installation of a proprietary effluent treatment system were submitted and the trial and percolation holes connected with the site assessment undertaken for this system remained open on site.
- 1.4. The site is steeply sloping rising up away from the road and such that the rear of the site is approximately 9 metres above the road level. Significant cut to the original ground level has occurred to create a level area for the footprint of the house and this is evident at the rear of the building where the ground level has been lowered by more than 3 metres. The driveway accessing the site slopes up and to the north east away from the shared vehicular access point that has been created at the south west corner of the appeal site and which is shared with the adjoining site to the east (Ref. ABP-308784-20). The slope on the site is such that the existing part completed houses are not clearly visible from the public road.
- 1.5. The site is characterised by existing hedgerows along the rear and part of the front boundaries, while to the west the site is relatively open. The site is located c.300 metres from the boundary of the settlement of Ballinderry as identified in the *North Tipperary County Development Plan, 2010*.
- 1.6. The stated area of the appeal site as per the planning application form is 5.065 ha. however, it would appear that the correct area is 0.506 ha.

2.0 Proposed Development

2.1. The application comprises retention of works undertaken on the site to date comprising the following:

- A single storey house on the site as constructed. This house has a stated floor area of 181.39 sq. metres and an overall height of 5.5 metres. The dwelling as exists on site and for which retention is sought does not have a room.
- Septic tank and percolation area which are located along the western side of the site. It is noted that this was changed during the course of the assessment of the application by the Planning Authority such that it is now proposed that a new effluent treatment system would be installed on the site.
- Shared entrance that is located at the centre of the frontage between the two sites, the current appeal site, and the adjoining site to the east.
- Permission is also sought for completion of the house as previously permitted under Ref. 04/511889. This involves completion of the roof and all external finishes and internal fit out.

2.2. Water supply to the development is proposed to be via a bored well.

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 issues:

1. Submission of plans that indicate the site in red and all adjacent lands in the same ownership in blue.
2. The applicants are requested to submit information to demonstrate compliance with Policy SS4 of the development plan. Supporting documentation to demonstrate that the applicant has resided within 5km of the site for the previous 10 years and do not currently own a house should also be provided. Part 2 of the Planning Application form to be completed.

3. Submission of a report from a qualified site assessor setting out that the existing septic tank complies with the EPA Code of Practice. Should this not be possible then a full site assessment will be required along with proposals for the treatment of effluent on site.

In response to this request for further information, the following information and / or revisions to the development were submitted:

- Revised Site plan submitted showing the appeal site outlined in red and the adjoining site to the west (subject of appeal Ref. ABP-308782-20) outlined in blue.
- Regarding compliance with the rural housing policy and Policy SS4, stated that the first parties bought the site from a developer (Ger Cillally) who obtained planning permission for development of a house on the site under Ref. 04/511889. There were no conditions attached with this permission which required that the applicant needs to live within 5km of the site for 10 years previously and that they not currently own a house.
- The letter of response to the further information (dated 2nd October, 2020) states that a report submitted from a qualified site assessor which states that the existing septic tank and percolation area complies with the EPA Code of Practice. The information submitted comprises a completed site assessment form that recommends the installation of a proprietary effluent treatment system (O'Reilly Oakstown BAF system). It is noted that no revised public notices reflecting this change were required by the Planning Authority or submitted.

3.2. Decision

The planning authority issued a Notification of Decision to Refuse Permission for one reason that can be summarised as follows:

That the planning authority is not satisfied, on the basis of the information provided with the application, that the applicant has demonstrated a local need for a house in compliance with the requirements set out in Policy SS4 of the development Plan.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The initial planning report on file states that due to the fact that the house on site is partially completed the applicants will have to demonstrate compliance with the rural housing policy. Also stated that the septic tank will require further information to demonstrate compliance with the EPA Code of Practice. Initial report recommends further information consistent with the request issues. Second report subsequent to the response to further information recommends refusal of permission consistent with the notification of decision which issued.

3.3.2. Other Technical Reports

None on file.

3.4. Third Party Observations

None received by the Planning Authority.

4.0 Planning History

The following planning history is noted in the report of the Planning Officer on file:

Appeal Site

Tipperary County Council Ref. 04/511889 – Permission granted for a single storey dwelling, septic tank, and new entrance. As per Condition No.2, this permission expired in March 2007.

Tipperary County Council Ref. PLC/23645 – Outline permission granted for a single storey house on the site as part of a grant of outline permission for two houses on a larger site comprising the current appeal site and the adjoining site to the west.

Adjoining Lands

Tipperary County Council Ref. 20/420; An Bord Pleanála Ref. ABP-308784-20 – Permission refused by the planning authority for the retention and completion of a single storey dwelling, septic tank, and entrance on the site immediately to the west of the current appeal site. This decision is the subject of a concurrent appeal to the Board.

Tipperary County Council Ref. 04/511888 – Permission granted for a single storey dwelling, septic tank, and new entrance. As per condition No.2, this permission expired in March 2007.

Tipperary County Council Ref. PLC/23645 – Outline permission granted for a single storey house on the site as part of a grant of outline permission for two houses on a larger site comprising the current appeal site and the adjoining site to the east.

5.0 Policy Context

5.1. Development Plan

The appeal site is located within the administrative area of Tipperary County Council and the relevant plan is the *North Tipperary County Development Plan, 2010*. The period of this plan has been extended on foot of s.11A of the Planning and development Act, 2000 (as amended) and the process of preparing a new Tipperary County Development Plan has commenced.

The site is located outside of any settlement identified in the plan and the boundary of the closest settlement (Ballinderry) is located approximately 350 metres from the appeal site at the closest point.

Ballinderry Specific Objectives:

Objective GO 1: To facilitate low density development proposals to meet local housing demands together with the provision of local and community services / facilities and local employment opportunities within the village/settlement boundary in accordance with the principles of proper planning and sustainable development.

Rural Housing Policy is set out at section 3.4 of the plan.

For the purposes of Policy SS4, the appeal site is located in a 'Primary Amenity Area' as per Figure 3.4 of the Plan.

Policy SS4: Housing in the Rural Countryside states as follows (as relevant to a Primary Amenity Area):

It is the policy of the Council to facilitate individual dwellings in the open countryside for person(s) who are intrinsic to the area, have a demonstrated housing need²⁰, and who are seeking to provide a home for their own occupation. A housing need should be demonstrated in accordance with any one of the categories set out below:

Category A: Local Rural Person

(ii) A 'Local Rural Person' in a 'Primary Amenity Area' is a person who has lived in the primary amenity area (outside of designated centres, see below) and within 5km of the proposed site for a minimum and continuous 10 year period.

For the purposes of this policy 'Rural area' refers to the area outside of designated settlements with a population in excess of 1,500 people.

Or

Category B: Functional Need to Live in a Rural Area

Persons who can demonstrate a land-dependant need to be at the location of the farm and meeting either of the following criteria:

(i) A farmer of the land - defined as a landowner with a holding of >20ha ²¹,
or

(ii) An owner and operator of an agricultural/horticultural/equine activity on an area less than 20 hectares where it is demonstrated to be of a viable commercial scale ²².

Or

Category C: Exceptional Medical Circumstances

Consideration will be given in very limited circumstances to an applicant demonstrating housing need on the basis of exceptional medical circumstance. Any planning application must be supported by documentation from a registered medical practitioner and disability organisation proving that a person requires to live in a particular environment and in a dwelling designed and built purposely to suit their medical needs.

5.2. Natural Heritage Designations

The site is not located within or close to any European site. The closest such site to the appeal site is the Lough Derg, North-east Shore SAC (site code 002241) which is located c.2.6km from the appeal site at the closest point. The Ballyfinboy River which discharges into the SAC c.3km to the north west of the site is located on the opposite side of the local road that fronts the appeal site and c.20 metres from the site boundary.

5.3. EIA Screening

Having regard to the nature and scale of the development 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. First Party Grounds of Appeal

The following is a summary of the main issues raised in the first party grounds of appeal:

- That the circumstances of the appellants are that they have connections with the local area. The first appellant (Robert Bloom) has a mother from Dundrum County Tipperary. The second appellant (Donal Ryan) who is a cousin of the other appellant, is also from County Tipperary and has parents who reside in Rossmore, County Tipperary.

- That the application is intimately connected with the adjoining site which is also the subject of a current appeal to the Board (Ref. ABP-308782-20).
- That the sites were bought by the first party appellants in 2006 with the benefit of full planning permission for two houses.
- The houses as permitted were not completed due to financial issues arising firstly from the cost of excavating the foundations (due to presence of rock) and then to the financial collapse of 2008.
- Due to oversight no extension of duration of the permissions (originally granted in 2004) were sought.
- That permission has been refused because the provisions of policy SS4 of the development plan relating to local housing has been applied retrospectively. Policy SS4 was not contained in the development plan at the time that the decision was issued to grant permission. Policy SS4 came into the development plan in 2010.
- Submitted that the planning authority have failed to have any regard to the planning history of the site in making its decision.
- That the development permitted on the site was substantially completed with foundations and blockwork up to ceiling level. Roof joists were fitted but had to be removed subsequently due to weather damage.
- That the site is an appropriate location for the type of development sought. . It is closely connected with the village of Ballinderry. The proposed development would strengthen this settlement as the site is located close to a cluster of housing. Reference is made to the objective of strengthening rural villages and towns set out in the Sustainable Rural Housing Guidelines for Planning Authorities.
- That paragraph 3.20 of Delivering Homes Sustaining Communities that reasonable proposals for houses in rural areas for persons with links to or contribute to the rural community should be accommodated and that demand should be accommodated in areas that are suffering population decline. The appeal site is located in an area that is not under pressure from any large settlements and the population of the area has declined in recent years.

Submitted that the planning authority have not had regard to the objective of preventing population decline.

- That the planning authority have failed to have regard to the objective set out in the plan regarding facilitating low density housing appropriate to the village location.
- Without prejudice to other grounds of appeal, submitted that the permission for the proposed development should be granted having regard to the RSES for the area, section 28 guidance and 29 policy directives.
- That the Planning Authority has not had regard to the requirements of s.40(1)(b) of the Act which provides that where development was commenced within the appropriate period but not completed the expiration of the appropriate period does not prejudice the validity of anything done under the permission prior to the expiration.
- That the planning authority has not had adequate regard to the impact on the proper planning and development of the area if the development is not permitted and the development on site is not completed.

The appeal is accompanied by a number of documents / attachments including the following:

- Copy of land registry folio 43682F showing Donal Ryan and Robert Bloom as joint owners.
- Notification of Decision to grant Permission for Refs. 04/511888 and 04/511889.
- Engineers Cert re foundations (dated May, 2009),
- Copy of Planning Officer Reports and request for further information,
- Photographs of site.

6.2. Planning Authority Response

Submission stating that the planning authority has examined the appeal and has no further observations to make.

7.0 Assessment

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

- Principle of Development and Planning History
- Compliance with Rural Housing Policy
- Site Servicing
- Design and Other Issues
- Appropriate Assessment

7.2. Principle of Development and Planning History

7.2.1. The first party appellants highlight the planning history of the sites and contend that inadequate consideration of this history has been taken into account. It is also noted that the current rural housing policy requirements were not in place at the time that permission was originally granted for development on the site (2004).

7.2.2. The appeal site is located in a rural area that is outside of any identified settlement. The settlement boundary of Ballinderry village is located c.300 metres from the appeal site at the closest point, and the site is not within the village or such that it adjoins or is contiguous to development that is within the village. The planning history of the site, together with that of the adjoining site, is noted and it is accepted that the first party was previously granted permission for the development of a house on the site. This permission was not however assessed having regard to the personal connections of the first party with the rural area and rather was granted having regard to the fact that an outline permission had been granted for two houses, one on this site and a second on the adjoining site to the west. The reasons why development did not proceed are noted, however the fact is that all existing permissions for development on the site have expired. The situation is in my opinion clear that any application for development on the site now has to demonstrate compliance with the current development plan policy and with s.28 guidance currently in effect. The fact that Policy SS4, or a policy with similar requirements, was not in effect at the time of the original grant of permission on the site is not in my

opinion a basis as to why current development plan policy should be set aside in the assessment of the current application.

- 7.2.3. The appellants have made a number of statements regarding the fact that the site is located in close proximity to Ballinderry village. As noted above, however, the site is located c.300 metres outside of the development boundary as identified in the North Tipperary County Development Plan, and in a location where there is no contiguous development connecting the appeal site to the village. Given its location 300 metres outside the development boundary I do not agree with the first party appellants that the proposed development, together with that on the adjoining site, would strengthen the settlement of Ballinderry and therefore be consistent with the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities. Rather, I consider that the siting of two additional houses on lands outside the development boundary would serve to lead to an uncoordinated and haphazard form of development that would serve to weaken the distinction between Ballinderry and its rural hinterland.
- 7.2.4. I note the reference in the first party appeal to the failure of the planning authority to have regard to the objective set out in the plan regarding facilitating low density housing appropriate to the village location, (Objective GO 1). The full text of this Objective is set out at section 5.1 of this report above, and from this it can be seen that this objective relates to development *'...within the village/settlement boundary in accordance with the principles of proper planning and sustainable development'*. The appeal sites are not within or close to the identified development boundary and, for the reasons set out above relating to uncoordinated and haphazard form of development, would not in my opinion be consistent with the proper planning and sustainable development of the area.
- 7.2.5. I note that the appeal states that the Planning Authority has not had regard to the requirements of s.40(1)(b) of the Act which it is contended provides that where development was commenced within the appropriate period but not completed the expiration of the appropriate period does not prejudice the validity of anything done under the permission prior to the expiration. The full wording of Section 40(1)(b) is set out below:

40.—(1) Subject to subsection (2), a permission granted under this Part, shall on the expiration of the appropriate period (but without prejudice to the validity of anything done pursuant thereto prior to the expiration of that period) cease to have effect as regards—

(a) in case the development to which the permission relates is not commenced during that period, the entire development, and

(b) in case the development is commenced during that period, so much of the development as is not completed within that period.

- 7.2.6. From the above, it can be seen that s.40(1)(b) provides that if development undertaken in compliance with a valid permission, such as the development undertaken on the appeal site, then this development is valid. This does not however mean that there is a presumption that any development not completed within the appropriate period is also valid or that there would be an assumption that permission would be granted. Rather, s.40(1)(b) makes clear that only that part of the development completed within the appropriate period (in this case up to March 2007) is valid and that development not completed within that period the permission ceases to have effect.
- 7.2.7. Finally, I note the comment of the first party appellants that the planning authority has not had adequate regard to the impact on the proper planning and development of the area if the development is not permitted and the development on site is not completed. This is a valid point to raise as the existing development on the site was undertaken in line with a valid permission, is not unauthorised and cannot be the subject of enforcement proceedings requiring its removal and the reinstatement of the site. The case can therefore be made that it is appropriate that development of the site be completed. Not to do so, and to refuse permission, would mean that the only way that development would be completed would be if permission was sought by a person or persons who could demonstrate compliance with the current Tipperary County Council rural housing policy, and specifically the requirements of Policy SS4.

7.3. Compliance with Rural Housing Policy

- 7.3.1. As set out above, I consider that the appeal site is located in a rural area outside of any identified settlement and such that the provisions of the rural housing policy contained in the North Tipperary County Development Plan are applicable in this case.
- 7.3.2. Rural housing policy is set out at Section 3.4 of the *North Tipperary County Development Plan, 2010* (as varied and extended). The policy distinguishes between what are designated 'Primary Amenity Areas' and the 'Open Countryside'. The appeal site and environs has been designated by the Planning Authority as a 'Primary Amenity Area' on the basis that it is an important tourism location in the vicinity of Lough Derg. The first party make the case that the appeal site is located in an area that is experiencing population decline and that on this basis the provisions of *Delivering Homes Sustaining Communities* indicate that reasonable proposals for houses in rural areas for persons with links to or contribute to the rural community should be accommodated and that demand should be accommodated in areas that are suffering population decline. As set out above however, the planning authority have identified the area in the vicinity of the appeal site and inclusive of the appeal site as a sensitive location for tourism where there is a demand for rural housing and I do not consider that there is a clear basis under which this designation should be set aside in the application of the rural housing policy in this case.
- 7.3.3. Policy SS4 of the Plan, as set out in section 5.1 of this report above, provides for three categories of person who might be considered to meet the rural housing policy. These are
- Category A: Local Rural Person
 - Category B: Functional Need to Live in a Rural Area, and
 - Category C: Exceptional Medical Circumstances
- 7.3.4. Regarding the circumstances of the first party and how they may comply with the rural housing policy, it is noted that this issue was specifically raised as part of the further information request issued by the Planning authority and that it was requested that Part 2 of the Planning Application Form would be completed. This request was not complied with and the level of information submitted regarding the

connections that the appellants have with the local rural area is limited. The first parties have not provided any information that would indicate compliance with Categories B or C of Policy SS4. Specifically, no information is provided with regard to the nature or location of the appellant's employment. Regarding Category A (local rural person), it is stated that the first appellant (Robert Bloom) has a mother from Dundrum County Tipperary and that the second appellant (Donal Ryan), who is a cousin of the other appellant, is also from County Tipperary and has parents who reside in Rossmore, County Tipperary. Both of these locations are at a significant remove from the appeal site, being 71 and 64km respectively away from the appeal site, and such that the appellants do not in my opinion meet the definition of a local rural person specified in the development plan or what I would consider to reasonably constitute a local rural person. In addition, no details are provided with regard to if or for how long the first parties resided in these locations or any other connections such as education or employment.

- 7.3.5. On the basis of the information presented therefore I do not consider that the first parties have demonstrated that they are intrinsic to the local rural area such as to have a local housing need. I therefore agree with the Planning Authority that the first parties do not comply with the rural housing policy set out in Chapter 3 of the North Tipperary County Development Plan and specifically Policy SS4.

7.4. Site Servicing

- 7.4.1. As initially submitted, the application on the appeal site proposed the use of an onsite septic tank and percolation area which was installed during the initial construction works undertaken on the site prior to the expiry of permission. As part of the further information request, the applicant was requested to submit a report from a qualified site assessor that the installed system complies with the EPA Code of Practice. The information submitted in response to this request comprises a Site Suitability Assessment including percolation tests and proposals for the installation of a new on site effluent treatment system. As noted in section 2.0 of this report under the heading of Description of Development, no revised public notices were issued on foot of this change.

7.4.2. The information from the site assessment undertaken indicates a T value of 12.14 and P value of 8.06. The groundwater response matrix indicates R2¹ based on a locally important aquifer and extreme groundwater vulnerability. The GSI groundwater protection matrix indicates that a standard septic tank system is acceptable in such locations subject to normal good practice, however I note the very stony nature of the ground conditions on site, the elevated nature of the site and the relatively fast percolation results obtained in the site assessment. These factors, together with the proximity of the proposed system to the Ballyfinboy River located c.60 metres down slope of the proposed system and the proposed use of an onsite well for water supply indicates to me that in the event of a grant of permission some form of proprietary treatment system would be appropriate.

7.5. Other Issues

7.5.1. The shared entrance created incorporates a significant set back from the road edge and a set back of the site frontage has been created on both sides of the entrance. The entrance is located on a relatively straight stretch of local road and in a position where a 90 metre sightline is available in both directions.

7.5.2. The finishes to the dwelling on site comprise plastered external walls with dark tiles or slates to the roof. The basic finishes proposed are in my opinion acceptable. The completed house would be significantly screened from the public road fronting the site due to the extent that it is set back from the road, the cutting into the slope of the site to accommodate the footprint and the screening afforded by vegetation fronting the site.

7.6. Appropriate Assessment

7.6.1. The site is not located within or close to any European site. The closest such site to the appeal site is the Lough Derg, North-East Shore SAC (site code 002241) which is located c.2.6km from the appeal site at the closest point. The Ballyfinboy River, which discharges into the Lough Derg – North East Shore SAC c.3km to the north west of the site, is located on the opposite side of the local road that fronts the appeal site and c.20 metres from the site boundary.

7.6.2. The qualifying interests of the Lough Derg – North East Shore SAC are as follows:

- Juniperus communis formations on heaths or calcareous grasslands
- Calcareous fens with Cladium mariscus and species of the Caricion davallianae
- Alkaline fens
- Limestone pavements
- Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)
- Taxus baccata woods of the British Isles.

7.6.3. In the event of a significant failure of the onsite effluent treatment system there is a potential pathway via the Ballyfinboy River into the SAC. The nature of the qualifying interests is however such that water pollution arising from the proposed development would not have any effect on the habitats for which the SAC is designed and no significant effects on the site in light of the conservation objectives for which it is designated are therefore considered likely to arise.

7.6.4. Therefore, 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

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. It is the policy of the planning authority, as set out at Section 3.4 of the *North Tipperary County Development Plan, 2010* (as varied and extended), that development outside of designated urban centres should be strictly limited to local need where the applicant can demonstrate compliance with Policy SS4 of the plan, and where it is the settlement policy to direct new residential development to designated development centres and to protect existing rural settlements outside these centres from urban overspill. Notwithstanding the planning history of the site, and the previous grant of permission that has resulted in partially completed development on the site, the proposed development which, on the basis of the information presented with the application does not cater for locally derived housing needs, would conflict with the rural housing policies of the Development Plan, and specifically Policy SS4, and would therefore be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

24th February, 2021

10.0