



An
Bord
Pleanála

Inspector's Report ABP-310221-21

Development	Dwelling & wastewater treatment system
Location	Coonagh East, Coonagh, County Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	21/299
Applicant(s)	Kenneth Griffin
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Kenneth Griffin
Date of Site Inspection	13 th July, 2021
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The 0.78 hectare site is located in a rural area to the west of Limerick City. It comprises a field bounded to the north-east by a playing pitch and by a detached dormer dwelling to the south-west. The site has frontage onto a local road to the north-west. There is a grassed earthen bank fronting the site and a recently constructed footpath runs along the road frontage. The primary land use in the area consists of agriculture and there is extensive ribbon development along the local road to the south of the site.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a house and a detached garage and the installation of a wastewater treatment system. The house would be a detached, two-storey, four bedroom unit with a stated floor area of 268.38 square metres. It would also accommodate an attic store. The proposed garage would be a single-storey structure with a stated floor area of 50.87 square metres. The house would be served by a mains water supply and a private on-site wastewater treatment plant.
- 2.2. Details submitted with the application included a letter from the applicant outlining the need for the dwelling, a flood risk assessment, a design statement, and a site characterisation report.

3.0 Planning Authority Decision

3.1. Decision

On 28th April, 2021, Limerick City & County Council decided to refuse permission for the proposed development for two reasons relating to the development being at risk of flooding and the applicant not coming within the scope of Development Plan housing need criteria and therefore being contrary to the objective for the agriculture zoned land.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner referred to the site's planning history, noted the site's zoning provisions and the reports received, in particular the PDD report. Acknowledging the zoning of the land for agriculture, it was submitted that residential development is not permitted except where it directly relates to agriculture. It was considered that the applicant had failed to demonstrate compliance with the zoning objective. A refusal of permission for two reasons was recommended.

3.2.2. Other Technical Reports

The Physical Development Directorate (PDD) Section was not satisfied that the flood risk had been mitigated to an acceptable level and considered the proposal was inappropriate at the site. It was considered the development should be refused on the grounds of flooding. It was also noted that the agriculture zoning of the land did not permit residential development except where it related to agriculture.

The Environmental Services Engineer set out conditions relating to the proposed wastewater treatment system.

The Roads Technician outlined conditions to be met. Reference was also made to the applicant needing to address the flooding concerns of the PDD.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

4.0 Planning History

I note from the Planner's report that permission was refused for a dwelling on this site five times under P.A. Refs. 91/1075, 89/188, 88/28299, 88/28705, and 86/26739.

5.0 Policy Context

5.1. Limerick City Development Plan

Zoning

The site is zoned ZO.7 Agriculture with the objective “To protect, retain and enhance lands for agriculture and agricultural uses”. Only development of an agricultural nature is permitted within this zone. Residential development is not permitted except where it relates directly to agriculture.

Flood Protection

The Plan policy is as follows:

Policy WS.8 Flood Protection

It is the policy of Limerick City Council to continue to work towards reducing flooding within the City and ensure that all new development proposals comply fully with the requirements of ‘The Planning System & Flood Risk Management Guidelines for Planning Authorities’, 2009, and any additional guidance introduced during the lifetime of the Development Plan.

The Objectives include:

- o Avoid the risk of flooding by not permitting development in flood risk areas, particularly floodplains, unless where it is fully justified that there are wider sustainability grounds for appropriate development and unless the flood risk can be managed to an acceptable level without increasing flood risk elsewhere and where possible, reducing flood risk overall.

- o Adopt a sequential approach to flood risk management based on (1) avoidance, (2) reduction and only then (3) mitigation of flood risk as the overall framework for assessing the location of new development.

5.2. EIA Screening

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. The submission of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

Reason 1

- The site did not flood in 1:1000 major weather events in 2011, 2012, 2014, 2017 and 2018.
- Updated OPW mapping 2018 and empirical evidence show the site is very low risk for flooding. Since the Limerick City Development Plan was published in 2010 the OPW has undertaken the CFRAM programme. According to the flood mapping carried out, flooding is not predicted to occur at the appeal site in either a 1:1000 year fluvial or coastal flood event.
- The site is on land benefitting from an OPW arterial drainage scheme.
- There is no history of flooding.
- Permission was granted for a similar house 200m adjacent to the appeal site (P.A. Ref. 16/7019).

Reason 2

- The City Development Plan states that there is a requirement that those with special housing needs be met.
- Reference is made to the decision relating to P.A. Ref. 10/269 200m north-east of the site.
- The appellant has gone some way to establish a connection with the area and cites personal issues as the reasoning behind the need to build a second house in the area.
- The site is approximately 2 acres and the residential aspect will take up less than 0.5 acres, leaving 1.5 acres for potato, vegetable and permaculture development.

Site History and Proper Planning and Sustainable Development

- Four outline applications and an application for permission have been refused on the land. An application has not been made on the site in 30 years. Much has changed with major drainage maintenance works, the adjacent sports field development, land reclamation and drainage works to the site, and the site passing percolation tests. Several grants of permission for houses have been issued on adjacent sites. The site now constitutes an infill development and would consolidate the building line, increase density, and limit development on an alternative stand-alone site.
- The application has not been given the same fair and impartial assessment as that applied to adjacent developments.

Details submitted with the appeal included a letter from the appellant's solicitor and accountant, a letter regarding the lease of land for potato cultivation in Coonagh, and correspondence from a registered potato dealer who has been purchasing potatoes from the appellant's potato company.

6.2. **Planning Authority Response**

I have no record of any response to the appeal from the planning authority.

7.0 **Assessment**

7.1. Introduction

7.1.1. I consider that the principal planning issues relating to the site are the zoning provisions for the site, flood risk, and effluent treatment.

7.2. The Zoning Provisions

7.2.1. The site for the proposed development is on land that is zoned 'ZO.7 Agriculture' in the current Limerick City Development Plan. The zoning objective is: "To protect, retain and enhance lands for agriculture and agricultural uses". The Plan expressly states that only development of an agricultural nature is permitted within this zone and that residential development is not permitted except where it relates directly to

agriculture. It is evident from the details provided in the planning application that the proposed residential development is not directly related to agriculture. The proposed development constitutes a material contravention of the Limerick City Development Plan.

- 7.2.2. I acknowledge the submission of the appellant in relation to his engagement in potato growing. I submit to the Board that if the site of a one-off house partially used for potato growing was accepted as a criterion to determine that a residential development relates to agriculture then the rural hinterland of Limerick City would be greatly undermined by the development of such housing. The applicant clearly has not demonstrated that he has any rural generated housing need.
- 7.2.3. I further note that there is extensive one-off housing in the immediate vicinity of this site. There is ribbon development to the north-east of this site and further expansive ribbon development to the south. This proposed development would add to this unsightly, undesirable pattern of development in this unserved rural hinterland of Limerick City. This proposal would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. It would ultimately constitute unsustainable development.
- 7.2.4. It is apparent that, based on the applicant's submission on housing need, this proposal would run contrary to the *Sustainable Rural Housing Guidelines for Planning Authorities*, as the applicant has no genuine 'rural' housing need within an area that is evidently under significant development pressure for one-off housing, given the pattern of housing development in this rural area, an area which is easily accessible to the served area of Limerick City. The applicant's residential needs could clearly be met within the served areas of the city.
- 7.2.5. Further to the above, I note national planning policy as set out under the *National Planning Framework* published in February, 2018. This includes the following:
- With reference to the development of rural areas, National Policy Objective 15 seeks to support the sustainable development of rural areas by managing the

growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

- National Policy Objective 19 seeks to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, 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 and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

7.2.6. From the details on the appeal file, it is clear that the applicant does not have any justification that would merit permitting the development of a house on this site. The National Planning Framework objective of managing the growth of areas that are under urban influence to avoid over-development would essentially be contravened. The proposal would, thus, be in conflict with the National Planning Framework.

7.3. Flood Risk

7.3.1. I first note the very extensive development of one-off housing in the immediate vicinity of this site. It would appear from this that there is some degree of inconsistency by the planning authority when considering planning applications and the issue of flooding in the Coonagh area.

7.3.2. I note the applicant submitted a Flood Risk Assessment with the application. Within that assessment reference is made to “Assessment of minor proposals in areas of flood risk” in Section 5.28 of *The Planning System and Flood Risk Management Guidelines for Planning Authorities*. This is not relevant to the proposal as it is not a development which constitutes a minor proposal in the context of the Guidelines. I further note that the applicant’s assessment acknowledges that the site is a localised low point. Reference is made to the site not being subject to flooding in the severe 1:1000 year floods that have occurred in recent years. It is also acknowledged that

the Coonagh area is part of a low-lying area defended by an OPW scheme against flood ingress from the Shannon. To address flooding issues the applicant proposes to fill the site up to the level of the adjoining sports pitch, i.e. to a finished floor level of 2.80m OD, with the intent of raising the site above any flood which has occurred in Coonagh in the past 60 years.

7.3.3. I note the following from the Flood Risk Management Guidelines:

- The provision of flood protection measures in appropriate locations can significantly reduce flood risk. However, the presence of flood protection structures should be ignored in determining flood zones. This is because areas protected by flood defences still carry a residual risk of flooding from overtopping or breach of defences and the fact that there may be no guarantee that the defences will be maintained in perpetuity. (Section 2.25).

7.3.4. The Planning Principles set out in Section 3.1 of the Guidelines include:

- Development should preferentially be located in areas with little or no flood hazard thereby avoiding or minimising the risk.
- Development should only be permitted in areas at risk of flooding when there are no alternative, reasonable sites available in areas at lower risk that also meet the objectives of proper planning and sustainable development.
- A precautionary approach should be applied, where necessary, to reflect uncertainties in flooding datasets and risk assessment techniques and the ability to predict the future climate and performance of existing flood defences.

7.3.5. I further note the report of the Physical Development Directorate (PDD) Section of the planning authority wherein it was not satisfied that the flood risk had been mitigated to an acceptable level and it was considered that the proposal was inappropriate at the site.

7.3.6. It is my submission to the Board that a precautionary approach is necessary in this instance. This area is subject to flood protection measures and a breach in the existing Shannon flood protection measures could potentially impact this area, affecting accessibility and potentially water ingress onto the site and/or neighbouring

lands and roads. It is clear that the applicant acknowledges that the development necessitates significant filling of the site to avoid potential flooding. I further note that the applicant has not carried out a Justification Test in accordance with the provisions of the Flood Risk Management Guidelines. This is a particularly sensitive site and a full understanding of the effects of flooding in the event of a breach of the current flood defences is essential. I accept the planning authority's position that one cannot be assured that this development is not subject to flood risk.

7.3.7. Finally, I note Policy WS.8 of the Limerick City Development Plan which seeks to continue to work towards reducing flooding within the City and to ensure that all new development proposals comply fully with the requirements of 'The Planning System & Flood Risk Management Guidelines for Planning Authorities'. I further note a number of the flood protection objectives in the Plan which includes the following:

- *Avoid the risk of flooding by not permitting development in flood risk areas, particularly floodplains, unless where it is fully justified that there are wider sustainability grounds for appropriate development and unless the flood risk can be managed to an acceptable level without increasing flood risk elsewhere and where possible, reducing flood risk overall.*

7.3.8. It is my submission to the Board that the proposed development has not been justified, that it would be contrary to Policy WS.8 and it would conflict with the above referenced objective.

7.4. Effluent Treatment

7.4.1. The proposed development would be served by a private on-site wastewater treatment system. I note the applicant's submitted Site Characterisation Form. This shows that there was some ponding on the site at the time of the site tests, that a shallow trial hole of only 0.6 metres was dug before bedrock was encountered, and that permeability of the soil was slow. I submit to the Board that this site is on a flood plain and that there must be serious public health concerns about discharging final effluent to ground in such a location when such conditions have been encountered during testing.

7.4.2. A further issue of concern is the unserviced nature of this area in general which indicates a reliance of the extensive numbers of one-off houses in this area on private effluent treatment systems. In my opinion, there must be a serious public health concern relating to the high concentration of such systems in such a vulnerable location.

7.4.3. I acknowledge that this was not an issue raised in the planning authority's decision or the appeal submission.

7.5. Appropriate Assessment Screening

7.5.1. I note that the Lower River Shannon Special Area of Conservation (Site Code: 002165) and the River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077) lie to the west and south of the site and that the site lies within the flood plain of the River Shannon. There was no consideration given to the potential effects of the proposed development on European sites in the planning application made to the planning authority and no appropriate assessment screening report was provided. I note the planning authority acknowledged the development is within the immediate catchment of a watercourse that has been designated as a Natura 2000 site, is within 1km of an SAC and an SPA, and is located within a marine or intertidal area or within 5km of a SAC whose qualifying habitats or species include salmonid, lamprey, mudflats, sandflats, salt marsh, shingle, reefs, and sea cliffs. It was concluded in the Planner's report that the development should not exercise a significant effect on the conservation status of any SAC or SPA and that appropriate assessment was not necessary.

7.5.2. The proposed development is not directly connected to or necessary for the management of any European site. It is therefore subject to the provisions of Article 6(3) of the EU Habitats Directive. I submit to the Board that, given the proximity of the site of the proposed development to the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA, the proposed provision of an on-site wastewater treatment plant to serve the development, the site being on a flood plain, the shallow depth to bedrock that prevails at this location, and the poor percolation characteristics of the soils on this site, the proposed development should

have been subject to appropriate assessment screening and an appropriate assessment screening report should have been submitted by the applicant to the planning authority.

7.5.3. I note the Qualifying Interests of the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA as follows:

Lower River Shannon SAC

Sandbanks which are slightly covered by sea water all the time [1110]

Estuaries [1130]

Mudflats and sandflats not covered by seawater at low tide [1140]

Coastal lagoons [1150]

Large shallow inlets and bays [1160]

Reefs [1170]

Perennial vegetation of stony banks [1220]

Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]

Salicornia and other annuals colonising mud and sand [1310]

Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330]

Mediterranean salt meadows (Juncetalia maritimi) [1410]

Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260]

Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]

Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

Lampetra fluviatilis (River Lamprey) [1099]

Salmo salar (Salmon) [1106]

Tursiops truncatus (Common Bottlenose Dolphin) [1349]

Lutra lutra (Otter) [1355]

River Shannon and River Fergus Estuaries SPA

Cormorant (Phalacrocorax carbo) [A017]

Whooper Swan (Cygnus cygnus) [A038]

Light-bellied Brent Goose (Branta bernicla hrota) [A046]

Shelduck (Tadorna tadorna) [A048]

Wigeon (Anas penelope) [A050]

Teal (Anas crecca) [A052]

Pintail (Anas acuta) [A054]

Shoveler (Anas clypeata) [A056]

Scaup (Aythya marila) [A062]

Ringed Plover (Charadrius hiaticula) [A137]

Golden Plover (Pluvialis apricaria) [A140]

Grey Plover (Pluvialis squatarola) [A141]

Lapwing (Vanellus vanellus) [A142]

Knot (Calidris canutus) [A143]

Dunlin (Calidris alpina) [A149]

Black-tailed Godwit (Limosa limosa) [A156]

Bar-tailed Godwit (Limosa lapponica) [A157]

Curlew (Numenius arquata) [A160]

Redshank (Tringa totanus) [A162]

Greenshank (Tringa nebularia) [A164]

Black-headed Gull (Chroicocephalus ridibundus) [A179]

Wetland and Waterbirds [A999]

7.5.4. The Conservation Objectives for these Qualifying Interests are to either:

- (a) maintain the favourable conservation condition of the habitats / species or
- (b) restore the favourable conservation condition of habitats / species.

7.5.5. There is no full understanding at this time of the potential pathways to the European sites. However, I again acknowledge the nature of the development, the poor site drainage characteristics and the site being within the flood plain of the River

Shannon. This is an area where flood protection measures have been put in place and require to be maintained. It is also a location where there is extensive one-off housing development reliant on the provision and maintenance of private effluent treatment systems. Given these observations, I submit that it could reasonably be considered that potential effects on the referenced European sites may arise by way of impacts on water quality and aquatic ecology and, ultimately protected habitats, which may potentially effect foraging habitat for qualifying species.

7.5.6. Cumulative in-combination effects could potentially result with other land uses causing runoff into the European sites. Thus, I acknowledge that there is potential for significant cumulative effects with other potential sources of pollution in the area such as other wastewater or runoff from agricultural uses.

7.5.7. In undertaking this screening exercise, I note for the Board that no measures designed or intended to avoid or reduce any harmful effects of the proposed development on a European site have been relied upon.

7.5.8. In conclusion, I submit that the proposed development has been considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects may be likely to give rise to significant effects on the Lower River Shannon Special Area of Conservation (Site Code: 002165) and the River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077) in view of their Conservation Objectives, and Appropriate Assessment may be required.

7.5.9. This determination is based on the following:

- The nature and extent of the proposed development, including the provision of an on-site wastewater treatment system,
- The discharge of final effluent in a location where there is shallow depth to bedrock and where there are poor soil drainage characteristics, and

- The site being within the floodplain of the River Shannon and thus having potential pathways between the site and the European sites.

7.5.10. I acknowledge that this was not an issue raised in the planning authority's decision or the appeal submission.

8.0 Recommendation

8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

1. The site of the proposed development is on land that is zoned 'ZO.7 Agriculture' in the Limerick City Development Plan with the objective "To protect, retain and enhance lands for agriculture and agricultural uses". It is a requirement of the Plan that only development of an agricultural nature is permitted within this zone and that residential development is not permitted except where it relates directly to agriculture. Having regard to the proposed development not being directly related to agriculture, the proposed development would constitute a material contravention of the Limerick City Development Plan. Furthermore, the proposed development, in the absence of any identified locally based rural housing need, would contribute to the encroachment of random rural development in the area, would exacerbate the pattern of ribbon development that prevails, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, thus, be contrary to the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities* and rural policy provisions of the *National Planning Framework*, and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. It is an objective of Limerick City Development Plan to avoid the risk of flooding by not permitting development in flood risk areas, particularly floodplains, unless where it is fully justified that there are wider sustainability grounds for appropriate development and unless the flood risk can be managed to an acceptable level without increasing flood risk elsewhere and where possible, reducing flood risk overall. It is also the policy of the Development Plan to continue to work towards reducing flooding within the City and to ensure that all new development proposals comply fully with the requirements of 'The Planning System & Flood Risk Management Guidelines for Planning Authorities' (Policy WS.8).

Furthermore, the requirements of *The Planning System and Flood Risk Management Guidelines for Planning Authorities* include:

- the presence of flood protection structures should be ignored in determining flood zones because areas protected by flood defences still carry a residual risk of flooding from overtopping or breach of defences and there may be no guarantee that the defences will be maintained in perpetuity (Section 2.25);
- Development should preferentially be located in areas with little or no flood hazard thereby avoiding or minimising the risk (Section 3.1); and
- Development should only be permitted in areas at risk of flooding when there are no alternative, reasonable sites available in areas at lower risk that also meet the objectives of proper planning and sustainable development (Section 3.1).

Having regard to the site of the proposed development being located in an area where flood protection measures for the River Shannon are in place to protect the site and other lands in the area, the site being in a low point in this area, the lack of any Justification Test undertaken for the proposed development in accordance with the Flood Risk Management Guidelines, and the necessity for the substantial filling of this site as a flood protection measure, it is considered that the proposed development is at risk of flooding and it would be contrary to the objective and policy of Limerick City Development Plan and the provisions

of *The Planning System and Flood Risk Management Guidelines for Planning Authorities*. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the siting of the proposed development on a flood plain, the evidence of ponding on the site, the shallow depth to bedrock, and the poor permeability of the soil on the site, it is considered that the proposed disposal of effluent by means of an on-site effluent treatment system would be prejudicial to public health. Furthermore, it is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive density of development served by private effluent treatment systems in the area and would, therefore, be prejudicial to public health.
4. On the basis of the information provided with the application and the appeal, particularly in relation to the proposed servicing of the development by a private on-site wastewater treatment plant on a flood plain and on a site with poor percolation characteristics and shallow depth to bedrock, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the Lower River Shannon Special Area of Conservation (Site Code: 002165) and the River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077) in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission for the proposed development.

Note: The Board is informed that Reasons 3 and 4 are new issues that were not raised in the appeal submissions.

Kevin Moore
Senior Planning Inspector

3rd August 2021