



An
Bord
Pleanála

Inspector's Report ABP-310674-21

Development	Construction of Dwelling
Location	Carrowroe Td, Roscommon, Co. Roscommon
Planning Authority	Roscommon County Council
Planning Authority Reg. Ref.	21182
Applicant(s)	Anthony Clogher
Type of Application	Planning Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party Appeal
Appellant(s)	Anthony Clogher
Observer(s)	None
Date of Site Inspection	9 th September 2021
Inspector	Susan Clarke

1.0 Site Location and Description

- 1.1. The site has a stated area of 0.267ha and is located in the townland of Carrowroe, Co. Roscommon. The site is accessed via a local tertiary road from the L7055 (secondary road). The rectangular shaped site has a flat topography and is located in the urban periphery, approximately 2km southeast from the centre of Roscommon town.
- 1.2. The site is currently in agricultural use with north facing views of Roscommon town. There are two large, detached houses located to either side of the subject site. Carrowroe House, a Georgian House, is located approximately 450m from the site. Roscommon golf course is located west of the site, along the tertiary road. There is a large, forested area located approximately 250m south of the site.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - Construction of a two-storey dwelling (289 sq m),
 - Provision of a detached garage (48 sq m),
 - Provision of a wastewater treatment system and percolation area, and
 - Associated site works to facilitate the development.

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a Notification of Decision to Refuse to Grant Permission on 4th June 2021 subject to two reasons:

1. The proposed development is located in a rural area identified as 'Urban Periphery' as set out in Section 5.11 of the current County Development Plan. The Planning Authority is not satisfied, based on submissions received with this application, that the applicant meets the criteria for a rural generated house for this category area in accordance with the Sustainable Rural Housing Guidelines, and Table 5.3 of the County Development Plan, which would render the proposed development contrary to Policy 5.29 of the County Development Plan. The

Planning Authority is therefore not satisfied based on submissions received with this application that the development would be in accordance with the proper planning and sustainable development of the area.

2. The proposed development is located on land which is subject of Condition No. 3 of implemented Planning Reference No. PD/19/91, which required the sterilisation of “the remainder of lands outlined as per Folio RN14791F from new development for a period of 10 years”. The proposed development would therefore materially contravene a condition of the aforementioned planning permission and would be contrary to the principles of proper planning and sustainable development.

3.2. Planning Authority Reports

3.2.1. Planning Report (28th May 2021)

The Planner’s Report is consistent with the decision of the Planning Authority.

The Planning Officer considered that the information provided with the application demonstrates that the Applicant originates from Roscommon town, and not from the subject rural area, which is identified as the urban periphery. As such, it was considered that the Applicant did not comply with housing rural policy. In addition, the Planning Officer considered that the proposed development would materially contravene the permission granted on the adjacent site. It was considered that traffic safety, effluent disposal, and the architectural treatment and visual impact of the dwelling were acceptable.

3.2.2. Other Technical Reports

- **Environment Section (24th May 2021):** No objection to a grant of planning subject to condition.

3.3. Prescribed Bodies

- **Irish Water:** No comments received.

3.4. Third Party Observations

- None received.

4.0 Planning History

Two planning applications that overlap the subject site were identified on Roscommon's County Council's online planning search system:

Reg. Ref. 08/1221: Outline planning permission for two houses with associated septic tanks and percolation areas was granted on 16th February 2009, subject to 18 No. conditions. This permission expired in 2014.

Reg. Ref. 19/91: Planning permission to construct a dwelling and domestic garage with an associated proprietary treatment system and percolation was granted permission on 20th November 2019 subject to 15 No. conditions.

Condition No. 2 states:

Following completion, the proposed dwelling shall be first occupied as a place of permanent residence by the applicants, members of the applicants' immediate family or their heirs and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the Planning Authority for its occupation by other persons who belong to the same category of housing need as the applicants.

No development shall be commenced until an agreement embodying a provision to that effect has been entered into with the Planning Authority pursuant to Section 47 of the Planning & Development Act 2000 as amended. This condition shall not affect the occupancy of the dwelling arising from the sale by a mortgagee in possession or by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

Condition No. 3 states:

Prior to the commencement of development, the landowner shall enter into a Section 47 Agreement with the Planning Authority sterilising the remainder of

lands outlined as per Folio RN14791F from new residential development for a period of 10 years.

Reason: In the interests of the proper planning and development of the area.

5.0 Policy Context

5.1. National Planning Framework (NPF)

In planning for the development of the countryside, the NPF acknowledges that there is a need to differentiate between demand for housing in areas under urban influence and elsewhere, as per the following objective:

National Objective 19: 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, 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,
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

The Guidelines confirm development plans should identify the location and extent of rural area types as identified in the NSS (now superseded by the NPF). These include: (i) **rural areas under strong urban influence** (close to cities and towns, rapidly rising population, pressure for housing and infrastructure); (ii) **stronger rural areas** (stable population levels within a well-developed town and village structure and in the wider rural area; strong agricultural economic base and relatively low level of individual housing development activity); (iii) **structurally weaker rural areas** (persistent and significant population decline and weaker economic structure); and, (iv) **areas with**

clustered settlement patterns (generally associated with counties of the western seaboard).

Development plans must tailor policies that respond to the different housing requirements of urban and rural communities and the varying characteristics of rural areas.

5.3. **Roscommon County Development Plan 2014-2020 (as varied)**

The policies and objectives of the Roscommon County Development Plan 2014- 2020 (as varied) are relevant.

The site is within an 'Area Under Strong Urban Influence' (Map 11 Rural Area Types) and within an area designated as Category A: 'Urban Periphery'. The 'Urban Periphery' constitutes a small number of townlands immediately adjacent to the development boundaries of the settlements including Roscommon Town. These areas can be classed as being under very strong urban influence and within short commuting distance of these settlements. These settlements are also classed as important population growth centres within the west region which is likely to result in increased pressure for individual housing development in these rural hinterlands as the population of these settlements increase. In this context it is considered reasonable that individual housing development within these areas be reserved for essential locally generated housing need. Policy 5.29 requires that applicants seeking new housing development in the countryside shall be required to meet the suitability criteria set out in Table 5.4 of the Plan.

Table 5.3 outlines the Rural-Generated Housing Need. In summary, this is defined as demand for housing in rural areas generated by:

- a. People who have lived in a rural area of County Roscommon for a large part of their lives or who have rural roots in terms of their parents being of rural origin. These would include farmers or close relatives of farmers who can substantiate that they are also engaged in agriculture or otherwise dependant on the immediate rural area (rather than a nearby town or village) for employment, and/or anyone taking over the ownership and running of a farm. It would also include people who have no family lands but who wish to build their first home

within the rural community in which they have spent a large and continuous part of their lives.

or

- b. People working full-time in a rural-based activity, who can show a genuine need to live close to their workplace and have been engaged in this employment for over five years. This would include those working in agriculture, horticulture, farming, forestry, bloodstock, peat industry, inland waterway or marine-related occupations, as well as part-time occupations where the predominant occupation is farming or natural resource-related.

or

- c. People employed locally whose work provides a service to the local community or people whose work is intrinsically linked to rural areas such as teachers in rural schools.

or

- d. People with a significant link to the Roscommon rural community in which they wish to reside, by reason of having lived in this community for a minimum period of five years or by the existence in this community of long-established ties with immediate family members.

Table 5.4 sets out policies and suitability criteria for rural area types. In relation to Category A, it is stated:

- To preserve from development the open countryside that defines the setting of **Roscommon Town** Monksland/Bealanamullia, Castlerea, Boyle and Ballaghaderreen.
- To recognise the individual housing need that may arise from time to time, within the Urban Periphery for those referred to in **categories (a) and (b)** in **Table 5.3**. Such needs may be accommodated, provided it is within the same Urban Periphery Area, subject to the availability of a suitable site and normal planning considerations.

- The reuse and replacement of existing structures and dwellings will be considered in the Urban Periphery regardless of rural or urban-generated housing need.
- Qualifying persons within this category are those referred to in categories (a) and (b) in Table 5.3¹.

Chapter 9 outlines the Development Management Guidelines and Standards. Relevant sections from this chapter include:

- Section 9.2 – Wastewater Treatment – All Development Types
- Section 9.38 – Additional Development Management Standards (Traffic Safety & Sight Line Visibility);
- Section 9.5 - Rural Siting and Design;
- Section 9.8 - Rural Residential Considerations.

5.4. Natural Heritage Designations

The closest designated site is Lough Ree SAC (site code: 000440), which is located approximately 2km from the subject site.

5.5. EIA Screening

Having regard to the nature and scale of the proposed development, comprising the construction of one residential dwelling and the provision of a new wastewater treatment unit and percolation area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

¹ Applicants are required to provide documented evidence in support of claims for Rural-Generated Local Housing Need.

6.0 The Appeal

6.1. Grounds of Appeal

A First-Party Appeal has been lodged by Anthony Clogher, the grounds of which can be summarised as follows:

- The home address/family house stated in the application is where the applicant grew up St. Jude's, Boyle Road, Roscommon Town. This is in the urban periphery of Roscommon Town and is outside of the town zoning itself. Therefore, the applicant can be considered to originate from the urban periphery area of Roscommon town, not from the town itself.
- The applicant is currently renting a property in Roscommon town and not in the urban periphery area. Supporting/educational backup has been included which all refers to Roscommon town and not the urban periphery townland of Carrowroe.
- The site is located on the urban periphery of Roscommon town and is 500m from the town boundary. There is only one cul-de-sac road into the area which begins from within the town boundary. There are four houses in the area, none of which are available for rent. There are no schools/GAA clubs within the townland of Carrowroe as it is within 500m of Roscommon town.
- The applicant has recently taken over the running of a substantial part of the family farm from his father, which he is farming part-time as a part-time occupation. Included in backup documentation was confirmation of transfer of the land, confirm of herd number and entitlements' documentation, and confirmation of agricultural green cert completed.
- The Development Plan clearly states that part-time occupations where the predominant occupation is farming qualifies for Table 5.3 Para b Rural Housing Need.
- Planning permission was granted in 2008 (Ref. 08/1221) for two houses on the same site location now considered. The then applicant (John Clogher) agreed under point 14 of 08/1221 to enter into a Section 47 agreement with Roscommon County Council to sterilise the remainder of his landholding from

new residential development for a period of 10 years. Under 19/91 on a site adjacent to the current site, John Clogher agreed to sterilise all lands under Folio RN14791F excluding the site currently under appeal. This was clearly marked out on his recent return to the Council for this planning condition under 19/91. It is believed that planning request 19/91 did not warrant the sterilization of the site in question now under 21/182.

- It is requested that the sterilisation request under 08/1221 when outline planning permission was granted for two sites in this location be taken into account.
- The family has no issue with agreeing to sterilising the rest of the lands in Folio RN14791F excluding the clearly marked out site currently under appeal (21/182).
- There is not a valid reason for requesting the sterilisation of the subject site. When outline permission was originally granted for two sites under 08/1221.
- It is requested that the Council accept the amended sterilisation/accept some alternative method of accommodating this planning application, and that permission be granted in this instance.
- It is also noted that there are no environmental concerns/objections, no submissions, and no issues with road access, effluent disposal or house design.

6.2. Planning Authority Response

Roscommon County Council submitted a response to An Bord Pleanála on 27th July 2021 in respect to the First-Party Appeal. The key points in the Response can be summarised as follows:

- The subject site is outside the Roscommon Town Local Area Plan boundary, as per the Roscommon Town LAP 2015-2021;
- The land is within 'Category A- Urban Periphery' Rural Policy Area and therein Policy 5.29 of the Development Plan and associated criteria as set out in Table 5.3 and 5.4 of the Plan. In particular, within 'Urban Periphery' lands, criteria (a) and (b) only of Table 5.3 are applicable.

- The applicant has not demonstrated compliance with either of the above criteria.
- The case fails to comply with Objective 19 of the NPF and a bona fide economic or social need to live in the proposed rural area has not been demonstrated.
- The subject site forms part of the landholding which the landholder (Mr. John Clogher, the applicant's father) agreed to sterilise from further residential development, when the landowners' agreement to same was sought on this issue in the course of assessing Ref. 19/91, which is located adjacent to the subject site.
- In addition to the written consent of the landowner being provided to the Planning Authority on 27th May 2019 as part of a response to a request for further information, the response was also accompanied by land registry details and folio maps, clearly identifying the collective extent of the remaining landholding which was to be sterilised.
- Condition No. 3 of Ref. 19/91 subsequently required that the landowner enter into a Section 47 agreement with the Planning Authority "sterilising the remainder of lands outlined as per Folio RN14791F from new residential development for a period of 10 years".
- A sterilisation agreement to that effect was duly issued. However, the agreement, when returned to the Planning Authority on 2nd June 2021, included a handwritten addition, attempting to exclude the subject site from the said sterilisation.
- For the avoidance of doubt, the Council wish to make clear that the attempted exclusion of the said lands is unacceptable and further correspondence has issued from the Planning Authority to Mr John Clogher to advise of this.
- Copies of documentation relating to Ref. 19/91 are submitted with the Response including a copy of the Section 47 agreement issued for signing by the Council and a copy of the said agreement returned to the Planning Authority including the subject handwritten note. In addition, correspondence from the Planning Authority to the landowner advising that the altered Section 47 agreement was unacceptable.

6.3. **Observations**

None.

7.0 **Assessment**

Having examined the application details and all other documentation on file, including the First-Party Appeal and Local Authority's Response, inspection of the site, and having regard to relevant local/regional/policies and guidance, I consider that the main issues in this appeal are as follows:

- Rural Housing Policy,
- Land Sterilisation/ Section 47 Agreement,
- Site Access / Road Safety,
- Architectural Design,
- Wastewater Disposal, and
- Appropriate Assessment.

Each of these issues is addressed in turn below.

7.1. **Rural Housing Policy**

The site is located in open unzoned countryside in an area designated as 'Category A- Urban Periphery' in the Development Plan. The site is located outside the boundary of the Roscommon Town Local Area Plan 2014-2020. There is a strong presumption against permitting rural housing unless the applicant demonstrates a genuine need based on their personal circumstances, or links to, a particular area as set out in Policy 5.29 and Tables 5.3 and 5.4, respectively, subject to normal planning and environmental criteria. In refusing planning permission in this instance, Roscommon County Council considered that the Applicant had not established a permanent housing need at this location.

In responding to this refusal reason, the Appellant states that he grew up in the urban periphery and not in Roscommon Town and therefore can be considered to originate from the urban periphery. Evidence has been submitted with the application, including the completion of the Supplementary Application Form, to demonstrate that the

Applicant has sporting and educational links to Roscommon Town. In addition, the Applicant has advised that part of the family farm was transferred to him in 2020. Documentation has been included with the application demonstrating that the Applicant has obtained Level 5 and Level 6 educational training in agriculture in 2020. The First Party Appeal states that the Applicant is farming as a part-time occupation.

As outlined above, Table 5.3(a) requires that applicants demonstrate that they have lived in a rural area for a large part of their lives or who have rural roots in terms of their parents being of rural origin. These would include farmers or close relatives of farmers who can substantiate that they are also engaged in agriculture or otherwise dependant on the immediate rural area (rather than a nearby town or village) for employment, and/or anyone taking over the ownership and running of a farm. The Applicant states that he grew up at St. Jude's, Boyle Road, Roscommon Town and submitted documentation confirming same, and as such not on the lands subject of this application. Notwithstanding that his earlier address may be in the urban periphery, the subject application relates to a different part of the urban periphery.

Whilst the Applicant advises that he has taken over the running of the family farm, the information outlined in the Supplementary Application Form demonstrates that his occupation is not a rural resourced based activity and he is farming on a part-time basis only (as stated in the First Party Appeal). Furthermore, I note that while the Applicant is currently in rental accommodation in Roscommon Town, his principal residence (which was in his ownership) in 2020 was in Athlone, Westmeath.

Table 5.3(b) requires that applicants work full-time in a rural-based activity, who can show a genuine need to live close to their workplace and have been engaged in this employment for over five years. Evidence has not been submitted with the application to demonstrate that the Applicant has been engaged in full-time farming for over five years. On the contrary, it is stated that part of the family farm was transferred to the Applicant in 2020 and that agricultural training was completed in the same year. In addition as stated above, the Applicant is farming on a part-time basis only, not full-time. As such, I do not consider that compliance with criteria Table 5.3(b) has been demonstrated.

In conclusion, I consider that the overall policy requirement set out in the RCDP is clear and unambiguous and in line with national and regional guidance including the

National Planning Framework and NPO19. There is a strategic focus on providing housing in existing towns and villages and in preventing the scattering of urban generated housing across the countryside, especially in those areas such as South Roscommon, which is under obvious pressures, with consequent impacts on the landscape and the provision of roads and other services. The application of the housing need criteria therefore has to be applied in a strict manner having regard to the presumption against such one-off rural developments. Whilst the Applicant states that he grew up in the urban periphery at St. Jude's, Boyle Road, he has not demonstrated a genuine rural housing need to live in this location which is under strong urban influence given its proximity to Roscommon town and I recommend that planning permission should be refused on this basis.

7.2. Land Sterilisation/ Section 47 Agreement

The second reason for refusal relates to a Section 47 land sterilisation agreement in relation to Reg. Ref. 19/91. I understand from review of the Planning Authority's Response and First Party Appeal that at present there is no Section 47 agreement in relation to Reg. Ref. 19/91 that is signed by both parties (i.e. the landowner and the Local Authority). Whilst the Planning Authority has demonstrated through sufficient evidence that a Section 47 agreement is required in respect of Reg. Ref. 19/91, having regard to the fact that there is currently no written agreement signed by both parties and that the issue is now a planning compliance dispute to be resolved by the parties, I do not consider it would not be necessary for this matter to form a reason for refusal of planning permission in this case given the substantive grounds of refusal cited above relating to the Applicant's non-compliance with local housing needs criteria. Furthermore, I do not consider this matter relevant to the proper planning and sustainable development considerations relating to the subject development.

7.3. Site Access / Road Safety

The is accessed via a local tertiary road from the L7055 (secondary road), which connects with a private accessway to Carrowroe House north of the site. I note from my site visit that the roadway is very narrow but has limited traffic movements. The application proposes a new entrance point onto the local road. The Site Layout drawing illustrates that 90m sightlines are achievable west of the site. Whilst sightlines

are not shown to the east of the site on the drawing, I consider that there is adequate visibility having regard to the straight layout of the road and volume of traffic that would be generated from this direction of the site. Having regard to the location of the development on a straight road in a rural area and the volume of traffic on same, I do not consider that the proposal would not result in a traffic hazard.

7.4. Architectural Treatment

The proposed development includes for the construction of a two-storey, T-shaped dwelling with a gross floor area of 289 sq m and overall height of 7.173m. In addition, a single storey garage is proposed to the rear of the dwelling. The T-shaped format provides a narrow plan and ensures that the scale and massing is not excessive at this location. The dwelling will be finished in stone at Ground Floor level and plaster finish at First Floor level. Overall, the development is not too dissimilar to the two-storey dwelling located to the east of the site. In summary, I consider the design of the proposed dwelling to be acceptable at this location.

7.5. Wastewater Treatment

The Site Characterisation Form submitted with the planning application notes that the site is located in an area with a regionally important aquifer and where groundwater vulnerability is high. A groundwater protection response of R2⁴ applies on the site. The bedrock type is noted as undifferentiated limestone. Roscommon Central Water Supply is located within one kilometre of the site. The soil type is recorded as BMINDW, deep well drained mineral (mainly basic). A trial hole measuring 3m was excavated on site as per the EPA's Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses, 2009². The water table was encountered at 2.2m. Beneath the topsoil (which has a depth of 0.6m) sandy silty/clay with cobble was recorded for 2.2m, with clay with cobbles and boulders recorded at 2.3m. The predicted groundwater flow is in a south-east direction. A T-value of 31.36 was calculated based on tests undertaken in March 2021 and a P-value of 39.50 (photographs of the testing are included with the application). Conditions were dry and firm during my site visit. It is proposed to install a packaged proprietary wastewater

² The EPA's Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses 2009 is applicable as planning permission was sought prior to the 7th June 2021.

treatment system and polishing filter system. Details provided on the proposed site layout plan indicate that the system would generally comply with the EPA Guidelines minimum separation distances to features of interest. I am satisfied that the assessment and the proposed development design details comply with those required within the Code of Practice. I note that the Local Authority's Environment Department had no objection to the proposed development. In summary, the proposed development would not be prejudicial to public health and would not be likely to cause a deterioration in the quality of waters in the area. I do not recommend that permission should be refused for reasons relating to wastewater treatment.

7.6. Appropriate Assessment

The closest European site to the subject site is Lough Ree SAC (site code 000440). It is located approximately 2km from the appeal site.

Having regard to:

- the nature and scale of the proposed development (i.e. construction of a single dwelling and the installation of a packaged wastewater treatment system and polishing filter)
- the absence of a direct pathway connecting the subject site to the SAC,
- the nature of the immediate receiving environment (agricultural land and two detached dwellings),
- the existing use of the lands (i.e. agricultural use with associated limited anthropogenic activity),
- the separation distance between the subject site and the SAC,
- no direct discharge to any surface waterbody,
- the relatively short-term construction phase, and
- no loss, fragmentation disruption or disturbance to European sites or their annexed species either directly or indirectly,

I do not consider that the proposal would be likely to significantly impact the qualifying interests of Lough Ree SAC. Furthermore, I do not consider that the proposed development would be likely to have a significant effect individually or in combination

with other plans or projects on any European site. As such, I consider that no Appropriate Assessment issues arise.

8.0 Recommendation

- 8.1.1. I recommend that planning permission be refused for the proposed development based on the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to National Policy Objective 19 of the National Planning Framework, 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, the location of the site within a Rural Area under Strong Urban Influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities, and in an urban periphery area identified as being under strong urban pressure for development as set out in the Roscommon County Development Plan 2014- 2020, where housing is restricted to persons demonstrating a genuine housing need based on their connections to a particular area in accordance with Policy 5.29 and Tables 5.3 and 5.4 of the Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the said planning policy. The proposed development would contribute to the encroachment of rural development in an urban periphery 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, be contrary to the proper planning and sustainable development of the area.

Susan Clarke
Planning Inspector

29th October 2021