



An
Bord
Pleanála

Inspector's Report

ABP-311017-21

Development	Construction of 2 story house, garage, wastewater system, new site entrance wall & gate.
Location	Ballinarooga, Ballingarry, Co. Limerick.
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	21647
Applicant(s)	Donagh and Marie McCarthy.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	Third Party
Appellant(s)	Evelyn Kiely
Observer(s)	Francis Clarke
Date of Site Inspection	16 th September 2021
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to a rural site of 1.51 hectares located circa 1.9 km to the southwest of Ballingarry Village, circa 7.7km southeast of Rathkeale and 11.4km east of Newcastle West in County Limerick. The site is currently under grass and slopes gently from northwest to southeast. A mature hedgerow forms the northern boundary with the public road. There is an agricultural passageway along the boundary to the west. The area while predominantly agricultural in character includes a number of individual dwellings of varied age and design.

2.0 Proposed Development

- 2.1. The proposal involves permission for the construction of a new part single part two storey dwelling house (255sq.m), a domestic garage (43sq.m), a waste-water treatment system, a new site entrance wall and gate and all ancillary site works.

3.0 Planning Authority Decision

3.1. Decision

By order dated 7th July 2021 Limerick City and County Council issued notification of the decision to grant permission and 15 conditions were attached which included the following of particular note.

Condition 2 Development Contribution €5,100.

Condition 3. First occupancy.

Condition 4. Existing roadside boundary to be retained in its entirety save where removal is required for the construction of an entrance.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's report recommends permission subject to conditions consistent with the subsequent decision.¹

3.2.2. Other Technical Reports

Roads report – No objection subject to maintenance of sightlines & surface water management.

Archaeologist report indicates no archaeological issues in relation to the application.

Environment report – layout complies with EPA standards.

3.3. Prescribed Bodies

Irish Water - No objection subject to connection agreement, compliance with Irish Water Standards codes and practices.

3.4. Third Party Observations

Submission from Evelyn Kiely, Ballynarooga More (South) objects to the proposal on the following grounds:

- No such townland as Ballynarooga therefore application should be invalidated.
- Question why the applicant has not applied for permission on the family holding.
- Significant number of one-off houses in this rural unserved area.
- Traffic hazard. Sightlines not demonstrated. Necessary loss of mature hedgerow and trees detrimental to biodiversity and rural amenity.
- Implications for future development in relation to the adjoining lands.
- Implications in relation to the safe operation of the identified landing plot on the appellant's property which requires strict compliance and adherence with aviation standards for take off and landing.

¹ Planner's report refers to Environment Section report recommending seeking further information however the Planning Authority subsequently confirmed in correspondence to the first party (submitted in the first party response to the appeal) that this was an error.

- Accompanying report entitled Surface Level VFR Helicopter private landing site at Ballynarooga More South, Ballingarry, Co Limerick sets out to review the implications of the development of the appeal site on the private landing site. The report notes that the proposed development is directly under the final stages of the approach to the landing site.
- A sandpit and quarry operated from the site for decades. The site is filled in ground.

4.0 Planning History

308035 20/53 Application by Bobby Noonan for the construction of a new two storey dwelling house, a domestic garage, a waste-water treatment system, a new site entrance wall and gate. Application withdrawn 25/9/2020 following third-party appeal.

18/1206 Application by Pdraig Nicholas & Elizabeth Kelly for a two-storey house domestic garage, entrance, gates and packaged wastewater treatment system. Withdrawn. 10/7/19

04/3717 Permission granted to Peter Healy 28/4/2005 for construction of two storey dwellinghouse with integral garage, entrance, septic tank and percolation area.

5.0 Policy Context

5.1 National Planning Framework. Policy 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 spatial 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. Sustainable Rural Housing Guidelines. The

guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need.

5.2 Limerick County Development Plan 2010-2016 as extended.

The site is located in an area designated an 'Area of Strong Agricultural Base'. The Plan states that these areas traditionally have had a strong agricultural base, are restructuring to cope with changes in the agricultural sector and have an extensive network of smaller rural towns, villages and other settlements. In these areas, the focus of urban generated housing is to be in the network of settlements to support the development of services and infrastructure and to take pressure off development in the open countryside. The Council recognises the needs of local rural people who wish to live or work in the area in which they grew up.

Policy RS02 : In order to demonstrate a genuine rural housing need any of the following criteria should be met: (a) The application is being made by a long-term landowner or his/her son or daughter seeking to built their first home on the family lands, or (b) The applicant is engaged in working the family farm and the house is for that persons own use; or (c) The applicant is working in essential rural activities and for this reason needs to be accommodated near their place of work; or (d) The application is being made by a local rural person (s) who for family and/or work reasons wish to live in the local rural area in which they have spent a substantial period of their lives (minimum 10 years) and are seeking to build their first home in the local rural area.

5.1. Natural Heritage Designations

The site is not on, in or near any European site.

5.3 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. No EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Michael G O'Brien, Civil Engineer on behalf of Mrs Evelyn Kiely owner of the dwellinghouse located circa 100m to the west of the appeal site. The appeal is accompanied by a number of enclosures including observations by Captain Tim McNamara and helicopter site report and aeronautical map and photographs. Grounds of appeal are summarised as follows.

- Reference in public Notices to Ballinarooga, Ballingarry is incorrect. The correct location is Ballynarooga More (South). Application should have been invalidated.
- Proposal will result in traffic hazard. Sight distance of 90m cannot be achieved to the east of the entrance without removal of in excess of 30m of hedgerow.
- Soil profile is not uniform across the site. Effluent from the site may discharge through unintended flowpaths and pollute the aquifer and wells. Historic quarrying not taken into account by the site assessor.
- Site was a sandpit once excavated to depths of in excess of 20m therefore not suitable for the foundations of a substantial one-off house. Photographs appended from 20 years ago show the sandpit in progress
- Development of a dwelling on the site will limit the exempted development rights currently available to the objector for overwintering cattle on the holding.
- Limerick County Council did not assess the application in a full and prudent manner.
- Removal of hedgerow to provide sightlines will have adverse impact on biodiversity and rural amenity.
- Private level helicopter landing site on the appellant's property immediately adjacent which is noted on all air navigation charts for the region, has an established use since 1992. The flight path approach is immediately over the appeal site and the proposed development will impact on the appellant's ability to continue the established helicopter business. Dwelling will create a significant hazard in the final stages of approach to the landing area resulting in an unacceptable risk to helicopter and its passengers and any persons on the ground.

6.2. Response

6.2.1 The response by the first party seeks to rebut the grounds of appeal as follows:

- Ballinarooga is the correct address. In any case this is not a substantial ground of appeal. Any person reading the site notice would not have been misled as to the relevant site in question.
- Dwelling would not generate significant additional traffic. Proposal designed to ensure no endangerment to public safety. 90m sightlines can be achieved with slight modification to roadside boundary. Entrance location minimises impact on hedgerow.
- No evidence of risk to public health. Email from Executive Engineer Environment Section states that the layout complies with the EPA code of practice.
- Regarding foundations CS Consulting Engineers letter submitted as part of an previous planning application outlines that based on the trial hole description a shallow strip foundation with mesh reinforcement would appear suitable located on a formation level of approximately 900mm below ground constructed on the compact gravelly clay and confirms that the site is suitable for the proposed dwelling.
- No alternative site is available on family landholding.
- Applicant complies with local rural housing policy. Applicant is employed a Ballinagarry National School, is heavily involved in social activities in this rural area and has lived his whole life in this rural area and is currently renting locally. Family home is within 3km of the appeal site.
- Farming activities would not be limited by virtue of the erection of a dwelling on the appeal site.
- Proposal would not prejudice future applications by the appellant's son as each application considered on its own merit.
- Ribbon development does not arise.
- Regarding helipad it is notable that photographs show helicopters to the west of the appellant's house therefore based on photographic evidence the designated landing site is a flexible arrangement. Ballinarooga is not the main commercial helicopter business location. The appellant in previous objections to applications on the appeal site did not raise issue of air navigation.

- Principle of a residential dwelling is established on the site with Limerick City and County Council's previous grants of permission.

6.3. **Planning Authority Response**

The Planning Authority did not respond to the appeal.

6.4. **Observations**

Observations are submitted by Francis Clarke, Turrett Street, Ballingarry. Objects to the proposal on the following grounds:

- Site is under investigation due to hedgerow being cut back on August 20th 2021 in contravention of Section 40 of the Wildlife Act 1976.
- Application details deficient. In previous application on this site, dealt with by the same agent 20/53, it was noted that there was formerly a quarry on the site.
- Inconsistency in decision making by the local authority. Council have granted numerous one-off permissions in a confined area to the same landowner while imposing section 47 land sterilisation orders in relation to neighbouring properties.
- Site address is incorrect.

7.0 **Assessment**

7.1 I consider that the appeal can be assessed under the following broad headings:

- Principle of Development – Compliance with rural housing policy
- Impact on air navigation and established residential and other amenities
- Traffic Safety and Wastewater Treatment
- Appropriate Assessment

7.2 I note in relation to the issue of site address location the third-party appellant and observer contend that the application should have been invalidated on the basis that the correct townland is Ballynarooga More (South) not Ballynarooga as advertised. I

note the submission of the first party that the correct address is Ballynarooga and that a cursory 'Google' search of the address leads one to this area. On review of this matter, I am inclined to agree with the first party that the abbreviation would not prejudice any third parties in terms of identification of the location of the site.

- 7.3 On the issues raised within the submission of the third-party observer and allegations that the site is under investigation due to cutting back of hedgerow in contravention of Section 40 of the Wildlife Act 1976 this is not relevant to the assessment of the proposed development on its planning merit.

7.4 Principle of Development – Compliance with Rural Housing Policy

- 7.4.1 Limerick City and County Council's urban and rural settlement strategy is set out within Chapter 3 Urban and Rural Settlement Strategy of the Limerick County Development Plan 2010-2016. The proposed development would be located in an area designated as an "Area of Strong Agricultural Base." Objective RS 02 of the Plan and various qualifying criteria including (a) the application is being made by a long term landowner or his /her son or daughter; or (b) the applicant is engaged in working the family farm and the house is for that persons own use; or (c) the applicant is working in essential rural activities and for this reason needs to be accommodated near their place of work; or (d) the application is being made by a local rural person(s) who for family and/or work reasons wish to live in the local rural area in which they spent a substantial period of their lives (minimum 10 years).

- 7.4.2 Policy Objective 19 of the National Planning Framework seeks to ensure that, 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.

7.4.3 I note that while the appeal site is within a predominantly agricultural area the pressure for one off housing development is clearly evident. I note that there is currently a site for sale directly opposite the site. The documentation submitted on behalf of the applicant outlines that he grew up within 3km of the appeal site and is currently renting a house in the area. He works as a teacher in the village of Ballingarry and has contracted to purchase this site subject to planning permission. Having reviewed the details submitted, I consider that while the applicant clearly has a strong local connection justification for an additional dwelling at this location has not been demonstrated and the applicant's housing needs could clearly be met within the village of Ballingarry or alternatively within another town or settlement in the vicinity. From the details on the appeal file, it is evident that there is no demonstrable economic or social need for the applicants to have a house at this particular location. I conclude that the application does not comply with Policy Objective 19 of the National Planning Framework. I consider that the proposal would undermine the rural housing policy and would be contrary to the proper planning and sustainable development of the area.

7.5 Impact on air navigation established residential and other amenities

7.5.1 As regards the issues raised by the third-party appellant with regard to the potential impact on the use of the appellant's dwelling site as a helicopter landing site, I note that there is no record of a planning permission for this use. I consider that it would be unreasonable to prohibit development on the appeal site on this basis. As regards the potential for impact on the future development potential on the adjoining lands or potential for exempted agricultural proposals I consider that such matters would not be seen as barriers to development. Any future proposals would be assessed on their own planning merit.

7.6 Traffic Safety, Servicing & Wastewater Treatment

7.6.1 On the issue of traffic and road safety the site abuts a relatively straight section of the local road and whilst the road is undulating sufficient sightlines are readily

achievable subject to some minor amendments to the roadside boundary. Having regard to the limited number of additional vehicular movements arising from a single dwelling it is my view that the proposed development would not result in a traffic hazard.

7.6.2 As regards site suitability for effluent treatment I note that the site suitability assessment report outlines that in the trial hole excavated to 2.3m neither bedrock nor water table were encountered. The soil is described as a clay loam topsoil with very compact clay layer with random cobble in the .3m to .9m horizon with a very gravelly clay with low cobble fraction interspersed from 1m to 1.5m and well sorted clean sand to base of trial hole. A T value of 13.56 was determined. It is proposed to remove the subsoil in the 0.3m-0.9m horizon as it would impede downward flow and to replace this with good quality topsoil. A packaged wastewater treatment plant and polishing filter is proposed.

7.6.3 The third-party submissions question the suitability of the site for wastewater treatment on the basis of the former use of the site as a quarry and the fact that the site is made ground. Questions are also raised with regard to foundation design and structural stability issues. These matters are not adequately addressed by the first party in my view and it is not clear as to the extent of past excavations on the site and the detail of the nature of fill on the site.

7.7 Appropriate Assessment

7.7.1 Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

8.0 Recommendation

8.1 I recommend that permission be refused for the reasons stated in the attached schedule.

Reasons and Considerations

Having regard to the location of the site in a rural area within an “area of strong agricultural base,” as designated in the current Limerick County Development Plan, to the expanse of one off housing in the area and having regard to the provisions of the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment Heritage and Local Government in April 2005 and the National Policy Objectives of the National Planning Framework, which seek to manage the growth of areas that are under strong urban influence to avoid over development and to ensure that the provision of single houses in rural areas under urban influence are provided based on demonstrable economic or social need to live in a rural area. It is considered that the application has not demonstrated an economic or social need for an additional dwelling in this rural area. It is considered therefore, that the applicant does not come within the scope of the housing need criteria as set out in national policy and guidelines and in local development plan policy for a house at this location. The proposed development, in the absence of an identified locally based need for the house would contribute to the encroachment of random rural development in the area, would exacerbate the pattern of ribbon development, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. It is considered that the proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy and would be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector
11th November 2021