



An
Bord
Pleanála

Inspector's Report

ABP-311070-21

Development	Construction of a dwelling house and garage.
Location	Clogher East, Athlacca, Kilmallock, Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	21113
Applicant(s)	Niall & Jackie Burchill
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Robert & Lisa Eustace / John Enright & Helen O'Brien
Observer(s)	None
Date of Site Inspection	3 rd February 2022
Inspector	Liam Bowe

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Clogher East approximately 4.6km to the east of the N20 national road and approximately 23km to the south of Limerick City. The settlement of Bruree is 2.2km to the west of the appeal site, the settlement of Athlacca is approximately 3.1km to the northwest, and the settlement of Killmallock is approximately 4.1km to the southeast. The appeal site is located within a rural agricultural area with a scattered pattern of one-off housing development.
- 1.2. The appeal site is rectangular in shape and has a stated area of 0.67 hectares comprising part of a larger open agricultural field which is low-lying and is relatively level. The front / western roadside boundary with the public road, the eastern, and the southern site boundaries are comprised of hedgerows. There is an existing vehicular access to the site from the local road. There is a single storey dwelling to the north of the field within which the appeal site is located with a mature hedgerow along its intervening boundary. There are two other single storey dwellings further to the north.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a single storey house, domestic garage, installation of a domestic wastewater treatment system (DWWTS), installation of a private well and associated site development works at Clogher East, Athlacca, Killmallock, County Limerick.
- 2.2. The proposed dwelling is single storey in design with a ridge height of 6.7m over finished floor level, with render finish and blue / black slates. The existing site boundaries are to be retained and the northern site boundary will comprise a timber fence with beech hedging planted along the length of this boundary.

3.0 Planning Authority Decision

3.1. Further Information Request

Prior to issuing a notification of decision, the Planning Authority issued a further information request on 30th March 2021 requiring details in relation to the wastewater

treatment system, a completed supplementary form, details of the location of the family house, full land registry folios and maps of all family lands, a landscape plan, and a request to address the third party objections.

The applicant submitted a response to this further information request to the Planning Authority on 17th June 2021, which included a revised site layout plan, confirmation that the supplementary form had been submitted as unsolicited further information, a map showing the family home in Athlacca village, full land registry details, a landscaping scheme and comments on the objections to the proposed development.

3.2. Decision

By order dated 13th July 2021 Limerick City and County Council issued notification of decision to Grant Permission for the proposed development subject to 16 No. standard conditions. The Conditions include inter alia the following:

- Condition No. 3: 7 years occupancy agreement.
- Condition No.4: Retention of roadside boundary.

3.3. Planning Authority Reports

3.3.1. Planning Reports

There are two Planning Reports on file dated 24th March 2021 and 7th July 2021, respectively. The Planning Officer in the initial report stated that the location of the site is in an Area of Strong Agricultural Base in the Limerick CDP, Objective RS02 applies and that it was considered that the applicants had not demonstrated compliance with this objective and recommended further information be requested on this issue, which is reflected in the decision of the Planning Authority.

Appropriate Assessment Screening was carried out and concluded that there is no likely potential for significant effects to any Natura 2000 site.

A second Planner's Report (dated 7th July 2021) refers to the further information submitted and considered that, having regard to the additional information and comments of the Environment Section, permission should be granted subject to 16 No. conditions.

3.3.2. **Other Technical Reports**

Roads – The Roads Engineer stated that the existing roadside boundary would need to be reduced to 1 metre above the existing road level and that all surface water should be disposed of on-site.

Environment – Initial request for a revised site layout drawing showing the location of the proposed secondary and tertiary treatment system and details of the infiltration system. The second report dated 6th July 2021 from the Environmental Scientist stated that there was no objection to the application on environmental grounds and recommended that permission be granted, subject to conditions regarding the installation of the DWWTS.

3.4. **Prescribed Bodies**

None

3.5. **Third Party Observations**

Submissions were received from Robert & Lisa Eustace and Helen O'Brien & John Enright. The issues raised are generally similar to those referenced in the grounds of appeal. These include concerns regarding road safety, public health, non-compliance with rural housing policy, premature pending a decision on the M20 Limerick-Cork motorway route selection, lack of a design statement, and loss of privacy.

4.0 **Planning History**

4.1. **Appeal site:**

None

4.2. **Adjacent sites:**

ABP-311249-21 (P.A. Ref. No. 21423): Permission for a house with shed, wastewater treatment system and polishing filter, and ancillary site works for Valerie Lenihan granted, subject to conditions, by Limerick City & County Council. Currently

under third party appeal with case to be decided by 04/03/2022. The applicant is a sister of the First Party under this appeal.

ABP-312439-22 (P.A. Ref. No. 21571): Permission for a single storey house and garage for Jason Lenihan and Lisa Murphy granted, subject to conditions, by Limerick City & County Council. Currently under third party appeal with case to be decided by 16/5/2022. The applicant is a brother of the First Party under this appeal.

5.0 Policy Context

5.1. National Planning Framework

5.1.1. The NPF in relation to rural housing includes objective 19 which states –

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)

5.2.1. The Sustainable Rural Housing Guidelines require planning authorities to differentiate between rural housing demand arising from rural housing need and housing demand arising from proximity to cities and towns. Additionally, development plans should distinguish rural areas under strong urban influence, stronger rural areas, structurally weak rural areas and areas with clustered settlement patterns. Development management policy should be tailored to manage housing demand appropriately within these areas.

5.3. Limerick County Development Plan 2010-2016 (as extended)

Section 3.9 - Rural Settlement Policy

The Plan states:

The planning authority recognises that the continued trend towards single houses in the open countryside is unsustainable and has implications for the key rural resources of agricultural land, water quality, landscape and heritage as well as undermining the growth and use of existing services and facilities in the towns and villages. In addition, it is stated that the proliferation of one-off rural houses does not strengthen rural communities in the long term. The strengthening of rural communities can only be achieved in the long term through making settlements more attractive places to live and providing employment opportunities.

Policy RS P3 - It is a policy of the Council to apply a presumption in favour of granting planning permission to applicants for rural generated housing where the qualifying criteria set down in objectives **RS 01 to RS 08** are met and where standards in relation to siting, design, drainage and traffic safety set down in the Plan are achieved.

Rural Area Types

In terms of Rural Settlement Policy, the site is located within an area identified in Section 3.9.1 of the Plan as an “Area of Strong Agricultural Base” which is described as rural areas that traditionally have had a strong agricultural base, that 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 should be in the network of settlements to support the development of services and infrastructure and to take pressure off development in the open countryside.

Objective RS 02

It is an objective to recognise the housing need of people intrinsic to the rural local area subject to applicants demonstrating that their proposal complies with a genuine housing need. 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 build their first home on the family lands, or
- (b) The applicant is engaged in working the family farm and the house is for that person's 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.

5.4. Natural Heritage Designations

There are no European Sites in the vicinity of the site. The closest site is the Glen Bog SAC (site code: 001430) approx. 10km to the northeast.

5.5. EIA Screening

- 5.5.1. Having regard to the nature and scale of the proposed development and separation from sensitive environmental receptors, I am satisfied that no likely significant impacts on the environment arise from the proposed development and that the carrying out of an EIA is not required in this case.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal are submitted by Robert & Lisa Eustace / John Enright & Helen O'Brien. The main points made can be summarised as follows:
 - Note that the Planner's Report made no reference to the observations made by Robert & Lisa Eustace.
 - Highlight that the supplementary application form has not been fully completed.

- Contend that the combination of the marginal result of both the T and P tests, proximity to a watercourse and the considerable number of percolation areas and private wells in the area would result in a serious risk of pollution and would endanger public health.
- Contend that the issue of inadequate sightlines at Sheehy's Cross was not addressed in the planner's assessment.
- Contend that the planner did not take the lower ground level of the site compared to the level of the road into account when assessing the sightlines.
- Concerned that the increased traffic on the road would give rise to a hazard.
- Contend that no provision has been made for backfilling of drains on the appeal site and the impact that this would have on the drainage of rainwater from the road, surrounding lands and neighbouring holdings.

The appeal was accompanied by a copy of the incomplete supplementary report and photographs of the site and nearby junction.

6.2. Applicant Response

6.2.1. The applicants responded to the issues raised in the appeal as follows:

- The Lenihan family have lived in the area for generations and one of the applicants, Jackie Burchill (nee Lenihan) was born, reared, and presently resides in Athlacca.
- Confirm that they have been renting a house in Kilmallock and the owner has now put this house up for sale.
- Contend that there will be no increase in traffic as both applicants pass the appeal site every day on their way to and from work and school.
- State that the appeal site passed the percolation test and is well in excess of 0.5 acres in size.
- The appeal site is on family land and contend that the appeal by John Enright and Helen O'Brien is due to a personal grievance with their family.

- Contend that Robert and Lisa Eustace are not from Athlacca and are renting a house nearby.

6.3. **Planning Authority Response**

The Planning Authority has not responded to the grounds of appeal.

7.0 **Assessment**

I consider that the main issues in the assessment of this appeal are as follows:

- Rural Housing Policy
- Road safety
- Ground water
- Other Issues
- Appropriate Assessment

7.1. **Rural Housing Policy**

- 7.1.1. The key issue to be addressed within this appeal relates to the question of whether the applicants have an economic or social need to live in this rural area that meets the requirements of the rural housing policy. The First Parties set out the justification for providing a house at this location on the basis of a social need to locate on family lands close to where Jackie was born and reared. The appeal states that the supplementary application form has not been fully completed and, therefore, while not specifically stated that the applicants do not comply with rural housing policy, this is not therefore considered to be a new issue.
- 7.1.2. The site is located in an area identified in the Limerick County Development Plan 2010-2016 (as extended) as an 'Area of Strong Agricultural Base' and a 'Stronger Rural Area' as identified in the Sustainable Rural Housing Guidelines. In these areas population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing

development activity in these areas tends to be relatively low and confined to certain areas.¹

- 7.1.3. The development plan policies (RS P1 and RS P3) and Objectives RS 01 to RS 08 seek to facilitate housing need requirements of rural communities, particularly for immediate family members on family farms/landholdings, while directing urban generated housing into towns and villages. The policy in 'Areas of Strong Agricultural Base' (Objective RS 02) requires applicants to show a genuine rural housing need in the area. This can be demonstrated if the applicant is the owner of a landholding which must be in the ownership of the family for more than 10 years, or the applicant is engaged in working on the family farm or in essential rural activities which requires them to live nearby. The final criterion is where the application is being made by a 'local rural person' who wishes to live in the local rural area in which they spent a substantial period of time (min. 10 years) for either family or work reasons.
- 7.1.4. The Sustainable Rural Housing Guidelines for Planning Authorities (2005) state that development driven by urban areas should take place within the built-up areas, and that a distinction should be drawn between development that is needed to sustain rural communities and that which tends to take place in the environs of towns, which should more appropriately take place within urban areas.
- 7.1.5. The policies set out in the Sustainable Rural Housing Guidelines have been reinforced in the more recently published National Planning Framework (2018). In stronger rural areas, it is the policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic and social need to live in a rural area, having regard to the viability of small towns and rural settings. Thus, it continues to be necessary to demonstrate a functional economic or social requirement for housing need in these areas.
- 7.1.6. The First Parties submitted a Supplementary Form as unsolicited further information to the Planning Authority on 26th March 2021. This form states that they have resided in Kilmallock since 2008 and that Jackie works in Kilmallock and Niall works in Shannon, Co. Clare. I note that in the response to the appeal, the First Parties have stated that they are now residing with Jackie's parents in the village of Athlacca.

¹ P.16, Sustainable Rural Housing – Guidelines for Planning Authorities (DoEHLG 2005)

- 7.1.7. The First Parties submitted details of Jackie's family home, and a landholding map of family lands in the area in response to the RFI on 17th June 2021. They confirmed that Jackie's family home is in Athlacca village. They also confirmed that Mary Linehan (Jackie's mother) became the registered owner of the small landholding that the appeal site forms part of on 6th May 2015.
- 7.1.8. In terms of Objective RS 02 and the requirements of the rural housing policy, the application can be summarised as follows:
- (a) The application is not being made by a long-term landowner or his/her son or daughter seeking to build their first home on the family lands as the lands are only in the family ownership since 2015,
 - (b) The applicants are not engaged in working a family farm,
 - (c) The applicants have not provided information of working in essential rural activities,
 - (d) It has not been sufficiently demonstrated that the application is being made by local rural persons who for family and/or work reasons wish to live in the local rural area. On the basis of the information provided, I consider that the First Party have not demonstrated that they spent a substantial period of their lives (minimum 10 years) in this rural area or that they are seeking to build their first home in the local rural area.
- 7.1.9. Therefore, I am not satisfied that the information provided forms a clear basis for compliance with rural housing policy set out in the development plan or forms a basis for a need to live at this rural location. The applicants' housing needs could clearly be met within the small town of Kilmallock or alternatively within another town or settlement in the vicinity.
- 7.1.10. On the basis of the above, I do not consider that either of the applicant meets the requirements of the Limerick County Development Plan relating to rural housing in an area designated as 'Area of Strong Agricultural Base' such as the appeal site. Given the location of the appeal site in an area also designated as a 'stronger rural area' and the circumstances of the applicants, I also consider that the proposed development would be contrary to the National Planning Framework and the Sustainable Rural Housing guidelines. The applicants have not, therefore,

demonstrated that they can meet the requirements of the settlement policy as set out in Objective RS 02.

7.2. Road safety

- 7.2.1. The appellants contend that the junction to the south of the appeal site is seriously deficient in terms of sightlines and, with extra vehicular traffic generated as result of this proposed development, would result in a serious traffic hazard. They also contend that this issue was not addressed in the planning officer's report.
- 7.2.2. I note the First Party's contention that the proposed development will not result in additional traffic movements on this local road as they already use the road on a daily basis for work and school runs. I also note and agree with the report dated 19th March 2021 from the Roads Engineer for the Kilmallock Area, Limerick City & Council which states that sightlines are available at the proposed entrance once the existing boundary hedge is reduced to 1 metre above the road level.
- 7.2.3. On the day of my site inspection, I noted that the appeal site abuts a straight section of the local road and sightlines are readily achievable subject to some minor amendments to the roadside boundary. I also noted the issues raised by the appellants regarding the junction to the south that the appellants refer to as Sheehy's Cross. I used and observed the use of this junction on the day of my site inspection and, on the basis of my observations, I do not consider that the form and scale of development proposed would lead to a traffic safety issue at this location.
- 7.2.4. In conclusion, 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.

7.3. Ground Water

- 7.3.1. The appellants contend that the combination of the marginal result of both the T and P tests, the proximity of the appeal site to a watercourse and the considerable number of percolation areas and private wells in the area would result in a serious risk of pollution and would endanger public health.
- 7.3.2. Section 7.4.1.3 of the Limerick County Development Plan requires that where rural houses are to be served by DWWTS that they demonstrate compliance with the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single

Houses (2009), and any subsequent amendment. Under the Code of Practice, the trial hole should be excavated to a depth of at least 1.2m below the invert of the lowest percolation trench (or 2m for GWPRs of R2² or higher)². The new Code requires a trial hole depth of at least 2.1m or to bedrock (or 3m for GWPRs of R2² or higher).

- 7.3.3. The First Party excavated the trial hole to a depth of 2.8m and recorded that the water table was located at a depth of 1.9m. It is confirmed within the Site Characterisation Report that the appeal site is located over a regionally important aquifer with medium vulnerability, which requires a Groundwater Protection Response of R1. The T Value is stated as 52.82 and the P Value is stated as 51.39. Based on these results, the Site Assessor recommended a proprietary wastewater treatment system with secondary and tertiary treatment.
- 7.3.4. On the day of my site inspection, I noted that the ground conditions were good and consistent with those described within the Site Characterisation Report. There is a watercourse approximately 30m to the east of the appeal site, however, the proposed DWWTS is to be installed on the westernmost part of the site. This is approx. 150m from the watercourse and, consequently, such that I do not consider it likely to pose a risk to this watercourse.
- 7.3.5. I conclude, based on the material submitted with the application, that the appeal site is suitable for the safe disposal of domestic effluent and with the installation of a proprietary wastewater treatment system, that the proposed development would not create a serious risk of ground water pollution.

7.4. Other Issues

7.4.1. Design / Visual impact

As stated earlier in this report, the proposed development comprises the construction of a single storey house with a floor area of 167m² and a ridge height of 6.7m over finished floor level, and it also includes the construction of a detached single-storey garage, with a floor area of 54m², both with render finish and blue / black slates. The existing site boundaries are to be retained and the northern site boundary will

² The new Code applies to site assessments and installations carried out after 7th June 2021 (see preface to the Code).

comprise a timber fence with beech hedging planted along the length of this boundary.

I consider the proposed house design to be simple in form and design and, therefore, I am satisfied that the proposed house would not present any significant adverse visual impact on this rural landscape.

7.4.2. Surface water

The appellants raised concerns about the backfilling of drains on the appeal site and the impact that this would have on the drainage of rainwater from the road, surrounding lands and neighbouring holdings. In this regard, I note both the proposal to install a soakaway and the permeability of the soil on the appeal site and, consequently, I consider that surface water can be disposed of safely on the site without impacting the local road or adjoining lands.

7.4.3. Motorway

The appellants contended in their submission to the Planning Authority that the proposed development should be considered premature as the site is located within the study area for the realignment / development of the N20 / M20 Cork to Limerick motorway. I confirm that the appeal site is located within the study area for the realignment / development of the N20 / M20 Cork to Limerick motorway, but it is located approx. 800m to the east of the easternmost route option (Option RS2b)³. I am, therefore, satisfied that the proposed development would have no impact on the route selection process for the motorway.

7.5. **Appropriate Assessment Screening**

- 7.5.1. Having regard to the nature and scale of the development proposed and the absence of any direct or indirect pathway between the appeal site and any European site and the separation distances to the nearest European site (Glen Bog SAC (site code: 001430) approx. 10km to the northeast), 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.

³ <https://corklimerick.ie>

8.0 Recommendation

I recommend that permission be refused for the reason stated below.

9.0 Reasons and Considerations

Having regard to:

- the location of the site within a rural area identified as being a stronger rural area in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005,
- National Policy Objective 19 of the National Planning Framework (February 2018) which seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements,
- The provisions of the Limerick County Development Plan 2010-2016 (as amended) and specifically Objective RS 02, which facilitates the provision of rural housing for local rural people building in their local rural area (defined as within 10 kilometres radius of the where the applicant has lived or was living), and
- The documentation on the file including details of the applicants' links with the settlements of Athlacca, Kilmallock and Shannon as their current locations of employment,

the Board could not be satisfied on the basis of the information on the file that the applicants came within the scope of either economic or social housing need criteria as set out in the overarching National Guidelines or the definition of a local rural person in accordance with the relevant criteria of the development plan.

The proposed development, in the absence of any identified locally based need for a house at this location, would result in a haphazard and unsustainable form of development in an unserved area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and

undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Liam Bowe
Planning Inspector

7th March 2022