



An
Bord
Pleanála

Inspector's Report

ABP-311255-21

Development	Construction of a dwelling house and detached garage.
Location	Ballycummin Road, Derryknockane, Co. Limerick.
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	21818
Applicant(s)	Diarmuid and Bernard O'Shaughnessy
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Diarmuid and Bernard O'Shaughnessy
Observer(s)	None
Date of Site Inspection	20 th January 2021
Inspector	Liam Bowe

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005).....	6
5.3. Limerick County Development Plan 2010-2016 (as extended)	6
5.4. Natural Heritage Designations	7
5.5. EIA Screening	7
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Planning Authority Response	8
7.0 Assessment.....	9
8.0 Recommendation.....	14
9.0 Reasons and Considerations.....	15

1.0 Site Location and Description

- 1.1. The site is located on the southern end of Ballycummin Road, Derryknockane, approx. 700m to the southeast of the M7 motorway and the built-up area of Limerick City. The site is accessed by means of a local road serving the area of Derryknockane and Derrybeg, which is also accessed from the Dooradoyle exit (J2) on the motorway. This is a rural area which is characterised by farmland with a considerable level of one-off houses. It is in close proximity to Limerick City and, from my observations, is an area that is under considerable pressure for one-off housing, as evidenced by the extent of single houses in the overall area.
- 1.2. The site area is given as 0.35ha. The site is rectangular in shape and has frontage to the local road to the east. The site is well screened from the road by a mature hedgerow and from the east by mature trees and hedgerows. There is an over-head 110kV electricity power line running in a South-North direction along the western portion of the site and there is a pylon supporting this power line immediately to the north of, and within the same field as, the appeal site. The site is low-lying and is relatively level, but the ground levels generally fall away to the north. There is an existing agricultural entrance from the local road at the southern end of the site frontage and there is a ditch running along the inside of the roadside hedgerow. The road serving the site is a local rural road which is characterised by several one-off houses in the vicinity of the site. There are 2 no. two-storey houses immediately to the south and a significant number of single dwellings to the southeast and to the southwest of the appeal site. There is a 1.5m high block wall running along most of the southern boundary of the site. The ground level has been raised in this area of the site to facilitate vehicular access.

2.0 Proposed Development

- 2.1. The proposed development comprises construction of a two-storey house, installation of a domestic wastewater treatment system (DWWTS), connection to a public mains water supply and associated site development works at Ballycummin Road, Derryknockane, County Limerick.

3.0 Planning Authority Decision

3.1. Decision

By order dated 4th August 2021 Limerick City and County Council issued a notification of decision to refuse permission for one reason, namely it was considered that the applicants did not come within the scope of local rural housing need criteria as set out under Objective RS01 in the Development Plan.

Further to this, it was stated that proposed development would materially contravene the objectives of the Limerick County Development Plan in relation to rural settlement.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planner's report (29/07/21) stated that the location of the site is in an Area Under Strong Urban Influence in the Limerick County Development Plan, Objective RS01 applies and that it was considered that the applicants had not demonstrated compliance with this objective and recommended refusal of the application, which is reflected in the decision of the Planning Authority.

Appropriate Assessment Screening was carried out and it was noted that the site lies within the catchment of the River Shannon. It was concluded, however, that there are no likely significant effects on the Natura 2000 site.

3.2.2. Other Technical Reports

Area Office – The Executive Technician expressed concern that the required 90m sightlines were not clearly indicated and requested that all remedial works required to achieve this be indicated on a revised site layout plan.

3.2.3. Prescribed Bodies

OPW – No objection. Condition recommended.

Irish Water – No objections. Conditions recommended.

3.3. Observations / Elected Representatives

Cllr. Catherine Slattery, Secretarial Assistant to Willie O’Dea TD – Expressed support for the planning application.

4.0 Planning History

4.1. Appeal site:

None

4.2. Adjacent sites to the south:

P.A. Ref. No. 04/2964: Permission granted for the construction of a house.

PA Ref No. 10/674: Permission granted for the construction of a replacement dwelling.

Condition no.10 required the landowner(s) to enter into a Section 47 agreement with the Planning Authority sterilising the remainder of the overall landholding.

P.A. Ref. No. 18/862: Permission refused for 2 houses on lands to the south of the appeal site.

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)

In terms of Rural Settlement Policy (3.9), the site is located within an area identified as a **Rural Area Under Strong Urban Influence** which is described as one which is within commuting distance of Limerick City and Environs and is experiencing pressure from the development of urban generated housing in the countryside. It is stated (3.9.1) that 'continued high levels of single rural houses in these locations would inhibit growth of the County's urban areas which would result in a failure to achieve the growth targets, particularly in the City and Environs.'

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.

- 5.3.1. The Development Plan states that the Council recognises the needs of local rural people who wish to live or work in the area in which they grew up. The following 3 criteria arise in assessing applicants under this category:
- i) The applicant must come within the definition of a '**Local Rural Person**' (a person who is living or has lived in the local rural area for a minimum of 10 years prior to making the planning application),

- ii) The proposed site must be situated within their '**Local Rural Area**' (generally, but not exclusively, within a 10km radius of the applicant's family home), and
- iii) The applicant must have a '**Local Rural Housing Need**' (a person who does not or who has never owned a house in the 'local rural area' and has the need for a permanent dwelling for their own use in the rural area).

A '**Long Term Landowner**' is defined as a person who has owned a minimum of 10 hectares of land in the rural area for a minimum of 15 consecutive years.

Objective RS 01: Single Houses in Areas Under Strong Urban Influence

It is an objective to recognise the individual housing needs of people intrinsic to the rural areas located within the areas defined as 'rural areas under strong urban influence'.

5.4. Natural Heritage Designations

5.4.1. There are two European Sites in the vicinity of the site. These are:

- Lower River Shannon SAC (Site Code: 002165) approx. 3.7km to the north.
- River Shannon and River Fergus Estuaries SPA (Site code: 004077), approx. 8.4km to the west.

The Loughmore Common Turlough pNHA (Site code: 000438) is located 2.4km to the northwest of the appeal site.

5.5. EIA Screening

5.5.1. Having regard to the nature and scale of the proposed development and the 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 GMDS Architects on behalf of the first parties, Diarmuid and Bernard O'Shaughnessy, and stated owners of the appeal site. The main points made can be summarised as follows:

- State that Diarmuid O'Shaughnessy is currently farming this land holding (6 acres) and his uncle's (Declan O'Shaughnessy) adjacent landholding (50 acres).
- Agree that Diarmuid O'Shaughnessy was not born on the farm and does not comply with rural housing policy but his father, Bernard, is a native of Lissanalta since 1958 and was born 500 metres from the appeal site.
- Diarmuid O'Shaughnessy purchased the landholding (6 acres) from his uncle in 2019 and advises that he is the appointed successor to the remainder of his uncle's landholding (50 acres).
- Contend that Diarmuid is carrying out an essential rural activity as he is currently farming (tending livestock) Monday to Sunday and he is also employed in the construction industry part-time to enhance his income. He is currently residing 1km from the appeal site but contends that he needs to be accommodated nearer his land holding.
- Contend that Bernard has a genuine rural housing need and for family reasons wishes to reside in close proximity to his elder brothers.
- Contend that Diarmuid endeavoured to provide his existing genuine family connection through his father's association to this rural area and his intention to work full-time in farming.

6.2. Planning Authority Response

The P.A. 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 and adequacy of access
- Ground Water – Potential New Issue
- Appropriate Assessment

7.1. Rural Housing Policy

- 7.1.1. The site is located in an area identified in the Limerick County Development Plan as a Rural Area Under Strong Urban Influence, due to its proximity to Limerick City and Environs. It is clear that the area within which the site is located is one which has experienced intense pressure for one-off housing, as evidenced by the proliferation of such development throughout the area. Having regard to the proximity of the application site to Limerick City and the pattern of recent housing development in the area I consider that this area is under pressure for one off rural housing unrelated to the agriculture land use in the area.
- 7.1.2. The CDP 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 Under Strong Urban Pressure (RS 01) is a little more restrictive in that the applicant must 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.
- 7.1.3. 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 be more appropriately take place within urban areas.

- 7.1.4. The policies set out in the Sustainable Rural Housing Guidelines have been reinforced in the more recently published National Planning Framework (2018). In rural areas under strong urban influence, 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 that are under intense pressure.
- 7.1.5. It is clear therefore, that the overall settlement strategy, which is consistently expressed in the hierarchy of national and local policies and plans, is to seek to prevent urban sprawl and to ensure that development takes place in appropriate locations in a sustainable manner which protects the vibrancy of rural communities, but in such a way that it does not give rise to long term problems for both the urban centres and for the rural environment. It is equally clear that the area in which the site is located is one which has been subjected to very intense pressure in the recent past.
- 7.1.6. One of the First Party's, Diarmuid, states that he purchased the 6 acres land holding that contains the appeal site from his uncle, Declan O'Shaughnessy, in 2019. As part of the appeal, the First Party also submitted Department of Agriculture, Food and the Marine maps showing other lands in family ownership in this area. This shows four other sites annexed from the land holding along the Ballycummin Road.
- 7.1.7. I note, and agree with, the First Parties statement that they don't consider Diarmuid's employment in the construction industry meets the needs criteria outlined in the Limerick County Development Plan. Under the planning application to Limerick City & County Council, Diarmuid submitted that he owns 6 acres in this area (which includes the appeal site), is a registered farmer, has a herd number and is farming dry stock. In addition to this, Diarmuid states that he leases a 7 acre plot from his uncle, Declan O'Shaughnessy. As Declan is 80 years old, Diarmuid states that he looks after his livestock also and carries out his farm chores. Diarmuid states that it is his intention to lease a further 17 acre plot from Declan's holding (stated as a 50

acre holding) from January 2022, however no evidence of this agreement is submitted.

- 7.1.8. As part of this appeal, Diarmuid has submitted information in relation to animal numbers on both his land and his uncle's land i.e., 17 no livestock and 40 no. livestock respectively. Diarmuid also states that he is next of kin and appointed successor to Declan O'Shaughnessy, although no evidence is provided of this arrangement. Diarmuid is presently living in Limerick City within 1km of the appeal site and has provided evidence of residing at this location. He has provided no evidence that he resided in this rural area at any stage. Given the limited extent of farming activities associated with this small livestock enterprise and the fact that he is not from the local rural area, I do not consider that Diarmuid has demonstrated a rural generated economic need in accordance with the plan policy to live in this rural area.
- 7.1.9. It is clear from the evidence provided that Bernard O'Shaughnessy (Diarmuid's father) was brought up in the rural area and that he appears to still have strong connections with the local community by way of his older brothers residing in this area. However, the First Parties have given no indication of Bernard's economic need to reside in this rural area and have confirmed that Bernard lives in Limerick City. It appears, from the submitted information, that he may have lived in Limerick City all of his adult life as no evidence is included with the appeal to indicate otherwise. For these reasons, I do not consider that Bernard meets the requirements of the rural housing policy in the Limerick County Development Plan.
- 7.1.10. On the basis of the above, I do not consider that either of the applicants meet the requirements of the Limerick County Development Plan relating to rural housing in an area under strong urban influence such as the appeal site. Given the location of the appeal site in an area designated as a 'rural area under strong urban influence' and the circumstances of the applicants, I consider that the proposed development would be contrary to the National Planning Framework and the Sustainable Rural Housing guidelines. I also consider that the housing need is an urban generated one and that the area has come under sustained pressure in recent times for this type of housing, such that the vibrancy of the rural community is not likely to be under any threat of decline. The applicants have not, therefore, in my opinion

demonstrated that they can meet the requirements of the settlement policy as set out in RS 01.

- 7.1.11. I note the reference by the Planning Authority to the proposed development materially contravening Objective RS 01 of the Limerick County Development Plan. In the event that the Board do not agree with the above assessment, under Section 37(2)(b) of the Planning and Development Act, 2000 (as amended), where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in a number of limited circumstances.
- 7.1.12. With regard to these criteria, I consider that the proposed development is not of strategic or national importance; and that there are no conflicting objectives in relation to rural housing policy in the Limerick County Development Plan. In addition, I consider that there are no regional level policies, section 28 guidelines, or other ministerial directions to support the proposed development. Finally, on the basis of the information available, I do not consider that there is a pattern of development or permissions granted in the area that would provide a justifiable reason to grant permission for the proposed development.
- 7.1.13. In conclusion, I consider that the applicants have not demonstrated a rural housing need in accordance with the plan policy within this area. I also consider that the established rural settlement policies for the area, which seek to avoid the overdevelopment of rural areas under strong urban influence, and to direct such development to towns and villages, would be contravened. The proposed development would, therefore, conflict with the provisions of the National Framework Plan (2018), the Sustainable Rural Housing Guidelines for Planning Authorities (2007) and would contravene the objectives of the Limerick County Development Plan (2010-2016 as extended) in relation to rural settlement.

7.2. Road Safety

- 7.2.1. On the issue of traffic and road safety, the site abuts a relatively straight section of the local road and I consider that 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.

7.3. Ground Water – Potential New Issue

- 7.3.1. 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.
- 7.3.2. 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)¹. 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. On the day of my site inspection, I noted a significant difference in ground levels between where the trial hole was excavated and where the wastewater treatment system is proposed to be installed. The trial hole seems to have been excavated on the higher ground on the southern side of the appeal site, which is the part of the appeal site that has been infilled to facilitate a vehicular access. I note the results within the Site Characterisation Form stating the water table to be at a depth of 1.2m. This is most likely accurate where the trial hole was excavated. However, the proprietary wastewater treatment system and associated polished filter is to be installed at a location on the appeal site where the ground level is approx. 0.5m lower than the location where the trial hole was excavated. This depth to ground water at this location would be approx. 0.7m i.e., 1.2m minus 0.5m, and would therefore constitute a site failure for discharging to ground as per Section 6.2.2.1 of the Code of Practice.
- 7.3.4. Further to this, ground water is afforded protection in its own right under the EU Environmental Objectives (Groundwater) Regulations 2010. The Sustainable Rural Housing guidelines make the point that “wastewater treatment facilities in rural areas should therefore be located, constructed and maintained to the highest standards to ensure minimal impacts on water quality and particularly groundwater quality”. In the present case, the site suitability assessment submitted with the application characterises subsoil on site as silt/clay, however, this assessment was carried out on the built-up part of the site along the southern boundary of the site. On the day of

¹ The new Code applies to site assessments and installations carried out after 7th June 2021 (see preface to the Code).

my site inspection, I noted the low-lying, poor draining nature of the appeal site with OPW maintained drainage channels running along the eastern and western boundaries of the site.

- 7.3.5. In addition to the conditions on the appeal site, there are approximately 20 houses in very close proximity to the application site which I assume, in the absence of a public sewer, also discharge to groundwater. The application provides no element of assessment of the cumulative impact on groundwater of this collection of houses. Based on the above, I consider that the proliferation of wastewater treatment systems on individual sites in this area would pose a risk to groundwater in the area.
- 7.3.6. In conclusion, based on the material submitted with the application and my observations, I consider that the appeal site is unsuitable for the safe disposal of domestic effluent and, notwithstanding the mitigation measures – installation of a proprietary wastewater treatment system - included in the application, that the proposed development would lead to a serious risk of ground water pollution.

7.4. Appropriate Assessment Screening

- 7.4.1. 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 sites ((Lower River Shannon SAC (Site code: 002165) and River Shannon and River Fergus Estuaries SPA (Site code: 004077)), 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.

9.0 Reasons and Considerations

1. Having regard to:

- the location of the site within a rural area identified as being under strong urban influence 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) 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 both applicants' links with Limerick City and current employment as a builder,

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 unserviced 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.

2. Notwithstanding the proposal to use a proprietary domestic wastewater treatment system on the site, having regard to the high water table, the proliferation of domestic wastewater treatment systems in this rural area, and to the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005, which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities, the Board could not be satisfied, on the basis of the information on the file, that the impact of the proposed development in conjunction with existing waste water treatment systems in the area would not give rise to a risk of groundwater pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Liam Bowe
Planning Inspector

17th February 2022