



An  
Bord  
Pleanála

## Inspector's Report ABP-311434-21

<b>Development</b>	Construction of a house, garage greenhouse, septic tank drainage system, new site vehicular entrance and all associated site works.
<b>Location</b>	Lacorroë, Feakle, Co Clare.
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	21376
<b>Applicant(s)</b>	Anthony and Rachael Guilfoyle
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Virginia Brown & Julia Walters
<b>Date of Site Inspection</b>	29 <sup>th</sup> December 2022
<b>Inspector</b>	Suzanne Kehely

## **1.0 Site Location and Description**

- 1.1. The appeal site, which has an area in the order of .3 hectares, is part of a stated farm landholding of 49 hectares to the east of Feakle. Scarrif is at a greater distance to the southeast. It fronts onto the northern side of a local road off the R461. It is effectively a cul-de-sac access road which is of substandard alignment for an access road – it is narrow and unevenly surfaced with rock outcropping and currently serves agricultural lands and a small number of dwellings. The appeal site is part of existing agricultural lands and straddles the corners of two fields. Development along the access road is characterised by working farmyards and a scatter of houses (some of which are vacant/semi derelict) and old farm buildings. During time of inspection the road was blocked by a tanker truck reversing along the access road over a distance of a few hundred metres from the vicinity of the proposed site. Nearer the junction on the southern side of the road there was a public notice alerting of invasive species.

## **2.0 Proposed Development**

- 2.1. It is proposed to construct a traditional styled two-storey dwelling house (285 sq.m.) with a 50sq.m. detached garage, proposed septic tank and percolation area, new site vehicular entrance and all associated site works. The dwelling features a pitched roof with external finishes consisting mainly of nap plaster render and dark blue-black cement roof slates. The site is part of a 49 hectare farm holding.
- 2.2. The applicant is a teacher/farmer presently living 35km from the school and 8km from the farm. The applicant's partner is 22km from work whereas the site is 16km from work.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Following the submission of further information to the satisfaction of the planning authority, a decision to grant permission was made by order on 31<sup>st</sup> August 2021 to subject to 13 conditions. Of note are the following conditions:

- Condition no. 3: No development shall commence on site unless and until the access road has been upgraded to the satisfaction of the Planning authority. Full details of all proposed road upgrade works which shall be carried out in conjunction with the Killaoe Municipal District Office shall be submitted to an agreed with the PA prior to the commencement of development and any works shall be carried out at the applicant's expense. Reason: In the interest of traffic safety, residential amenity and orderly development.
- Condition 11 requires landscaping in accordance with further information.
- Condition 13 requires a section 48 contribution of €7240

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Planning Report (14/06/21): No issue with principle of dwelling. Further information required in relation to:

- Proposals for upgrade of access road.
- Justification for siting having regard to more suitable locations in the holding and having regard to the settled landscape character where it is an objective to avoid prominent locations.

Planning Report (30/08/21): FI received on 5<sup>th</sup> August and it is noted that the applicant has liaised with the Area Engineer and reached an agreement on upgrading of the road which include surface water management specifications to the Areas Engineer's requirements.

It is sated that the works should be completed to facilitate construction traffic .

The proposed house has been relocated from the brow of the hill to the north and was considered acceptable as this allows for retention of more hedgerow and trees within and surrounding the site. The mature trees to the west and southwest are considered to provide a backdrop to long range views of the proposed dwelling. Having regard to the site being part of a 49 hectare holding which is actively farmed by the applicant and the further information, the proposal is considered acceptable.

#### 3.2.2. Other Technical Reports

Environment Section: No objections subject conditions.

### 3.3. Prescribed Bodies

No reports.

### 3.4. Third Party Observations

Submission by Virginia Brown & Julia Walters, Suiamhneas, Lecarroe, refers to traffic safety and standard/condition of access, impact on adjoining residential amenity and visual impact.

## 4.0 Planning History

ABP 311062 refers to a decision to refuse permission for a dwelling house to the south of the same access road for the stated reason:

1. The existing road serving the site is seriously inadequate in width, alignment and condition and is completely unsuitable for additional traffic movements likely to be generated by the proposed development. The proposed development would constitute a traffic hazard and cause obstruction to other road users. In addition there is a lack of clarity regarding the nature of works and feasibility of upgrading the road to the necessary standard with the proposal leading to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The Clare County Development Plan 2017-2023 is the applicable plan. In this plan, the appeal site is in a rural area designated as 'Settled Landscape' and is outside of an Area of Special Control.

- New Single Houses in the Countryside outside the 'Areas of Special Control':  
Objective CDP 3.12: Within the parts of the countryside outside of the 'Areas of Special Control' i.e.:
  - Outside of the Areas under Strong Urban Pressure;

- Outside of Heritage Landscapes;
- Not accessed from a Scenic Route.

To permit an application for a single house by persons who seek a dwelling as their principal private residence and will, therefore, contribute to the social and economic well being of the area.

Note: Where the proposed site is accessed from a National route or certain Regional routes the proposal must in addition to compliance with this objective, also be subject to objectives CDP8.4 and CDP8.5 as set out in Chapter 8. All development proposals must be in compliance with the requirements of the Habitats Directive.

- Settled Landscapes: Objective CDP 13.2 : To permit development in areas designated as 'settled landscapes' that sustain and enhance quality of life and residential amenity and promote economic activity subject to:
  - Conformity with all other relevant provisions of the Plan and the availability and protection of resources;
  - Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;
  - Regard being given to avoiding intrusions on scenic routes and on ridges or shorelines.

Developments in these areas will be required to demonstrate:

- That the site has been selected to avoid visually prominent locations;
- That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads;
- That design for buildings and structures reduce visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.

## 5.2. National Policy

- 5.2.1. **National Planning Framework – Project Ireland 2040** -Department of Housing, Planning and Local Government (2018): National Policy Objective 19 refers to the

necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence i.e commute catchment of cities and large towns and centres of employment. This will be subject to siting and design considerations. In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on quality and requirements set out in EU and national legislation and guidance documents.

The appeal site is located in Structurally Weak Area based on the Map 1: Indicative Outline of NSS Rural Area Types.

- 5.2.2. **Sustainable Rural Housing Development Guidelines:** These guidelines require a distinction to be made between an 'Urban Generated' and 'Rural Generated' housing need. Types of circumstances for which 'Rural Generated Housing Need' might apply include for example where 'persons who are an intrinsic part of the rural community' and 'persons working full or part time in rural areas'.

### 5.3. **Natural Heritage Designations**

- 5.3.1. The Slieve Aughty Mountains SPA (004168) is approximately 0.4km from the site.

### 5.4. **EIA Screening**

- 5.4.1 The proposed development is of a class but substantially under the threshold of 500 units to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the development, which is a new dwelling and associated works, the absence of features of ecological importance within the site, I conclude that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

- 6.1.1 A third party appeal against the grant of permission has been lodged by Virginia Browne & Julia Walters, Suiamhneas, Lecarroe, Feakle, Co. Clare. The grounds are based on the following issues:

- Traffic Safety by reason of the substandard alignment and impact of additional traffic on this road. This point is elaborated upon by reference to;
  - the condition of the road and the recent reason for refusal for another dwelling along the same road,
  - the absence of details for upgrading as referred to in the planning report, and
  - the nature of the traffic such as construction related traffic and this is compounded by the restricted sightlines from the appellants' property onto a road that has currently only limited slow moving agricultural traffic.
- Residential amenity by reason of impact of construction works and road works, impact of headlights

## **6.2. Applicant Response**

6.2.1 In response to the grounds of appeal the applicant makes the following points:

- With respect to housing need it is explained that the site is part a 49 hectare landholding which has been farmed by 3 generations of his family and which is now in his ownership. He is involved in the day to day running of the farm and his current family accommodation is 7km way and is not practical. The holding has limited road frontage and is reliant on this minor cul-de-sac road (L80851) for access.
- With respect to road condition, it is explained that 85m of the road from the proposed access will be upgraded. This will be at the expense of the applicant as it is not in the council road works programme.
- Finally it is stated that the increased costs associated with the road upgrade are be borne by the applicant in addition to ever increasing construction costs for the house building.

## **6.3. Planning Authority Response**

6.3.1 In its response, the planning authority makes the following points:

- The upgrade of the local road has been agreed with the local area engineer who will also design the required works. This will be done via the Road Opening Licence process. The applicants will implement the works to the required standards. Surface water management and ground conditions will be duly considered.
- As the landholding of 49 hectares is actively farmed by the applicants, they comply with the rural housing policy and are fully compliant with CDP3.11.

## **7.0 Assessment**

### **7.1. Issues**

7.1.1. Having reviewed the file content and inspection the site the key issues under consideration in this appeal relate to:

- Principle of the proposed development/rural housing policy
- Substandard access and impact on traffic safety and residential amenity.

### **7.2. Principle of the proposed development/rural housing policy:**

- 7.2.1 While the grounds of appeal do not question the housing need, the matter is raised in the responses by both the applicant and the planning authority and it is I consider a relevant consideration in this appeal.
- 7.2.1. The applicant clarifies in his response to the grounds of appeal how he actively farms the surrounding lands in this rural area and has a need to live on same with his family with whom he lives some 7km away. It is further explained how the land holding has limited road frontage which is confined to the subject access road. This justification for a house at this location is accepted by planning authority and I consider that based on the circumstances of the case that this reasonable. I say this having regard to national policy regarding rural housing and also having regard tot the most recent Climate Action Plan which advocates the protection of farming activity. I also note the compatibility with the development plan objectives and refer to location of the appeal site in a rural area designated as 'Settled Landscape' (outside an Area of Special Control) and consider that the applicant meets with criteria (as set out in section 13.2) for rural housing given that the applicant is actively involved in the day to day running of the farming activities on lands in his



ownership. I also note that in the context of the National Framework Plan that the site is located in an area defined as being a Structurally Weak Area based on the Sustainable Rural Housing Guideline (2005). Accordingly I consider there are strong grounds to support the case for a rural house for the applicant in this farm holding.

#### **7.4 Access laneway/traffic impact:**

- 7.2.2. The appeal site fronts a narrow uneven track that appears to be part of a local road named-L—80581. It is substandard in terms of its width and surface finish and I note features exposed rock outcropping. Some of the road is surfaced with tarmac but the condition is increasingly uneven the greater the distance off the R461. The planning authority and local area/roads engineer are clear that the surface needs improving and upgrading works were accordingly a condition of permission.
- 7.2.3. The appellant, who lives about 60m east of the site and on the southern side of the same road, raises a number of concerns on the limited capacity of the road to accommodate additional development. This is stated by reference to the planning authority reports and also by reference to the refusal of permission on appeal on grounds of traffic hazard. Essentially the case is made that the underlying reasons for refusal have not been addressed. Furthermore, the general reference to upgrading works lacks clarity.
- 7.2.4. I accept that the road fronting the site is substandard. It is also indicated that there are no plans to carry out Council works on this road. The applicant has indicated in further information and the response submission that he is agreeable to contribute towards the upgrade of the road and the Planning Authority has conditioned that the upgrades be completed prior to construction of dwelling which would improve current conditions for both construction traffic and existing agricultural traffic. It is further explained, with maps in the appeal response, that on foot of a meeting with the local area engineer, the applicant proposes to upgrade the road over a distance of 85m which extends along the site frontage and beyond, in the direction of the junction and appellant's property. While this will improve the immediate environs of the site and that of the appellants' I accept it does not address the remainder of the road. I note however that the applicant in this case is presently involved in the day to day running of the farm and would therefore generate traffic for this purpose. Accordingly the net increase of traffic associated with his permanent occupancy on the lands with

his family would I consider have a negligible increase on the traffic of this cul-de-sac which also serves as a vehicular access to the appellants' residence and agricultural uses and has, it would appear, a low volume of traffic. In addition, a condition of permission which is unchallenged imposes the requirement of a s.48 financial contribution towards roads which will benefit the development. I further note that the applicant's holding is fragmented as illustrated in the submitted maps in the grounds of appeal and road frontage is restricted. While it includes available road frontage in the tract of land to the north it is along a busy regional route - the R461 - a class of roads where new entrances are to be discouraged to ensure the efficient and safe operation. I further note that these lands appear to be crops/tilled land and that encroachment of housing may compromise its viability – this would be contrary to the Climate Action Plan which aims to extend such agricultural uses.

- 7.4.2 The applicant also raises concerns about the design detail with particular reference to the surface water run-off and the underlying structural implications of road works and impact on the appellants property which lower lying than the section of road to be upgraded. I note that the Area Engineer is involved in the design and that this would address surface water run-off. I do not consider it to be within the scope of the planning application to specific detailed road design external to property other than to ensure that sufficient sightlines are present and that works are in accordance with the detailed requirements of the planning authority. The matter of damage to private property is a civil matter and planning permission does not override obligations in this regard. I further note that the road improvements are to be carried out under road opening licence arrangement which offers a further safeguard to ensure good standard of practice.
- 7.2.5. The appellant also raises concerns about restricted sightlines from their property and a reliance on sound to alert to oncoming traffic. I consider this is matter for the appellants to address. The existence of their home should not sterilise the use of public road from modest traffic intensification of existing uses. I do not consider this to be reasonable grounds for refusal.
- 7.2.6. On balance I consider the provision of the proposed entrance together with road improvement works would not prejudice public safety by reason of traffic hazard.

7.2.7. The final matter relates to headlights and disturbance to the applicant. As the road is in existence albeit of substandard surface finish, I do not consider this to constitute reasonable grounds to restrict the subject development. The proposed is otherwise of a nature that would not unduly injure residential amenities.

### **7.3. Other matters**

7.3.1. Should the Board be of a mind to grant permission, I recommend conditions substantially in accordance with the nature of conditions in the planning authority's decision. I recommend however that a condition regarding invasive species be included having regard to the council's public notice of such species in the lands a few hundred metres to the southeast fronting the access road. This should also be incorporated into a construction management plan, also recommended, in order to control the risk of spreading invasive species as part of overall good construction practice.

### **7.4. Appropriate Assessment**

7.4.1. Having regard to the nature and scale of the development proposed, a single house and wastewater treatment system in the rural area, and to the nature of the receiving environment, remote from and with no hydrological or ecological pathway to any European site, no appropriate assessment issues arise. 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**

I recommend a grant of permission based on the following reasons and considerations.

## 9.0 Reasons and Considerations

Having regard to national policy for rural housing as set out in the National Planning Framework (2018) and the Sustainable Rural Housing Guidelines for planning authorities (2005) together with the provisions of the Clare County Development Plan 2018 – 2023 and the demonstrable need for a dwelling house as part of the farming of the associated lands in the applicant's ownership, it is considered that, subject to conditions, the proposed development of the site for residential use ancillary to the farming activity and as revised in further information, would be acceptable in principle. Furthermore it is considered that the residential traffic generated by the addition of a dwelling for the applicant who presently commutes to farm the land would be negligible and that subject to the proposed upgrading works prior to the commencement of the house construction work and in accordance with the requirements of the county council, the proposed development would not constitute a traffic hazard and would be acceptable in terms of residential amenity. The proposal would therefore be in accordance with the proper planning and sustainable development of the area.

### Conditions

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 5th day of July 2021 and by the further plans and particulars received by An Bord Pleanála on the 14th day of October 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

- 2 (a) The proposed development when completed shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of least seven years thereafter . Prior to commencement of development the applicant shall enter into a written agreement with the planning authority under section 47 of the planning and Development Act 2000 to this effect.
- (b) Within to month of the occupation of the proposed dwelling the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with the Paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession of the occupation of the dwelling by any person deriving title form such sale.

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

- 3 No development shall commence on site until the access road serving the site has been upgraded to the satisfaction of the planning authority. Full details of all proposed road upgrade works (which shall be caried out in conjunction with the Killaloe Municipal District Office) shall be submitted to and agreed with the planning authority prior commencement of development on site. All such works shall be carried out at the applicant's expense.

**Reason:** In the interest of traffic safety and orderly development.

- 4 (a) The entrance gate to the proposed house shall be set back not less than 2.4m from the edge of the road. Wing walls forming the entrance shall be splayed at an angle of 45 degrees or bel mouthed to provide a width of at least 13.5m at the fence line and shall not exceed one metre in height.
- (b) The finished level of the recessed entrance shall be the same level as that of the road at the entrance gates and the gradient of the driveway inside the entrance gates shall not exceed 3% for the first seven metres adjacent to the carriageway of the road fronting the entrance.
- (c) The existing front boundary hedge shall be retained except to the extent that its removal is necessary to provide for the entrance to the site.

**Reason:** In the interest of traffic safety and visual amenity.

- 5 The site shall be landscaped using only indigenous deciduous trees and hedging species in accordance with details which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. This scheme shall include the following

(a) Retention of trees and hedges as indicated in the submitted site layout plan on 5<sup>th</sup> August 2021 and measures to ensure same,

(b) The establishment of a hedgerow along all side and rear boundaries.

Any plants which die are removed or become seriously damaged or diseased within a period of 5 years of the completion of the development shall be replaced within the next planting season with others of a similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the developemtn and assimilate it into the surrounding rural landscape in the interest of visual amenity.

- 6 The water supply to serve the proposed dwellings shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

- 7 The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development and control measures to prevent the spread of invasive species, including hours of working, traffic management, noise management measures and off-site disposal of construction waste.

**Reason:** In the interests of public safety and residential amenity.

- 8 At least one month prior to commencement of works the applicant shall submit a detailed survey and if required a management plan to deal with Invasive Weed Species identified as being present in the vicinity of the site access road. The Invasive Weed Species Management Plan shall be prepared by a relevant competent environmental consultant and shall be submitted to the planning authority for prior written agreement.

**Reason:** To prevent the spread of invasive species in the interest of biodiversity.

- 9 The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

**Reason:** In the interest of visual amenity.

- 10 The external finishes for the dwelling house shall be in accordance with details submitted to the Planning Authority on the 5th day of August 2021.

**Reason:** In the interest of visual amenity.

- 11 All public service cables for the development, including electrical and telecommunications cables shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

- 12 (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

**Reason:** In the interest of traffic safety and to prevent pollution.

- 13 (a) The proposed effluent septic system shall be in accordance with the requirements of the document entitled 'Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.≤ 10)' – Environmental Protection agency , 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

(b) Treated effluent from the septic tank system shall be discharged to a raised percolation area which shall be provided in accordance with the requirements of the document entitled 'Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.≤ 10)' – Environmental Protection agency , 2009.

(c) Within three months of the first occupation of the dwelling the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the raised percolation area has been constructed in accordance with the standards set out in the EPA document.

**Reason:** in the interest of public health.

- 14 Water supply and drainage arrangements for the site, including the attenuation and disposal of surface water, shall comply with the requirements



of the planning authority for such works and services. In this regard details for the protection of ground and surface water from contamination by run-off from the site shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

**Reason:** In the interests of the environmental protection

- 15 The developer shall pay to the planning authority a financial contribution of €7,249 (seven thousand, two hundred and forty-nine euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

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Suzanne Kehely  
Senior Planning Inspector

5<sup>th</sup> January 2023