



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311701-21

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<b>Development</b>	Construction of a detached bungalow with a waste water treatment plant and percolation area, using existing entrance.
<b>Location</b>	Cloghadoolartry North, Fedamore, Co. Limerick.
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	211093
<b>Applicant(s)</b>	Lynsey Kavanagh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Lynsey Kavanagh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	3 <sup>rd</sup> February 2022
<b>Inspector</b>	Liam Bowe

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## **1.0 Site Location and Description**

- 1.1. This appeal relates to a rural site of 0.4 hectares located approx. 3.2km to the southwest of the Ballyneety village in County Limerick. The site is accessed by means of a laneway off a local road, which is a cul-de-sac, and extends to the appeal site. The appeal site is currently under grass and is relatively flat. There are open drains immediately to the west and north of the site. The site is rectangular in shape and only abuts the laneway at its access point. There is a cottage immediately adjacent with an associated yard. There is a dwelling approx. 100m to the east, which uses the laneway for access also. There are two farmyards to the east, both of which are accessed from the laneway.
- 1.2. The site is located in 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.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises construction of a single storey house, installation of a domestic wastewater treatment system (DWWTS), connection to a group water scheme and associated site development works at Cloghadoolartry North, Fedamore, County Limerick.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated 22<sup>nd</sup> September 2021 Limerick City and County Council issued notification of the decision to refuse permission for four reasons, relating to the following: 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 and would materially contravene the objective of the plan relating to rural settlement, that the proposed development would be prejudicial to public health due to inadequate

percolation, that it is located on a substandard road, and that it also constituted haphazard backland development.

### 3.2. **Planning Authority Reports**

#### 3.2.1. **Planning Reports**

The Planner's report (22/09/'21) stated that the location of the site is in an Area Under Strong Urban Influence in the Limerick CDP, Objective RS01 applies and that it was considered that the applicant 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 is no likely potential for significant effects to the Natura 2000 site.

#### 3.2.2. **Other Technical Reports**

**Area Office** – The Roads Engineer noted that the required sightlines are achievable, recommended conditions regarding disposal of surface water, and noted that the road is substandard and only capable of facilitating one vehicle at a time.

**Environment** – The Executive Engineer stated that the site is flat with impermeable clay subsoils and an elevated water table and that the disposal of treated effluent would not be achievable.

### 3.3. **Prescribed Bodies**

None.

### 3.4. **Third Party Observations**

None.

## 4.0 **Planning History**

None referenced in the report of the planning officer.

## 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.

### **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'.

It is an objective of the Council to permit single houses in the area under strong urban influence to facilitate those with a genuine rural housing need in the area. 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 owner or his/her son or daughter; 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).

#### **5.4. Natural Heritage Designations**

There are no European Sites in the vicinity of the appeal site. The closest site is the Lower River Shannon SAC (Site Code: 002165) approx. 12.2km to the east.

The Skoolhill pNHA (Site code: 001996) is located 1.1km to the south of the appeal site.

## 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 McMahon & Hardiman Consulting Engineers Limited on behalf of the first party, Lynsey Kavanagh, and stated owner of the appeal site. The main points made can be summarised as follows:

- Contend that the Planning Authority's assessment of the Site Characterisation Report appears to be based on experience on nearby sites. The site passed the Site Characterisation test.
- Contend that first party comes within the scope of the housing need criteria in the Development Plan.
- Notes the report of Roads Section, Limerick City & Council states that sightlines are available, that the road can facilitate one vehicle at a time and does not recommend refusal. Comments that the road only serves one other dwelling and some agricultural buildings – letter of support included from occupier / owner of the other dwelling.
- Contend that the road frontage is limited solely because the appeal site is located at the end of a cul-de-sac and the proposed house does not overlook, shadow or interfere with any other dwellings.

### 6.2. Planning Authority Response

None received.

## 7.0 Assessment

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

- Rural Housing Policy
- Traffic safety and site access
- Ground Water
- Backland development
- 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. From my observations, 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. The First Party's consulting engineer contends that the First Party comes within the scope of the housing need criteria in the Development Plan as she currently resides in her parents' house, which is located a few hundred metres from the appeal site. It is stated that the first party has resided in the area for over 10 years. It is further stated that her family own a landholding of around 10 hectares in the area. An email from Limerick City & County Council is included with the appeal confirming that the first party is an approved housing applicant since 2010.
- 7.1.7. I note from the Planning Officer's report that the First Party did not complete a supplementary application form or provide any documentary evidence of her address with the planning application. The First Party has submitted a letter from her parents, a letter from a GP practice and an email from the Housing Section in Limerick City & County Council. No details from state bodies/agencies confirming the First Party's address and residence in the local area are submitted and no details of the stated 10

hectare family landholding are provided. No details of any economic need to reside at this location are submitted.

- 7.1.8. On the basis of the above, I do not consider that the applicant has demonstrated that she meets the requirements of the Limerick County Development Plan relating to rural housing in an area under strong urban influence such as the appeal site. The applicant has not, therefore, demonstrated that she can meet the requirements of the settlement policy as set out in RS 01. Given the location of the appeal site in an area designated as a 'rural area under strong urban influence' and the circumstances of the applicant, I consider that the proposed development would be contrary to the National Planning Framework and the Sustainable Rural Housing guidelines.
- 7.1.9. In conclusion, I consider that the applicant has not demonstrated a rural housing need 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.
- 7.1.10. 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.
- 7.1.11. 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.

## **7.2. Traffic safety and site access**

- 7.2.1. The First Party notes the report of Roads Section, Limerick City & Council which states that sightlines are available, that the road can facilitate one vehicle at a time and does not recommend refusal. The First Party comments that the road only serves one other house and some agricultural buildings, and a letter of support is included with the appeal from the occupier / owner of this other house.
- 7.2.2. On the day of my site inspection, I noted that adequate sightlines are available at the junction of the laneway accessing the site and the public road approx. 300m to the east of the appeal site. I also noted that sightlines at the site entrance would not present as an issue as it is located at the end of this cul-de-sac.
- 7.2.3. Based on my inspection of the site, I observed that the laneway is seriously substandard in terms of width and alignment and that it is not possible for vehicles to pass for most of the length of the laneway. It would only be possible for vehicles to pass at existing entrances on the laneway. I observed two farmyards, a dwelling to the east of the appeal site and an unoccupied cottage immediately adjacent to the appeal site serviced by the laneway.
- 7.2.4. In conclusion, I consider that the appeal site is located on a minor road/laneway which is seriously substandard in terms of width and alignment and, consequently, that the proposed development would result in a traffic hazard due to this restricted access.

## **7.3. Ground Water**

- 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 R2<sup>2</sup> or

higher)<sup>1</sup>. The new Code requires a trial hole depth of at least 2.1m or to bedrock (or 3m for GWPRs of R2<sup>2</sup> or higher).

- 7.3.3. Based on the test results (T value = 33.28, P value = 33.3, and R1 Ground Water Response), the First Party proposed the installation of a proprietary wastewater treatment system with a sand polishing filter to treat the wastewater due to the lack of drainable subsoil beneath the site.
- 7.3.4. The First Party's consulting engineer contends that the Planning Authority's assessment of the Site Characterisation Report appears to be based on experience on nearby sites and not the fact that the appeal site passed the Site Characterisation test.
- 7.3.5. On the day of my site inspection, I noted the lowlying nature of the site and heavy nature of the land. This is consistent with the results contained within the Site Characterisation Form whereby the soil in the trial hole is described as clay. Further to this, the precise depth of the water table is not clear and is described to be at a depth of at least 1.2m. I note the Council's engineer raising concerns about the lack of permeability of the soil, which was confirmed in the Site Characterisation Report, and highlighting his experience of an elevated water table on nearby sites.
- 7.3.6. 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 clay.
- 7.3.7. In addition to the conditions on the appeal site, I note that there are approximately 30 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

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

treatment systems on individual sites in this area would pose a risk to groundwater in the area.

- 7.3.8. I conclude, based on the material submitted with the application and my observations of the site, that the application site is unsuitable for the safe disposal of domestic effluent and, notwithstanding the mitigation measures proposed in the form of the installation of a proprietary wastewater treatment system. I therefore agree with the Planning Authority that the proposed development would create a serious risk of ground water pollution and would be prejudicial to public health.

#### **7.4. Backland development**

- 7.4.1. The Planning Authority's fourth reason for refusal was based on the site configuration and limited road frontage, which it deemed to constitute haphazard backland development and, consequently, would have a detrimental impact on the amenities of existing residential properties. I note the Planning Officer's comments in this regard and the basis for the reason for refusal: 'It appears that the proposal would represent backland development'.
- 7.4.2. The First Party contends that the road frontage is limited solely because the appeal site is located at the end of a cul-de-sac and the proposed house does not overlook, shadow or interfere with any other dwellings.
- 7.4.3. The proposed house is modest in design and scale. It is a simple single storey building, 5.89m in height over finished floor level, with plastered walls and concrete roof tiles/slates as proposed finishes. I consider the design and scale of the proposed house to be acceptable and not such as to have a significant impact on the visual amenity or character of the area.
- 7.4.4. On the day of my site inspection, I noted that the appeal site was located approx. 300m down a laneway from the public road. However, in order for a development to be considered backland, I consider that it would need to be sited directly to the rear of another house or houses. I confirm that this is not the case in this instance and, consequently, that no residential amenities will be adversely impacted.
- 7.4.5. On this basis, I do not consider that the appeal site to be backland in nature and, consequently, would not seriously detract from the residential amenities of other house in the vicinity or the visual amenities of the area.

## **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 (Lower River Shannon SAC (Site code: 002165)) which is 12.2km to the east, 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 lack of documentation on the file including details of the applicant's economic need to reside in this area,

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 poor soil conditions and high water table in the area, to the proliferation of domestic wastewater treatment systems in this rural area, and to the Sustainable Rural Housing Guidelines for Planning Authorities, 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.

3. The site is located on a minor road which is seriously substandard in terms of width and alignment. The traffic generated by the proposed development would therefore endanger public safety by reason of traffic hazard and obstruction of road users.

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Liam Bowe  
Planning Inspector

17<sup>th</sup> February 2022