



An
Bord
Pleanála

Inspector's Report ABP-312270-21

Development	Construction of dwelling and all associated site works.
Location	Cloncolman, Lissycasey, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	211073
Applicant(s)	John & Sinead McHugh
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	John & Sinead McHugh
Date of Site Inspection	25 th February 2022
Inspector	Liam Bowe

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1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area of south County Clare, approximately 1.5km to the east of Lissycasey and 13km to the south west of Ennis. The general area is accessed via the N68 national road which connects Kilrush and Ennis. The site is then accessed via a local road off the N68 to the east of Lissycasey village. This local road is narrow, with room for just one car, but includes a number of pull-in points to facilitate passing cars. The Owenslieve River flows in an eastwards direction approximately 200m to the north of the appeal site. There are houses immediately to the east, west and opposite (south) of the appeal site and there are a significant number of one-off houses along this local road.
- 1.2. The appeal site is 1.049 ha. and occupies an area of road frontage which extends to approximately 60m. The appeal site falls away from the public road to the north. There is a low earthen mound along the roadside boundary, the western and eastern site boundaries are established hedges / hedgerows and the northern site / field boundary is a low hedgerow. There are utility poles on the southern / roadside boundary and within the appeal site. The site is grassland with a significant covering of reeds and it did not appear to be in agricultural use on the day of my site inspection.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a house, domestic garage, installation of a domestic wastewater treatment system (DWWTS), connection to the group water scheme and associated site development works at Cloncolman, Lissycasey, County Clare.
- 2.2. The proposed dwelling is two-storey in design with a ridge height of 9.585m, with render finish, some stone cladding and blue / black slates. The proposed dwelling and domestic garage will have areas of 314m² and 51m², respectively. The existing western, eastern and northern site boundaries are to be retained. A stone wall is indicated, although not specified, on the southern / roadside site boundary.

3.0 Planning Authority Decision

3.1. Decision

By order dated 1st December 2021 Clare County Council issued a notification of decision to Refuse Permission due to non-compliance with rural housing policy and due to the adverse visual impact that would be caused by the design, height, bulk and scale of the proposed house.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer stated that the location of the site is located in an area designated as an Area of Special Control and an area under strong urban pressure as per the Clare County Development Plan, that Objective CPD 3.11 applies and that it was considered that the applicants had not demonstrated compliance with this objective, 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.

3.2.2. Other Technical Reports

Roads – The Roads Engineer report dated 11th November 2021 stated that the sightline visibility met the requirements and recommended that permission be granted, subject to conditions.

Environment – The Environmental report dated 11th November 2021 sought details of revisions to the proposed secondary wastewater treatment system due to the type of soil present (gley) on the appeal site.

3.3. Prescribed Bodies

Irish Water – No objection. Conditions recommended.

Irish Aviation Authority – No observations to make.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

There is no planning history on the appeal site 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; and
- 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. The guidelines state that development management policy should be tailored to manage housing demand appropriately within these areas.

5.3. Clare County Development Plan 2017-2023

- 5.3.1. The site is located in the open countryside, in a rural area where there is no specific zoning afforded to the site. The site is located within an area identified as being under Strong Urban Pressure, referred to as an Area of Special Control in the Plan.
- 5.3.2. Section 3.2.5 of the Plan deals with Single Housing in the Countryside, and within Areas of Special Control. As such, Development Plan Objective CDP3.11 – New Single Houses in the Countryside within the ‘Areas of Special Control’ is relevant and states as follows:

It is an objective of the Development Plan:

- a) In the parts of the countryside within the ‘Areas of Special Control’ i.e.:
- Areas under Strong Urban Pressure (See chapter 17);
 - Heritage Landscapes (See Chapter 13);
 - Sites accessed from Scenic Routes (See Chapter 13 and Appendix 5).

To permit a new single house for the permanent occupation of an applicant who falls within one of the Categories A or B or C below and meets the necessary criteria.

- b) To ensure compliance with all relevant legislation as outlined in Objective CDP2.1 and have regard to the County Clare House Design Guide, in particular with respect to siting and boundary treatment.

Category A – Local Rural Person (which includes 3 criteria)

Category B – Persons working full time or part-time in rural areas.

Category C – Exceptional Health and / or family circumstances.

5.3.3. Development Plan Objective CDP13.2: Settled Landscapes

It is an objective of the Development Plan:

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, and
- 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,
- The site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads and
- The 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.

5.3.4. Other relevant objectives and sections of the plan include:

Appendix 1 – Development Management Guidelines where the following is relevant:

A1.3.1 – Rural Residential

- Development which deals with matters relating to siting and design, road frontage, plot size and wastewater treatment systems.

5.4. **Natural Heritage Designations**

The site is not located within any European site. The closest Natura 2000 sites are the Lower River Shannon SAC (Site code: 002165) and the River Shannon and

River Fergus Estuaries SPA (Site code: 004077) both located approximately 4.7km to the east.

5.5. EIA Screening

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 PND Building Consultancy, Kilrush House, Frances Street, Kilrush, Co. Clare on behalf of John and Sinead McHugh and the main points made can be summarised as follows:

- States that the application was made on the basis of the site being an infill site in accordance with Development Plan Objective CDP3.13 where the provisions of Objective CDP3.11 (local need requirement) will not apply.
- Highlight the reasons why they consider this is an infill site with 10 houses grouped together along this stretch of road and give examples of similar applications where planning permission has been issued.
- Contend that the design of the dwelling should not be a reason for an outright refusal of permission without being given the opportunity to revise the design under a further information request.
- Contend that there are other houses constructed in the Lissycasey area that are similar in scale and design to the proposed house under this appeal.

6.2. Planning Authority Response

The Planning Authority has responded to the grounds of appeal by highlighting the gaps between sites / houses in proximity to the appeal site and confirming that, consequently, this cannot be considered an infill site. Further to this, the Planning

Authority also highlight that the size of the overall site is 1 ha. which is four times the size of an average site in the countryside.

7.0 Assessment

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

- Rural Housing Policy
- Visual Impact
- 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 appeal site can be considered an infill site or not. If the appeal site is considered an infill site, an application / appeal for a house on the site would be assessed under Objective CDP3.13 of the Development Plan and, if it is not considered an infill site, an application / appeal for a house on the site would be assessed under Objective CDP3.11 of the Development Plan.

7.1.2. The applicants have not demonstrated any economic or social need to live in this rural area that meets the requirements of the rural housing policy set out in the development plan as the application and, subsequently, this appeal was made on the basis of the site being an infill site in accordance with Development Plan Objective CDP3.13 where the provisions of Objective CDP3.11 (local need requirement) do not apply.

7.1.3. In order to consider whether the proposed development on the appeal site can be assessed as being on an infill site the key wording in the Development Plan under Objective CDP3.13 is as follows:

“In the case where there is a grouping of rural houses, the development of a small gap site, sufficient to accommodate only one house, within an otherwise substantial and continuously built-up frontage, will be permitted provided it respects the existing

development pattern along the frontage in terms of size, scale, siting, plot size and meets normal site suitability requirements.”

- 7.1.4. The appeal site is located between two existing houses however, the roadside / southern boundary of the appeal site is approximately 60m in length which is almost twice the length of the roadside boundary of the two adjacent sites, and it is 1.049 ha. in size which is significantly larger than the size of the adjacent plots. There is another dwelling further to the west however, there is a large gap to this site also. On this basis, I am satisfied that this is not a small gap site and is not a substantial and continuously built-up frontage as described under Objective CDP3.13 of the Development Plan and, therefore, cannot be considered an infill site.
- 7.1.5. The site is located in an area identified in the Clare County Development Plan 2017-2023 as an ‘Area of Special Control’ and an ‘Area Under Strong Urban Influence’ 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
- 7.1.6. 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.
- 7.1.7. The policies set out in the Sustainable Rural Housing Guidelines have been reinforced in the more recently published National Planning Framework (2018). In 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.

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

- 7.1.8. 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 applicant's housing needs could clearly be met within the village of Lissycasey or alternatively within another town or settlement in the vicinity of the appeal site.
- 7.1.9. On the basis of the above, I do not consider that the applicants meet the requirements of the Clare County Development Plan relating to rural housing in an area designated as 'Area of Special Control' such as the appeal site. Given the location of the appeal site in an area also designated as an 'Area Under Strong Urban Influence' 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 CDP3.11 of the Development Plan

7.2. Visual Impact

- 7.2.1. As stated earlier in this report, the proposed development comprises the construction of a two-storey house with a ridge height of 9.585m, with render finish, some stone cladding and blue / black slates. The existing western, eastern and northern site boundaries are to be retained, and the southern / roadside boundary is to be replaced by a stone wall.
- 7.2.2. The Planning Authority's principal objection in this regard is that the proposed development would constitute an incongruous feature on the landscape due to its height, scale and bulk together with the fenestration arrangement, design features (porch) and proportions. The First Party contends that the design of the dwelling should not be a reason for an outright refusal of permission without being given the opportunity to revise the design under a further information request and that there are other houses constructed in the Lissycasey area that are similar in scale and design to the proposed house under this appeal.
- 7.2.3. On my site inspection, I observed a number of other houses along this stretch of local road of similar scale and bulk to the proposed house under this appeal. However, these houses were not as high as the proposed house and were more

traditional in terms of design. I agree with the Planning Authority's assessment and concerns in terms of the proposed design which I consider to be a suburban type of house, and I consider that the proposed house would form an incongruous feature on this rural landscape.

- 7.2.4. In conclusion, having regard to the height, scale and bulk of the proposed house together with the design being located within a 'Settled Landscape', I consider that the proposed dwelling will have a negative visual impact on the sensitive rural landscape within which it sits. Given this, I consider that the proposed development would be contrary to Objective CDP 13.2 of the current Development Plan and, therefore, I recommended that permission be refused on this basis.

7.3. **Ground water**

- 7.3.1. The Planning Report and accompanying referral advice from the Environmental Section highlighted a concern within the Site Characterisation Report and on-site characteristics. Although this did not manifest in a reason for refusal, I consider that this is not a new issue and merits further assessment.
- 7.3.2. Objective CDP8.27 in the Clare County Development Plan states that it an objective 'to permit the development of single dwelling houses only where it is demonstrated to the satisfaction of the Planning Authority that the proposed wastewater treatment system is in accordance with the 'Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses EPA (2009)'. 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). I note the results within the Site Characterisation Report stating the groundwater protection response to be R2¹ and the water table to be at a depth of 1.7m.
- 7.3.3. The First Party proposes to treat the wastewater by means of a secondary treatment system in the form of a Bio Tank and discharge to a polishing filter. I note the concerns outlined in the Environmental Report prepared by the planning authority

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

regarding the type of soil in the area and the time of year that the percolation tests were carried out i.e., in May when the water table would be at its lowest.

- 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 soil on site as gley and, on the day of my site inspection, I noted the poor draining nature of the appeal site with a significant quantity of reeds present.
- 7.3.5. In addition to the conditions on the appeal site and highlighted by the Frist Party, there are approximately 10 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. **Other Issues**

7.4.1. Traffic safety

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. Having regard to the limited number of additional vehicular movements arising from a single dwelling and the nature of the proposed site access, I consider that the proposed development would not result in a traffic hazard.

7.4.2. Development Contributions

I refer to the Clare County Council Development Contribution Scheme 2017-2023. It is recommended that, should the Board be minded to grant permission, a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

7.5. **Appropriate Assessment**

- 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 (the Lower River Shannon SAC (Site code: 002165) and the River Shannon and River Fergus Estuaries SPA (Site code: 004077) both located approximately 4.7km 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**

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

9.0 **Reasons and Considerations**

1. Having regard to:

- the location of the site within a rural area identified as being an area 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 and an 'Area of Special Control' under the Clare County Development Plan 2017-2023,
- 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 Clare County Development Plan 2017-2023 and specifically Objective CDP3.11, which facilitates the provision of rural housing for local rural people building in their local rural area, and
- The absence of documentation on the file outlining the applicant's links to this rural area,

the Board could not be satisfied on the basis of the information on the file that the applicants come 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 soil conditions, and the high water table recorded in the site Characterisation Report, to the proliferation of domestic wastewater treatment systems in this rural area, and to the provisions of 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.

3. Having regard to the design, height, bulk and scale of the proposed house, and its location within a designated 'Settled Landscape', it is considered that the proposed development would constitute an obtrusive feature on the landscape at this location, have a negative visual impact on this sensitive rural landscape within which it sits and would be contrary to Objective CDP13.2 of the Clare County Development Plan 2017-2023. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Liam Bowe
Planning Inspector

25th April 2022