



An
Bord
Pleanála

Inspector's Report

ABP-312742-22

Development	Construction of a house and garage
Location	Shanbally, Norwood, Nenagh, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	211518
Applicant(s)	Paddy Grace
Type of Application	Outline Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Kate Duggan
Observer(s)	None
Date of Site Inspection	16 th March 2023
Inspector	Emer Doyle

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.403ha, is located along on a local road c. 0.5km from the R445 and c. 7km to the east of Nenagh, Co. Tipperary.
- 1.2. The lands were formerly associated with Shanbally House and Demesne, a 200 acre Georgian estate and farmland. Shanbally House is a a Protected Structure (Ref. TRPS355).
- 1.3. The lands are currently in agricultural use and lands adjacent to the site are also in agricultural use.

2.0 Proposed Development

- 2.1. The proposed development comprises of the following:
 - Outline planning permission for the construction of a dwelling and garage
 - New well
 - New entrance and driveway
 - All associated site works

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to seven conditions. Condition 2 required the applicant to occupy the proposed dwelling as a place of permanent residence for a period of 7 years. Condition 5 required that the subsequent application for permission shall demonstrate that the vehicular entrance has suitable sightlines and stopping distances of 90m in both directions. Condition 6 stated that the outline permission granted was for a single storey dwelling and garage which shall have an overall height not exceeding 6.5m and 4.5m respectively from existing ground level to proposed ridge height. All other conditions are standard for a development of this type.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planner's report considered that the applicant complies with the rural housing policy. It was noted that the report from the Area Engineer stated that the road was wider than 4.25m and that 90m sightlines could be achieved at the entrance. The planner recommended a condition in this regard.

3.2.2. Other Technical Reports

Area Engineer: Report dated 26th of November 2021 noted that there were adequate sightlines for both 70 and 90 metre requirements. A condition was recommended which required the piping of the drainage channel at the site entrance.

3.3. Prescribed Bodies

3.3.1. No reports.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

ABP 312448-22

Leave to appeal granted by the Board for the following reasons and considerations:

It is considered that it has been shown that –

- (i) the development, in respect of which a decision to grant permission has been made, will differ materially from the development as set out in the application for permission by reason of condition number 5 imposed by the planning authority to which the grant is subject, and
- (ii) the imposition of condition number 5 will materially affect the applicant's enjoyment of the land adjoining the land in respect of which it has been decided to grant permission.

5.0 Policy Context

5.1. National Planning Framework

- 5.1.1. **National Policy Objective 15** Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- 5.1.2. **National Policy Objective 19** makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and 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

- 5.2.1. The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

5.3. Architectural Heritage Protection Guidelines for Planning Authorities (Department of Arts, Heritage and the Gaeltacht 2011)

- 5.3.1. The guidelines deal specifically with development within the curtilage of protected structures at section 13.5.

5.4. Tipperary County Development Plan 2022-2028

- 5.4.1. Relevant Sections include the following:

- Figure 2.4 Core Strategy Map- Site location is identified as an area under urban influence.
- Section 5.5 Residential Development in Open Countryside
- Section 5.5.1 Rural Area Designations
- Figure 5.3 Rural Areas with Strategic Transport Corridors and Primary Amenity Areas
- Table 5.2 Rural Housing Technical Principles for Applicants
- Table 5.3 Housing Need Definitions
- Section 5.6 Planning Policy
- Chapter 13 Built Heritage
- Section 13.4 Record of Protected Structures
- Policy 13-1
- Volume 3 - Development Management Standards - Section 6 Parking, Traffic and Road Safety.

5.5. Natural Heritage Designations

5.5.1. None relevant.

5.6. EIA Screening

5.6.1. Having regard to the small scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows:

- Concerns in relation to impact on Shanbally House and Demesne which is a protected structure – RPS Ref. S355. I refer the Board to the report included in the appeal ‘Architectural Heritage Impact Assessment Opinion’ in this regard.
- The applicant does not have a housing need as he has a home in Dublin where he is in full time employment. His family home is 6.5km from the site.
- The applicant does not come within the scope of the housing need criteria as set out in the current Development Plan or the Sustainable Rural Housing Guidelines and does not comply with Policy Objective 19 of the NPF.

6.2. Applicant Response

6.2.1. The response submitted on behalf of the applicant can be summarised as follows:

- The primary focus of the appeal is the impact on Shanbally House (protected structure). A report is attached to the appeal from ACP Architectural Conservation Professionals which contradicts a number of opinions of David McHugh.
- A revised drawing has been submitted which indicates sightlines of 90m in both directions.
- The photomontages submitted by the applicant do not reflect what is proposed and a mature tree will hide the proposed development.
- The applicant is also open to planting five mature deciduous trees along the boundary at both sides of the existing mature tree.
- The appeal to An Bord Pleanála references that the applicant may not comply with the changes to the updates of the Draft County Development Plan which is not yet enacted. We believe that this point is of absolutely no significance

as the applicant complies with the current Development Plan which is in force today and was in force when the applicant lodged this permission.

6.3. **Planning Authority Response**

- None.

6.4. **Observations**

- None.

6.5. **Further Responses**

6.5.1. A further response was submitted on behalf of the appellant which can be summarised as follows:

- The applicant is not intrinsic to the subject site and does not have a housing need as he continues to live full time in Dublin in a house in his ownership.
- There is no evidence that the applicant has a farming qualification or that farming makes any contribution to his livelihood.
- A reply is attached to the response from Mr. David McHugh, Conservation Architect which states that he 'is unconvinced that hiding the proposed house and outbuildings behind the existing tree is a credible mitigation of the visual impact.'
- A response is also attached from Rob Shanahan Architect states that the single deciduous tree proposed for screening is not on the applicant's site layout plan. It also considered that the images submitted are based on known levels.
- It is pointed out that there may be more appropriate locations on the landholding towards the southern end further removed from Shanbally House.

7.0 Assessment

7.1. I consider that the principle planning issues are as follows:

- Rural Housing Policy
- Impact on Architectural Heritage
- Traffic Safety
- Public Health
- Appropriate Assessment

7.2. Rural Housing Policy

7.2.1. The National Planning Framework (NPO 19) states that a distinction should be 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, single housing in the countryside may be facilitated where there is a demonstratable economic or social need to live in a rural area.

7.2.2. The Tipperary County Council Development Plan 2022-2028 makes a distinction in line with NPF policy NPO 19 between rural 'Areas under Urban Influence' and 'Open Countryside' areas having consideration to demand for 'urban generated' housing in certain areas and having consideration to the protection of the viability of smaller towns and rural settlements. The current site is identified on Figure 2.4 Core Strategy Map as an area under urban influence. The policy set out in Section 5.5.1 outlines that the approach in areas under urban influence is to facilitate the provision of single housing in the countryside based on the core consideration of demonstratable 'economic or social' need to live in a rural area, and siting, environmental and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements. Table 5.3 of the Development Plan sets out a definition of 'Social' need in the context of rural housing policy as follows: (a) A person who has resided in a rural area (as defined in Table 2.4 Chapter 2 Core Strategy: (i) Within 5km of the site where they intend to build for a substantial period of their lives within a 'Primary Amenity Area', (ii) Within 10km of

the site where they intend to build, for a substantial period of their lives (10 Years) within an 'Area of Urban Influence'.

- 7.2.3. The site is not located within a Primary Amenity Area identified by the Plan and the site is located within an Area of Urban Influence. As such the 10km distance applies in this case.
- 7.2.4. In terms of the information submitted with the application and appeal, I note that the applicant's family home is located c. 5km from the site. His family own 'Grace Sawmills' based on the outskirts of the village of Toomevara and he is the future part owner of the sawmills and the director of 'Spellings for Me' which is run from his family home on the outskirts of the village of Toomevara. His family own a small landholding and the applicant will inherit these lands on completion of his Green Cert. A significant amount of documentation has been submitted with the application to demonstrate his long term links with the area.
- 7.2.5. I note that the appellant claims that the applicant owns a house and lives in Dublin. This issue was partially addressed in the appeal response wherein it is stated that the applicant ceased working in Dublin in 2020 and has lived in Toomevara since then. The ownership of a house in Dublin was not addressed in the appeal response however housing need as set out in Table 5.2 of the Development Plan provides that 'an applicant seeking a new rural dwelling must be building their first home for their permanent occupation, demonstrate a housing need, and must not already own a dwelling in a rural area.'
- 7.2.6. The documentation as submitted with an application is the only acceptable way to determine a person's compliance with National and Local Policy. National Policy Objective 19 clearly sets out that in rural areas, single housing is to be facilitated '... in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area' subject to design considerations. I note that the applicant was deemed to comply with the Development Plan Policy set out in SS4 in now expired Development Plan. I am satisfied that the applicant also comes within the definition of social need as set out in the current Development Plan 2022-2028 which is the operative Development Plan at present.
- 7.2.7. Nevertheless, in terms of the Sustainable Rural Housing Guidelines and the NSS Rural Area Types, the appeal site is located in an Area Under Strong Urban

Influence. Consideration must be given to national policy with the site located in an area under urban influence based on its classification under national policy. National policy set out under the Objective 19 of the National Planning Framework and the guidance set out in the Sustainable Rural Housing Guidelines emphasises the requirement to demonstrate an economic, social or functional need to live in a rural area under strong urban influence such as this.

7.2.8. In this case the applicant clearly has links to the rural area and a desire to reside in the area. However, based on the fact that his current occupation both as a future part owner of a sawmills based close to the village of Toomevara and as a director and software developer of a company based at his home, is not rurally based and not intrinsically linked to the rural area, the applicant does not have a defined social or economic need to live in this area of strong urban influence and the development would be contrary to Objective 19 of the National Planning Framework and to the guidance set out in the Sustainable Rural Housing Guidelines.

7.2.9. The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserved area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3. Impact on Architectural Heritage

7.3.1. The appeal site is located within an area that can be considered sensitive from an architectural heritage perspective. The proposed development would be undertaken on lands that were formerly associated with Shanbally House, a Protected Structure (Ref. TRPS355). The property comprises a substantial three storey (two storey over basement) detached early Georgian house, with attendant stables, courtyard, walled garden and demesne constructed c. 1770. Shanbally House is listed as being of Regional Importance in the National Inventory of Architectural Heritage, Reg. No. 22402119.

- 7.3.2. According to information submitted with the appeal, Shanbally House and Demesne was purchased by the Duggan Family in 2013. Since that time, the family has embarked on a programme of renovation of the house and the wider demesne in order to develop an amenity and local attraction centred around organic farming, herbal medicine and guest accommodation. Over 3.5 million has been invested to date, a significant amount of which has been invested in planting, development and cultivation of medicinal plants, herbs and gardens with funding from various bodies.
- 7.3.3. Two reports have been attached to the appeal from Mr. Ralph Wickham, Amenity and Environmental Landscape Advisors (Appendix D) and Mr. David McHugh- Architectural Heritage Impact Assessment (Appendix C). The report by Mr. Wickham describes the works that have been carried out to the grounds and gardens of Shanbally House and contains an overview of the grounds and farm in the context of enhancing biodiversity. The Architectural Heritage Opinion considers that the proposed development would have a significant adverse impact on Shanbally House and Demesne and would be contrary to best conservation practice. A number of photomontages were attached to the appeal prepared by Rob Shanahan Architects to demonstrate the potential visual impact of the construction of the dwelling house.
- 7.3.4. The response to the appeal commissioned ACP Architectural Conservation Professionals to carry out an Architectural Heritage Assessment and its potential impact on Shanbally House. It is stated that the photomontages submitted by the applicant are inaccurate in that the proposed house is located to the side of the existing tree whilst the site layout submitted shows the proposed house located directly behind the tree when viewed from Shanbally House. Further it is stated that the photomontages show a house 'floating above the landscape in a location that does in no way resemble the location for which the local authority granted permission.' To help alleviate concerns of overlooking, it is stated that the applicant is open to planting five mature deciduous trees along the boundary at both sides of the existing mature tree and a revised site layout plan is submitted in this regard.
- 7.3.5. The Architectural Heritage Protection Guidelines deal with the issue of new development within the curtilage of a protected structure (section 13.5). The Guidelines note that in certain cases there are formal relationships between the protected structure and other elements within its curtilage; for instance, the relationship with outbuildings or other landscape features.

- 7.3.6. In this case, I note that a report was carried out by Finola Reid, Historic Gardens Consultant in 2015. She noted that 'the original extent of the demesne lands was considerably bigger but seems to have been divided and reduced in size to its modern dimensions. The demesne landscape in this present ownership comprises approx. 200 acres and includes 18th century parkland, some badly depleted woodland, a large lake (recently dredged and lying empty, the site of a pleasure grounds, a limestone walled garden of rectangular shape and the 'fort' (a ringfort, or mound) which is listed on the Archaeological Inventory for Co. Tipperary.'
- 7.3.7. Since then, in addition to the on-going conservation and restoration works to the house and outbuildings, remediation and conservation works carried out to the demesne include the restoration and re-stocking of the lake, the repair and re-planting of the walled gardens, the reinstatement and planting of the main parterre to the south-east of the house facing the lake and the design and setting out of formal gardens.
- 7.3.8. The proposed dwelling is to be located to the front of the tree which is standing alone in front of the lake. I note that the appeal response submitted on behalf of the applicant states that the site layout submitted shows the proposed dwelling located directly behind the tree when viewed from Shanbally House. I note that the trees shown on the site layout are indicative only and would not be of assistance to the Board. I refer the Board instead to Views 2 and 3 attached to Appendix 3 of the appeal together with photographs of the large tree referred to in the response submitted on behalf of the applicant. I refer the Board also to photographs taken on the site inspection from both the gardens and upstairs windows of Shanbally House.
- 7.3.9. The gardens of Shanbally House have been completely renovated and restored and are currently in a significantly better condition than presented in the photographs on file. I note that the gardens are included in the NIAH Garden Survey Data Site ID 833. At the time they were included, they had not yet been restored and were not in the excellent condition they are today.
- 7.3.10. In terms of visual impact, I consider that to rely on one tree alone to shield the proposed development from the gardens is completely inadequate. In this regard, I concur with the view of Mr. David McHugh, Conservation Architect which states that

he 'is unconvinced that hiding the proposed house and outbuildings behind the existing tree is a credible mitigation of the visual impact.'

- 7.3.11. I note that this is the main argument made in the appeal response submitted on behalf of the applicant. The response also indicates that the applicant is willing to plant 5 No. mature trees to address overlooking. Overlooking is not a concern at this location and in my view, the proposal to plant 5 No. mature trees will only make a very minor difference to the visual impact.
- 7.3.12. The proposed dwelling would not be visible from the front of the protected structure having regard to the unusual site layout with the rear of the dwelling facing the public road. There would be views of the proposed dwelling from the rear of the dwelling, the landscaped gardens, lake and driveway together with fleeting views from the public road in both directions. The main focus of my concern would be from the gardens and lake of Shanbally House. There is an important visual relationship between Shanbally House and the gardens and lake and they hugely contribute to the character and setting of the structure.
- 7.3.13. I note that Condition No. 6 of the Planning Authority stated that the outline planning permission is for a single storey dwelling and garage which shall have an overall height not exceeding 6.5 metres and 4.5 meters respectively from existing ground level to the proposed ridge height. The FFL of the proposed house is stated on the site layout submitted to the Planning Authority as being 101.84m. The lower ground level of Shanbally House is stated to be 94.92m in the documentation submitted. I am satisfied that the overall ridge height of the proposed dwelling taking the condition and the stated floor level into account would be c. 108m.
- 7.3.14. It is the Policy of the Planning Authority as set out in Policy 13-1 to 'encourage and support the sympathetic restoration, re-use and maintenance of protected structures thereby ensuring their conservation and protection. In considered proposals for development the Council will have regard to the Architectural Heritage Protection Guidelines for Planning Authorities, (DAHG 2011) or any amendment thereof, and proposals that will have an unacceptable impact on the character and integrity of a protected structure will not be permitted.'
- 7.3.15. In my opinion, the gardens and pond make a substantial contribution to the Protected Structure and the placing of a house in a very visible and exposed and

open location to the front of the gardens and lake and within the curtilage of the Protected Structure would be detrimental to Shanbally House. I therefore consider that proposed development within the curtilage of the Protected Structure would be detrimental to the preservation of its character and setting and that the proposed development would be contrary to Policy 13-1 of the Tipperary County Development Plan 2022-2028.

7.4. Traffic Safety

- 7.4.1. I note that Condition No. 5 of the grant of permission by Tipperary County Council required that the subsequent application for permission shall demonstrate that the vehicular entrance to the proposed dwelling site has suitable sightlines and forward stopping distances of 90m in both directions to allow for safe traffic movements pertaining to that junction.'
- 7.4.2. The Board granted leave to appeal to the appellant having regard to the imposition of Condition No. 5.
- 7.4.3. The report from the Area Engineer noted that the road was greater in width than 4.25m and considered that the site had adequate sightlines of both 70m and 90m.
- 7.4.4. The response to the appeal included a map which demonstrated that 90m sightlines were available at the proposed site entrance. I am of the view that this map is satisfactory and 90m sightlines can be provided at the proposed entrance.
- 7.4.5. I note that Table 10.1 of the now expired Development Plan set out sightline requirements for local roads greater than 4.25m wide of 90m in both directions. A new Development Plan has now been adopted – Tipperary County Development Plan 2022-2028. Appendix 6 – Development Management Standards sets out the sightline requirements in Section 6, Table 6.2. For rural non-national roads with a mandatory speed limit of 80km/h, sightlines of 160m in both directions are required.
- 7.4.6. I am not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the applicant has demonstrated sufficient legal interest to ensure that the required sightlines can be provided and maintained.

7.4.7. As such, it is considered that the proposed development would endanger public safety by reason of traffic hazard due to the location of the entrance proposed at a point where sightlines are restricted in both directions.

7.5. **Public Health**

7.5.1. The development includes the provision of a septic tank and percolation area together with private well. A site suitability report was included with the application. An average T- Test value of 13.06 min/ 25mm was returned and a P- Test value of 24.92 min/ 25mm was returned. The test results indicate values that are within the standards that would be considered acceptable under the EPA Code of Practice: Domestic Wastewater Treatment Systems. The drawings submitted meet the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries).

7.5.2. From the information available to me, I am satisfied that the site can accommodate a septic tank and percolation area as proposed. The Planning Authority did not express any concerns regarding foul drainage proposals.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and scale of the development and to the nature of the receiving environment with no hydrological pathway to any European site, no appropriate assessment issues arise and it is not considered that the 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 refusal for the following reasons:

9.0 **Reasons and Considerations**

1. Having regard to the location of this site within 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 in 2005, National Policy Objective 19 of the National Planning Framework (February 2018), which, for rural areas under urban influence, seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstratable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements, the Board could not be satisfied on the basis of information on the file that the applicant came within the scope of either economic or social housing need criteria as set out in the overarching National Guidelines.

The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserviced rural area, would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure, and would undermine the settlement strategy set out in the current development plan for the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the sensitive location of the appeal site, which is within the curtilage of a Protected Structure (Ref. TRPS355) and the elevated nature of lands relative to the grounds of the protected structure and the open and exposed views of the site from both the Protected Structure and the surrounding lands, it is considered that the proposed development would fail to respect and complement the character and setting of the Protected Structure and would seriously injure the visual amenities of the area. The proposed development would be contrary to Policy 13-1 of the Tipperary County Council Development Plan 2022-2028 and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements

the development would generate on a road at a point where sightlines are restricted in both directions. Furthermore, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the applicant has demonstrated sufficient legal interest to ensure that the required sightlines can be provided and maintained.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Emer Doyle
Planning Inspector

24th March 2023