



An  
Bord  
Pleanála

## Inspector's Report ABP-312901-22

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<b>Development</b>	Construction of dwelling
<b>Location</b>	Taylorstown, Cloonown, Athlone, Co. Roscommon.
<b>Planning Authority</b>	Roscommon County Council
<b>Planning Authority Reg. Ref.</b>	21693
<b>Applicant(s)</b>	Jennifer Higgins.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Jennifer Higgins.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	19 <sup>th</sup> October 2022
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. This appeal relates to a rural site located within the townland of Taylorstown, Cloonown, Co Roscommon. The site lies circa 2km east of the village of Cornafulla and 5km to the southwest of Athlone. The appeal site has an area of 0.4ha and forms part of a larger field pattern located along a single lane tertiary gravelled road, approximately 45m off the local road (L2035). The gravelled local road in turn provides access to Carrickynaghtan and Garrynagawna Bog to the site's northeast.
- 1.2. The appeal site is relatively flat and is located at approximately the same level as the road (10.00m) rising slightly by 0.3m at the proposed location of the dwelling house and then falling again to 9.4m to the rear of the site (north-eastern corner). The front (south-eastern) boundary of the site has an existing low ditch in place with post and wire fencing delineating this boundary. The surrounding area is characterised by agricultural fields on mainly flat land, interspersed with commercial forestry and sparsely populated one-off housing and farmsteads that generally front onto the local road network. The nearest dwelling is a single storey bungalow located approximately 105m to the southeast. Another dormer type dwelling house is located approximately 145m to the northeast.
- 1.3. A large network of field drains are evident in the area, though none are present on the appeal site. The closest drain is located on the eastern side of the adjoining local road which runs along the site's eastern boundary. The Carrickynaghtan Bog Natural Heritage Area (NHA) is located c.170m north east of the proposed site.

## 2.0 Proposed Development

- 2.1. The proposal involves permission to construct a two storey dwelling (4 bed 265m<sup>2</sup> ridge height 7.55m), a single storey domestic garage proprietary effluent treatment system and percolation area, associated site development works and services.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 11<sup>th</sup> February 2022 Roscommon County Council issued notification of the decision to refuse permission for the following reasons:

*The proposed development is located in 'Category Area B -Areas under Urban Influence' as defined in Section 5.11 of the Roscommon County Development Plan 2014-2020. It is the policy of the County Development Plan to restrict housing in this area to those who are intrinsically part of the rural community and who wish to build their first home, or who have an occupation predominantly based in the rural community. The Planning authority is not satisfied, based on the information submitted, that the applicant meets the criteria for a rural generated housing in accordance with the Sustainable rural Housing Guidelines and Table 5.3 of the Roscommon County Development Plan 2014-2020. The proposed development would, therefore, be contrary to Section 5.11 and Policy 5.29 the Roscommon County Development Plan 2014-2020 and to the Sustainable Rural Housing Guidelines issued to Planning Authorities. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

*The Planning Authority is not satisfied, of the ability of soils on the site to appropriately attenuate effluents generated by the proposed development or that the proposed domestic wastewater treatment system would operate in accordance with EPA (2021) Code of Practice: Domestic Wastewater Treatment Systems (P.E.10) The proposed development would therefore be prejudicial to public health and contrary to the proper planning and sustainable development of the area."*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Planner's report concludes that a rural housing need has not been demonstrated. The applicant is a teacher in a school within the envelope of the Monksland Belnamulla Local Area Plan, zoned for community and educational facilities, and this is not considered to be a rural school where Part C of Table 5.4 of the Development

Plan refers to rural schools. Site not considered suitable for an effluent treatment system. Refusal recommended.

### 3.2.2. Other Technical Reports

Environment Section report noted that on-site inspection that trial hole was filled with water to within approximately 500mm of ground level. Upper layer of soil is primarily peaty. Concerns arise regarding suitability of the site for installation of a domestic wastewater treatment system. Refusal recommended.

### 3.3. Prescribed Bodies

No submissions.

### 3.4. Third Party Observations

Submission by John Roche and Bernadette Roche, Togher, Clonown. Owners of the single storey dwelling to the southwest. Concerns regarding overlooking. Design is considered inappropriate. Traffic and Road Safety issues.

## 4.0 Planning History

**309273 (Roscommon Co Co Ref PD20/272.)** Application by Cathal Shine and Jennifer Higgins the current applicants for a dwelling wastewater treatment system and associated works. Following a third party appeal the Board overturned the decision of the planning authority and refused permission on grounds of housing need.

## 5.0 Policy Context

### 5.1 National Planning Framework, Department of Housing Planning and Local Government 2018

5.1 National Policy Objective 19 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 Development Plan.

### **Sustainable Rural Housing Guidelines for Planning Authorities (2005)**

The Guidelines confirm development plans should identify the location and extent of rural area types as identified in the NSS (now superseded by the NPF). These include: rural areas under strong urban influence (close to large cities and towns, rapidly rising population, pressure for housing and infrastructure). The current appeal site is located within a 'rural area under strong urban influence' as defined above and is located within 5km of Athlone town. In these areas the guidelines advise that the housing needs of the local rural community should be facilitated, but that urban generated housing demand should be met on zoned and serviced land within settlements.

### **EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2021)**

This code of practice provides guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses (p.e. less than or equal to 10).

## **5.2 Development Plan**

While the decision of the Planning Authority was taken when the Roscommon County Development Plan 2014-2020 plan was in effect the Roscommon County Development Plan 2022-2028 now refers. It was adopted on 8/3/2022 and has been in effect since 19<sup>th</sup> April 2022.

The appeal site is within the commuter catchment of Athlone and within rural policy zone A – Areas under urban influence. “These areas encompass the open rural countryside where 15% of the workforce is employed in Metropolitan Areas, Regional Growth Centres and Key Towns identified in the RSES for both the NWRA and the EMRA. The areas are designated to support the sustainable growth of towns and villages and to provide for the rural community who have a genuine locally based housing requirement, while otherwise directing urban generated housing into designated settlements. Those seeking planning permission for single dwellings in these areas must have a demonstrable economic or social need to live there, as detailed in Table 3.2.”

Table 3.2: Rural Housing Need Criteria

#### Economic Need

- “Persons engaged full-time in a rural-based activity, who can show a genuine need to live close to their workplace and have been engaged in this employment for over five years. This would include those working in agriculture, horticulture, farming, forestry, bloodstock, peat industry, inland waterway or marine- related occupations, as well as part-time occupations where the predominant occupation is farming or natural resource-related;
- A person whose business requires them to reside in the rural area. The nature of the operations of the business shall be specific to the rural area. Any such application shall demonstrate the viability of the business and clearly set out the nature of activities associated with the business and why it requires the owner to reside in the vicinity.

#### Social Need

- Persons who were born within the local rural area, or who are living or have lived permanently in the local rural area for a substantial period of their life at any stage(s) prior to making the planning application. It therefore includes returning emigrants seeking a permanent home in their local rural area who meet this definition;
- Persons with a significant link to the Roscommon rural community in which they wish to reside, by reason of having lived in this community for a minimum

period of five years prior to applying for planning permission or by the existence in this community of long established ties with immediate family members.

Demonstration of an economic need or social need will not warrant the granting of permission for a dwelling in the rural area where an individual has already benefitted from a permission for a dwelling on another site, or owns an existing property within the rural area, unless exceptional circumstances can be demonstrated.

Successful applicants will be required to enter into a Section 47 legal agreement restricting the occupancy of the dwelling to the applicant and their immediate family, or to other persons who fulfil the economic or social need criteria set out above, for a period of 7 years.

Applicants relying on economic need criteria involving part-time occupations in farming or natural resources related activities will be required to submit sufficient evidence to demonstrate same, for example (but not limited to) a herd number or hours of activity as a farmer.

*It is a policy objective of Roscommon County Council to:*

***PPH 3.13*** *Facilitate single houses in rural areas subject to appropriate siting and design criteria, including demonstration of adherence to the principles set out in the County Roscommon Rural Design Guidelines. In addition, in the case of proposals for single houses in defined Areas under Urban Influence, applicants will be required to demonstrate a social or economic link (as per Table 3.2) to the rural area in which they proposed to build.*

***PPH 3.14*** *Direct urban generated housing in rural areas to the towns and villages (serviced and unserviced) in the county as set out in the Settlement Hierarchy in Table 2.3”*

### 5.3 Natural Heritage Designations

The site is not within a designated area. The nearest such site is the Carrickynaghtan Bog NHA (Site Code 001623) which is located c.120m east of the site. The River Shannon Callows Special Area of Conservation (SAC) (Site Code 000216) and the Middle Shannon Callows Special Protection Areas (SPA) (Site Code 004096) are located c.2.5km north east of the appeal site.

### 5.4 EIA Screening

The proposed development is of a class under Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, namely Class 20. Infrastructure projects, (b)(i) construction of more than 500 dwelling units. However, as the proposed development comprises a single dwellinghouse, it is significantly subthreshold the 500 unit limit provided under that part. I am satisfied that due to the limited nature of the development and nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the proposed development and Environmental Impact Assessment is not required.

## 6 The Appeal

### 6.1 Grounds of Appeal

The appeal is submitted by Liam Madden, Planning Consultant. Grounds of appeal are summarised as follows:

- Application is in all material ways a replica of previous application 309273-21. The only material difference is now Jennifer, the sole applicant, is employed locally as a teacher in a local school.
- Local Authority and the Board previously approved a tertiary raised bed treatment system solution.
- Planning Authority's *volte face* on its previous decision is unexplained.



- As the applicant now meets the requirements listed in Table 5.3 for Rural Generated Housing Need Category C

*“People employed locally whose work provides a service to the local community.”*

**OR**

*People whose work is intrinsically linked to rural areas such as teachers in rural schools.”*

Applicant clearly falls into the definition for the first part.

Applicant also falls into the second part and the planning authority’s interpretation of “rural school” is both laborious and pedantic, unfair and reviewable.

Applicant also falls into the final section of Category A

*“a person who wishes to build her first home within a local community in which she has spent a large and continuous part of her life.”*

And final section of Category D11

*“A person with a significant link to this Roscommon rural community in which she wishes to reside... by the existence in this community of long established ties with immediate family members.”*

- Rural Housing and NPF should be interpreted in an even handed manner. On the Westmeath side of Athlone there is a different interpretation which applies a 10km radius from the family home.
- Applicant has absolute right to establishment under Articles 43 and 56 of the EC treaty to settle permanently in her own hinterland.
- Interpretation of the Planning Authority is wholly illogical and irrational, contrary to plain reason and common sense. Decision is made without good, stated reason.
- Applicant’s current home is 3km from the sits as shown in map appended.
- Planner’s report was compiled by a graduate planner and the report is not countersigned by the Senior Executive Planner.

## **6.2 Planning Authority Response**

The Planning Authority did not respond to the appeal.

## **6.3 Observations**

No submissions.

## **7 Assessment**

7.1 Having examined the file, considered the prevailing local and national policies, inspected the site, and assessed the proposal, the planning history and all submissions, I consider the key issues arising in this appeal for determination by the Board relate to the question of whether the proposal overcomes the Board's previous reasons for refusal ABP-302046-18 (which was assessed under the previously operative Roscommon County Development Plan 2014-2020). The reason for refusal related to rural generated housing need. The issue of site suitability for wastewater treatment, which was included as a reason for refusal in the council's decision on the current appeal case and the issue of appropriate assessment also need to be addressed.

7.2 I note that the third party submissions to the local authority raised concerns with regard to impact on established residential amenity and traffic safety. On the issue of traffic, I note that the Board did not cite traffic safety as a barrier to development on the site. I would concur that based on the lightly trafficked nature of the public roads in the vicinity of the site and the likely level of traffic arising from a single dwelling the proposal would not give rise to traffic hazard.

7.3 I note that in comparison to the previous application the proposed house design has been amended by way of ridge height reduction (from 8.1m to 7.55m) this also resulting in reduction in first floor area. The issue of ridge height was explored in the report of the previous reporting inspector (ABP-309273) who had recommended that a ridge height of 7.5m would be appropriate. I would concur with the conclusions in regard to the design that the proposed development of the site would not have

undue impact on visual amenities of the area or cause undue overlooking or overbearing impacts.

- 7.4 As regards concerns raised within the first party appeal with regard to the perceived inconsistent application of rural housing policy by adjoining local authorities, I note these concerns and acknowledge the wide potential for misinterpretation of “local housing need”. In any event it is appropriate to proceed to assess the current appeal be assessed on its planning merit. As regards the absence of countersignature of the graduate planner’s report by a senior executive planner / executive planner, I note that the said report is annotated, edited and elaborated in part by the Senior Planner, the delegated decision maker, who evidently concurred with the recommendation.
- 7.5 Policy Objective 19 of the National Planning Framework seeks to ensure that, in providing for the development of rural housing, 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, it is policy 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 and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.
- 7.6 As noted above when the local authority made its decision the operative plan was the Roscommon County Development Plan 2014-2020 which has now been replaced by the Roscommon County Development Plan 2022-2028. Rural housing need criteria are set out at Table 3.2 of the current plan in terms of Economic Need and Social Need, as follows:

#### Economic Need

- “Persons engaged full-time in a rural-based activity, who can show a genuine need to live close to their workplace and have been engaged in this employment for over five years. This would include those working in agriculture, horticulture, farming, forestry, bloodstock, peat industry, inland waterway or marine- related occupations, as well as part-time occupations where the predominant occupation is farming or natural resource-related;

- A person whose business requires them to reside in the rural area. The nature of the operations of the business shall be specific to the rural area. Any such application shall demonstrate the viability of the business and clearly set out the nature of activities associated with the business and why it requires the owner to reside in the vicinity.

#### Social Need

- Persons who were born within the local rural area, or who are living or have lived permanently in the local rural area for a substantial period of their life at any stage(s) prior to making the planning application. It therefore includes returning emigrants seeking a permanent home in their local rural area who meet this definition;
- Persons with a significant link to the Roscommon rural community in which they wish to reside, by reason of having lived in this community for a minimum period of five years prior to applying for planning permission or by the existence in this community of long established ties with immediate family members.

7.7 In setting out her case for housing need the applicant indicates that she currently lives at her husband's family home, within 3km of the site and is employed as a teacher in Cloonakilla NS. She also refers to numerous professional, sporting and social connections to the local community. The appeal site is located within the commuter catchment of Athlone within an area under urban influence. There is significant pressure for one-off urban generated housing as is clearly evident in terms of the settlement pattern in the wider locality. Having considered the application in its detail I am not satisfied that the application substantiates a genuine rural housing need. The settlement policy seeks to support the sustainable growth of towns and villages and to provide for the rural community who have a genuine locally based housing requirement, while otherwise directing urban generated housing into designated settlements. This policy would imply that the accommodation of one-off houses in a rural area under urban influence would be exceptional and locationally based and justified. I am satisfied that the particulars of this application do not meet the criteria in terms of genuine rural generated housing need. A grant of permission

would in my view not comply with Policy Objective 19 of the National Planning Framework, would undermine rural housing policy and would be contrary to the proper planning and sustainable development of the area.

7.8 As regards site suitability for effluent treatment I note that the concerns raised by the Environment Section of the planning authority having regard to the high water table and peaty upper soil layer observed on site. I note the details of the site suitability assessment ( as previously considered by the Board 309273-21). The trial hole was excavated (12 June 2020) to a depth of 2m with the water table noted at 1.4m. Peaty soils were observed to a depth of 400mm, below which silty gravel, shale and small stones were observed to a depth of 900mm, beyond this clay loam spoils were noted below which gravel and small boulders give way to the water table at 1.4m. The site characterisation records a T-test value of 49.22 just below the septic tank and percolation area threshold of 50 under table 6.4 of the Code of Practice. Given the slow draining nature of the soil and high water table recorded, the applicant proposes to use tertiary treatment system and infiltration treatment area. The top 400mm of peat is to be removed and replaced with pea gravel 10- 12mm in size at an invert level of .3m. It is also proposed that a French drain would be installed around the site to assist with drainage and lower the water table drain 600mm deep and 500mm wide which is to be filled with clean stone and fitted with a 100mm land drain pipe. In addition, it is also proposed that the site be further drained with 100mm land pipe and stone trenches across the site every 12 metres. Whilst it appears that it is technically feasible to provide for wastewater treatment on the site in accordance with EPA Wastewater Manual standards I would have concerns given the site characteristics and the level of interventions required, however I note that the Board previously did not include this as a reason for refusal.

7.9 On the issue of appropriate assessment the proposed development is not located within a European site and does not relate to the management of any European site and direct effects can therefore be ruled out. Having regard to the nature and scale of the proposed development and separation distance to the nearest European site potential for significant effects, including direct, indirect and in-combination effects on

the integrity of the European sites in view of their conservation objectives can be ruled out.

## **8.0 Recommendation**

- 8.1 I recommend that permission be refused for the reasons stated in the attached schedule.

## **Reasons and Considerations**

1. It is a policy of the current Roscommon County Development Plan 2022-2027, PPH 3.13 to *“Facilitate single houses in rural areas subject to appropriate siting and design criteria, including demonstration of adherence to the principles set out in the County Roscommon Rural Design Guidelines. In addition, in the case of proposals for single houses in defined Areas under Urban Influence, applicants will be required to demonstrate a social or economic link (as per Table 3.2) to the rural area in which they proposed to build. Policy PPH3.14 is to direct urban generated housing in rural areas to the towns and villages (serviced and unserviced) in the county as set out in the Settlement Hierarchy in Table 2.3.”* These policies are considered reasonable. Having regard to the location of the site within an area identified as an area under urban influence within the commuter catchment area of Athlone and to National Policy Objective 19 of the National Planning Framework issued by the Department of Housing, Planning and Local Government in 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 demonstrable economic or social need to live in a rural area, the Board is not satisfied that the applicant has sufficiently demonstrated that they have a rural-generated housing need to live in this rural area. As a result, the Board considers that the proposed development would contribute to the further 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. The proposed development would, therefore, be contrary

to the ministerial guidelines and to the over-arching national policy and would be contrary to the proper planning and sustainable development of the area.

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Bríd Maxwell  
Planning Inspector

24<sup>th</sup> January 2023