



An  
Bord  
Pleanála

## Inspector's Report ABP313526-22

### Development

Construction of dwelling house, detached garage, new entrance and installation of on-site treatment plant and percolation area, together with all associated site works.

### Location

Rooska East, Carrigkerry, Limerick.

### Planning Authority

Limerick City and County Council.

### Planning Authority Reg. Ref.

21/1065.

### Applicant(s)

David Dillane.

### Type of Application

Permission.

### Planning Authority Decision

Grant permission subject to conditions.

### Type of Appeal

First Party v Condition.

### Appellant(s)

David Dillane.

### Observer(s)

None on file.

### Date of Site Inspection

7<sup>th</sup> November 2023.

### Inspector

Des Johnson.

## **1.0 Site Location and Description**

- 1.1. The site is located approximately 5km to the west of Newcastle West in an area predominantly with a rural, agricultural character. There is a sparse settlement pattern in the area.
- 1.2. The site is relatively flat and set out in grass. There is a modern two-storey detached dwelling and detached garage adjoining to the east. The adjoining public carriageway is straight and narrow with ditches and hedgerows either side along this stretch. There are no public lighting or footpaths either side of the carriageway.

## **2.0 Proposed Development**

- 2.1. The proposal is for the construction of a dwelling house, detached garage, new entrance, and installation of an on-site treatment plant and percolation area, together with all associated site works.
- 2.2. The gross floor area of the proposed dwelling is stated to be 214.5sqm (ground floor 118.5sqm and first floor 96sqm), and the site area to be 0.21ha. The proposed dwelling has four double bedrooms (two en-suite), and finishes include black slates/tiles, smooth plaster to elevations, and stone facing to porch and to front and side of dining room. Proposed finishes to detached garage are to match the proposed dwelling.

## **3.0 Planning Authority Decision**

### **3.1. Decision,**

Grant permission subject to 14 conditions.

In addition to conditions relating to compliance, financial contribution, surface water run-off, treatment plant requirements, finishes, public service cables, screen planting, water supply and waste management plan, specific conditions of note are as follows:

Condition 3: First occupancy as a place of permanent residency to be by the applicants (members of the applicant's immediate family or their heirs), and remain

so occupied for a period of at least 7 years, unless in exceptional circumstances agreed in writing with the Planning Authority.

Condition 4: Existing roadside boundary to be retained in its entirety. Entrance gates to be recessed 4.5m behind the line of the roadside boundary.

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

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

This is a greenfield agriculture site level with the public road. The area is considered as 'Structurally Weak' in the CDP. Further Information was sought and submitted including site specific flood assessment. The applicant was born and raised on this road. The proposed development, by reason of its size, scale and mass is acceptable to the sustainable design and development of the area.

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

Environment recommends conditions.

Operations recommends conditions.

### **4.0 Planning History**

Register Reference 22805 – Permission refused for construction of dwellinghouse, detached garage, new entrance and installation of on-site treatment plant and percolation area, together with all associated site works. The site adjoins the current appeal site to the west. Decision date is 13<sup>th</sup> September 2022. The decision is currently on appeal (Reference ABP 314772). There are two reasons for refusal relating to:

- Substandard road network. Material contravention of Policy TR11 of the Limerick Development Plan 2022-2028.
- Location in 'Area of Strong Urban Influence' in the Limerick Development Plan 2022-2028. The applicant has not demonstrated that the criteria for a house in this rural area has been met. No rural housing need.

## **5.0 Policy and Context**

### **5.1. Development Plan**

The Limerick Development Plan 2022-2028 came into effect on 29<sup>th</sup> July 2022.

Newcastle West is a Level 2 Key Town. The Plan notes that it is a settlement with a strong employment base and a broad range of services that serve a wide catchment area. Newcastle West will play a critical role in ensuring a consolidated spread of growth beyond Limerick City and suburbs to the sub-regional level.

Objective CGR 012 – to monitor and review the Local Area Plan for Newcastle West to align with the Limerick Development Plan 2022-2028. The subject appeal site lies outside the development boundary in the Local Area Plan.

Objective HO 020 relates to Rural Areas under Strong Urban Influence. It is an objective to consider applicants in such areas, subject to demonstrating one of the following (1) demonstrable economic need to live in the area (2) social need to live in the area, (3) local exceptional need to live in the area. The local area is defined as the area outside all settlements identified as Level 1-4 of the Settlement Hierarchy.

Objective IN 023 relates to Occupancy Condition. It is an objective to require that any house in 'Areas Under Strong Urban Influence' is subject to an occupancy condition for seven years by the applicant.

Policy TR P11 relates to Road Safety and Carrying Capacity of the Road Network. It is policy to seek improvements to road safety and enhance carrying capacity of the road network throughout Limerick ... including access on to roads which are substandard in terms of width and alignment and preventing the creation of additional or new traffic hazards in the road network, maintaining the carrying capacity and securing appropriate signage.

### **5.2. Natural Heritage Designations**

Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA. Approximately 3km to the west.

River Shannon and River Fergus Estuaries SPA. Approximately 15km to the north.

### 5.3. EIA Screening

- 5.4. Having regard to the nature and modest scale of the proposed development, its location in a rural area and the likely emissions therefrom it is possible to conclude that the proposed development, during construction or occupation, is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

This is a First Party appeal against the imposition of Condition 3a and 3b on decision to grant permission. The subject conditions are worded as follows:

#### Condition 3a & b

- a) *The proposed house, when completed shall be first occupied as a place of permanent residence by the applicant(s), (member of the applicants immediate family or their heirs), and shall remain so occupied for a period of at least seven years thereafter, unless, in exceptional circumstances, where otherwise agreed in writing with the Planning Authority. (This condition shall not affect the sale of the dwelling by a mortgage in possession or by any person deriving title from such sale).*
- b) *Within two months of the occupation of the proposed dwelling, the applicants shall submit to the Planning Authority a written statement of confirmation of the first occupation of the dwelling in accordance with part (a) above and the date of such occupation.*

**Reason:** *To restrict the use of this dwelling to the types of person(s) described in the interest of the proper planning and development of the area.*

The grounds of appeal may be summarised as follows:

1. The supplementary form submitted with the application clearly states that the house is for sale. This is a Structurally Weak Area. The main road to the proposed site is not substandard and the residency clause is not applicable.

2. The site is located within a 80km/h zone.
3. The proposed development complies with the Limerick County Development Plan 2010-2016 extended.
4. Previous permissions were granted along the road in question without any mention of the condition of width of the road, and without any correspondence or queries in relation to the applicants link to the road by further information.
5. Present housing needs should be taken into consideration.
6. The proposed treatment plant is adequate as per site assessment.
7. The proposed house design is similar in nature to adjoining houses.

## **6.2. Planning Authority Response**

None on file.

## **6.3. Observations**

None on file.

## **6.4. Further Responses**

None on file.

## **7.0 Assessment**

- 7.1. This is a First Party appeal against Condition 3 of the decision of the Planning Authority to grant permission for development consisting of the construction of a dwellinghouse, detached garage, new entrance, and installation of an on-site treatment plant and percolation area. Condition 3 relates to an occupancy condition. The decision is dated 13<sup>th</sup> April 2022, and was made when the Limerick County Development Plan 2010-2016 (as extended) was in effect. The Limerick Development Plan 2022-2028 came into effect on 13<sup>th</sup> September 2022, and that is the Plan under which the appeal should be considered.
- 7.2. The Planner's report notes that "the proposal is in a Structurally Weak Area", and that report was written when the Limerick County Development Plan 2010-2016 (as

extended) was in effect. The grounds of appeal were submitted on 9<sup>th</sup> May 2022, also when the Limerick County Development Plan 2010-2016 was in effect, and state that the site is located in a 'Structurally Weak Area". I contend that the Board is required to consider the appeal in the context of the Limerick Development Plan 2022-2028, under which the site is located in a 'Rural Area under Strong Urban Influence', and to which Objective HO 020 applies.

7.3. The planning application form submitted to the Planning Authority clearly indicates that the proposed dwelling is for sale. No housing need to live in this particular area is claimed and it is in this context that the occupancy condition (Condition 3) is appealed. Under Section 139 of the Planning and Development Act 2000 as amended, where the Board is satisfied, having regard to the nature of the condition, that determination of the relevant application as if it had been made to it in the first instance is not warranted, may confine its consideration to the condition under appeal. In the particular circumstances outlined, I submit that the Board should consider the application 'de novo' having regard to the nature of the condition under appeal and the provisions of the Limerick Development Plan 2022-2028.

7.4. I consider that the key issues to be considered are as follows:

- House design and siting
- Access
- Wastewater treatment and disposal
- Housing need and compliance with Development Plan requirements

7.5. **Design and siting**

The proposal is for a two-storey detached dwelling and detached garage. The height and design of the proposed dwelling are similar to the existing adjoining dwelling to the east. The site is relatively flat and not unduly prominent. I submit that the proposed design and siting are acceptable.

7.6. **Access**

The proposed access is on to a narrow local road with ditches and hedgerows either side. The front boundary of the adjoining property to the east has been set back from the carriageway. I submit that the sightlines from the proposed access in both

directions are acceptable in terms of public safety. However, the public road is narrow and substandard, and has insufficient carrying capacity to accommodate the proposed development for which there is no demonstrated housing need. As such, I submit that the proposed development contravenes Policy TR P11 of the Development Plan.

#### **7.7. Wastewater treatment and disposal**

The site is flat and set out in grass. There is evidence of light rushes in parts of the site, particularly close to the front boundary. There was no evidence of significant ponding at the time of inspection. The submitted Site Characterisation indicates that the site is on a Poor aquifer, but has satisfactory drainage. Based on the information submitted, I submit that the proposal for wastewater treatment and disposal (through a polishing filter) is acceptable.

#### **7.8. Housing need and Development Plan requirements**

The site is in a Rural Area under Strong Urban Influence under the Limerick Development Plan 2022-2028. The Plan seeks to encourage compact residential development, and Objective HO 020 details specific requirements in respect of housing need in such rural areas. No case is made in respect of specific housing need in this proposal. The occupancy condition (Condition 3) imposed by the Planning Authority on the grant of permission is appealed on the basis that the site is located in a Structurally Weak Area. The applicant intends to sell the site. I consider that the designation of the site as being in a 'Rural Area under Strong Urban Influence' is correct having regard to its proximity to Newcastle West and surrounding development, and that the restrictions set out in objective HO 020 are supportive of this designation. The proposed development contravenes materially Objective HO 020 and, if permitted, would undermine the designation as a 'Rural Area under Strong Urban Influence'.

#### **7.9. Appropriate Assessment Screening**

Having regard to the nature and scale of the proposed development, the receiving environment, the separation distances and the absence of any pathways to European sites, it can be concluded that the proposed development, in its construction or occupation, alone or in-combination with other plans or projects, would not give rise to any significant effects on any European site, having regard to



their qualifying interests and associated conservation objectives. As such, there is no requirement for a Natura Impact Statement in this case.

## **8.0 Recommendation**

8.1. I recommend that planning permission be refused.

## **9.0 Reasons**

1. The site for the proposed development is located in a Rural Area under Strong Urban Influence in the Limerick Development Plan 2022-2028. Under Objective HO 020 of the Plan proposals for rural dwellings in such areas are to be considered subject to specific criteria relating to need. The proposed development, for which no housing need has been claimed or demonstrated, would contravene materially Objective HO 020, militate against the preservation of the rural environment and would be contrary to the proper planning and sustainable development of the area.

2. The road network serving the proposed site is narrow and substandard, and has insufficient carrying capacity to accommodate the proposed development for which there is no demonstrated housing need. The proposed development would contravene materially Policy TR P11 set out in the Limerick Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.

### **Note:**

In the event that the Board consider that planning permission should be refused, I recommend that, before making its final decision, it should inform the appellant that it is considering such an option.

In the event that the Board considers that the appeal should be considered under Section 139 of the Planning and Development Act 2000, as amended, I recommend that the Board require the retention of Condition 3 and the reason for its imposition.

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Des Johnson  
Planning Inspector

8th November 2023

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.