



An
Bord
Pleanála

Inspector's Report

ABP-313611-22

Development	House with proprietary wastewater treatment system and polishing filter together with ancillary site works
Location	Carnaun, Doolin, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	2235
Applicant(s)	Michelle McDonagh & Darren Ryan
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Michelle McDonagh & Darren Ryan
Date of Site Inspection	25 th January 2023
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area of west County Clare, approximately 3km to the east of Doolin, 7.7km to the north of Ennistymon and 7.9km to the north of Lahinch. The general area is accessed via the N67 national road which connects Kilrush and Galway. The site is located on an unnamed local road to the south of and accessed from the L1034 local road, approximately 2.5km to the west of the junction of the L1034 and the N68 to the north of Ennistymon. The unnamed local road is narrow, with room for just one car, but includes a number of pull-in points to facilitate passing cars. There are houses immediately to the east, west and north of the appeal site.
- 1.2. The appeal site is 0.306 ha. in area and occupies an area of road frontage which extends to approximately 46m. The appeal site rises steadily from the public road to the south i.e., from 99.83m OD to 107m OD. There is a low earthen mound with a post and wire fence along the roadside / northern boundary, the western and eastern site boundaries are open, and the southern boundary is a low post and wire fence. There is a utility pole on the southern part of the appeal site and the associated overhead wire traverses the site. The site is grassland and appeared 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, installation of a domestic wastewater treatment system (DWWTS), connection to the public water supply and associated site development works at Carnaun, Doolin, County Clare.
- 2.2. The proposed dwelling is single storey in design with a ridge height of 5.19m over finished floor level, with render finish, some stone and cedar cladding and blue / black slates. The proposed dwelling will have an area of 190.5m². The existing southern and northern site boundaries are to be retained with landscaping proposed in informal clusters in the form of rockeries and soft bed flower beds.

3.0 Planning Authority Decision

3.1. Request for Further Information

- 3.1.1. Prior to notification of decision, the Planning Authority issued a further information request on 15th March 2022 requiring that a number of inconsistencies in the site characterisation report to be addressed and inviting the applicants to comment on the creation of an infill site. The applicants submitted a revised site characterisation report with inconsistencies addressed and stated that the infill site was not in their control as it was in separate ownership.

3.2. Decision

- 3.2.1. By order dated 22nd April 2022 Clare County Council issued a notification of decision to Refuse Permission for the proposed development for the following reason:

Having regard to presence of an impermeable layer of soil surrounding the percolation area which would prevent the horizontal flow of treated effluent, the Planning Authority is not satisfied that ground drainage conditions on site are suitable for the treatment and disposal of wastewater (notwithstanding further information received by the Planning Authority) and as such the proposed development would be prejudicial to public health and would not be in the interest of proper planning and sustainable development.

3.3. Planning Authority Reports

3.3.1. Planning Reports

There are two Planning Reports on file dated 14th March 2022 and 21st April 2022, respectively. The Planning Officer in the initial report outlined concern that the principle of a dwelling house may not be acceptable due to the creation of an infill site. The Planning Officer was satisfied that the applicants complied with rural housing policy under policy Objective CDP3.11. The report recommended further information be requested regarding inconsistencies in the site characterisation report that needed to be addressed and invited the applicants to comment on the creation of an infill site.

Appropriate Assessment Screening was carried out and concluded that there is no likely potential for significant effects to any Natura 2000 site.

A second Planner's Report (dated 14th April 2022) refers to the further information submitted and considered that, having regard to the additional information in relation to the treatment and disposal of wastewater, permission should be refused, which is reflected in the decision of the Planning Authority.

3.3.2. **Other Technical Reports**

Municipal District – No observations to make.

Environment – The initial Environmental report dated 14th March 2022 outlined inconsistencies within the Site Characterisation Report and sought explanations for these inconsistencies. The second Environmental report dated 21st April 2022 highlights a blue layer of impermeable sub-soil from 700mm to 2.2m in the trial hole and, consequently, recommends that permission is refused.

3.4. **Prescribed Bodies**

Irish Water – No objection.

3.5. **Third Party Observations**

None.

Senator Martin Conway made representations on the planning application.

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. **Objective CDP13.5: Heritage Landscapes**

It is an objective of the Development Plan:

To require that all proposed developments in Heritage Landscapes demonstrate that every effort has been made to reduce visual impact. This must be demonstrated for all aspects of the proposal – from site selection through to details of siting and design. All other relevant provisions of the Development Plan must be complied with.

All proposed developments in these areas will be required to demonstrate:

- That sites have been selected to avoid visually prominent locations;
- That site layouts avail of existing topography and vegetation to minimise visibility from scenic routes, walking trails, public amenities and roads;

- That design for buildings and structures minimise height and visual contrast through careful choice of forms, finishes and colour and that any site works seek to reduce the visual impact of the development.

5.3.4. **Objective CDP3.13: New Single Houses on Infill Sites in the Countryside**

It is an objective of the Development Plan:

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. Dwellings constructed on infill sites of this nature must be for the permanent occupation of the applicant. The siting of new dwellings in the countryside so as to deliberately create a gap site of this nature will not be permitted.

5.3.5. 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 Black Head-Poulsallagh Complex SAC (Site code: 000020) and the Cliffs of Moher SPA (Site code: 004005) located approximately 4.2km and 3.9km to the north-west and west, respectively.

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 AF Engineering, Doolin, Co. Clare on behalf of Michelle McDonagh and Darren Ryan and the main points made can be summarised as follows:

- States that Michelle McDonagh has demonstrated compliance with rural settlement policy CDP3.11, that both applicants are working locally, presently renting accommodation in Lisdoonvarna, and that their son is attending Doolin national school.
- States that the 'infill' site causing concern to the Planning Authority is outside the control of both the applicants and the landowner that is selling the appeal site to the applicants and contends that the planner was pre-disposed to finding a reason to refuse this application so as to avoid the creation of an infill site.
- Contends that the Planner's site inspection was carried out following a period of exceptionally heavy rain.
- Addresses the issues within the Planning Authority's RFI again and contends that there is no specific requirement to show the depth of the trial hole and that the Environment Section should take the word of the site assessor on this matter.
- Questions the integrity of the photograph of the trial hole of 11th March 2022 contained in the Environment Scientist's report dated 14th March 2022.
- Contends that sideways migration of treated effluent to ground water is not required or necessary and that the reasons given for refusal are nonsensical and have no merit.

6.2. Planning Authority Response

The Planning Authority has responded to the grounds of appeal by clarifying that the Environment reports referenced are dated 14th March and 21st April and that the

photographs from the Environment report were taken on the site on 11th March 2022. It confirms that there remains a concern regarding this proposal from a public health perspective noting in particular the impermeable layer from 1.7m to 2.2m. It is requested that the Board uphold the Planning Authority's decision in this instance.

7.0 **Assessment**

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

- Rural Housing Policy
- Disposal of Wastewater
- 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 applicant has an economic or social need to live in this rural area that meets the requirements of the rural housing policy. As part of the application to the Planning Authority and under this appeal, the First Parties set out the justification for providing a house at this location on the basis of a social need to locate close to where one of the First Parties was born and reared and this is not, therefore, considered to be a new issue.
- 7.1.2. In this regard, the applicant's agent states that one of the First Parties, Michelle McDonagh, has demonstrated compliance with rural settlement policy CDP3.11 in the Clare County Development Plan 2017-2023. The applicant's agent also states that the issue of creating an infill site causing concern to the Planning Authority is outside the control of both the applicants and the landowner that is selling the appeal site to the applicants.
- 7.1.3. In order to demonstrate compliance with policy Objective CDP3.11, it is stated that Michelle McDonagh completed her primary education in Doolin National School and has submitted letter confirming attendance at Doolin National School from 1st September 1981. It is stated that the applicants are presently residing in

Lisdoonvarna, and that Michelle's family home is within 10km of the subject site. It is also stated that the First Parties are working locally and that their son is attending Doolin national school.

- 7.1.4. I note from the details provided with the planning application that the First Parties are living in Lisdoonvarna since 2016. It is stated that Michelle McDonagh resided at her family home in Glasha for more than 7 years, although no documentary evidence is submitted in support of this. I also note that the First Parties places of employment are stated to be in Ennistymon and Doolin, respectively. On the basis of the above, I consider that the proposed development of a house at this location appears to be speculative and it is urban generated as no evidence has been submitted by the First Parties to demonstrate otherwise and, therefore, such that it clearly conflicts with the provisions of the Sustainable Rural Housing Guidelines and the National Planning Framework.
- 7.1.5. The appeal site is located between two existing houses that are approximately 100m apart. The roadside / northern boundary of the appeal site comprises approximately 45m of this length of boundary between the two existing houses. A further 35m of this boundary remains to the east of the appeal site and this is clearly demarcated on the landholding maps submitted with the planning application and this appeal, although not in the ownership of the First Parties or the landowner from whom they are acquiring the appeal site. There are also two other dwellings further to the east. On this basis, I consider that the proposal would create an infill site. However, I am satisfied that this is not a deliberate act by the applicants to do so and I am, therefore, satisfied that the proposal does not conflict with policy Objective CDP3.13.
- 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.

7.1.8. On the basis of the information presented, I do not consider that the applicants have 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. 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 towns of Lisdoonvarna or Ennistymon, or alternatively within another 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. **Disposal of Wastewater**

7.2.1. 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 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 bedrock was encountered at 2.3m, with no water table present.

- 7.2.2. Based on the test results (sub-surface T value = 36.39, and R2₁ Ground Water Response), the First Party proposed the installation of a proprietary wastewater treatment system with a sand polishing filter to treat the wastewater due to the lack of drainable subsoil beneath the site.
- 7.2.3. The Planning Authority's Environmental Scientist noted the presence of an impermeable layer of soil surrounding the percolation area which would prevent the horizontal flow of treated effluent and was not satisfied that ground drainage conditions on site are suitable for the treatment and disposal of wastewater. The proposed development was refused by the Planning Authority on this basis as it was considered that it would be prejudicial to public health. In their response to the appeal, the Planning Authority confirmed that there remains a concern regarding this proposal from a public health perspective noting in particular the impermeable layer from 1.7m to 2.2m in the trial hole.
- 7.2.4. The First Party's engineer contends that the Planner's site inspection was carried out following a period of exceptionally heavy rain that sideways migration of treated effluent to ground water is not required or necessary and that the reasons given for refusal are nonsensical and have no merit.
- 7.2.5. On the day of my site inspection, I noted the presence of reeds / rushes on the appeal site and heavy nature of the land. This is consistent with the results contained within the Site Characterisation Form whereby the soil in the trial hole is described as clay. I note the Council's environmental scientist raising concerns about the lack of permeability of the soil, which was confirmed in the Site Characterisation Report.
- 7.2.6. Further to this, ground water is afforded protection in its own right under the EU Environmental Objectives (Groundwater) Regulations 2010. The Sustainable Rural Housing guidelines make the point that "wastewater treatment facilities in rural areas should therefore be located, constructed and maintained to the highest standards to ensure minimal impacts on water quality and particularly groundwater quality". In the present case, the site suitability assessment submitted with the application characterises subsoil on site as clay.
- 7.2.7. In addition to the conditions on the appeal site, I note that there are approximately 9 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.

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

7.3. Other Issues

Design & Layout

- 7.3.1. As stated earlier in this report, the proposed development comprises the construction of a single storey house with an area of 190.5m² and a ridge height of 5.19m over finished floor level, with render finish, some stone and cedar cladding and blue / black slates. The existing southern and northern site boundaries are to be retained with landscaping proposed in informal clusters in the form of rockeries and soft bed flower beds.
- 7.3.2. On the day of my site inspection, I observed a mix of house types and designs in the wider rural area around the appeal site. I consider that the proposed house design, which is traditional in form and design, would not form an incongruous feature on this rural landscape. I, therefore, am satisfied that the proposed house would not have any significant adverse visual impact on this rural landscape and would be in accordance with Objective CDP13.2 of the current Development Plan.

Traffic Safety

- 7.3.3. The proposed development would be accessed via a narrow local road where two-way vehicular traffic is difficult to accommodate. I consider available sightlines at the proposed entrance would meet acceptable standards. I also note that the site is close to a junction with another local road lying a short distance to the north.

7.3.4. From my observations, the junction to the north is well established and at present accommodating a relatively low level of traffic which serves the needs of those working and residing in the area. While the inadequacy of the road network further highlights the unsustainability of seeking to accommodate persons with no demonstrable rural housing need at this location, for the above reasons, I do not consider that a refusal of permission on traffic grounds alone would be merited.

7.4. **Appropriate Assessment**

7.4.1. 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 Black Head-Poulsallagh Complex SAC (Site code: 000020) and the Cliffs of Moher SPA (Site code: 004005) located approximately 4.2km and 3.9km to the north-west and west, respectively), 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 reasons stated in the attached schedule.

9.0 Reasons and Considerations

1. Having regard to:

- the location of the site within a rural area identified as being under strong urban influence in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005,
- National Policy Objective 19 of the National Planning Framework (February 2018) which seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements,
- The provisions of the Clare County Development Plan 2017-2023 (as amended) which facilitates the provision of rural housing for local rural people building in their local rural area (defined as within 10 kilometres radius of the where the applicant has lived or was living), and
- The lack of documentation on the file including details of the applicant's economic need to reside in this area,

the Board could not be satisfied on the basis of the information on the file that the applicants came within the scope of either economic or social housing need criteria as set out in the overarching National Guidelines or the definition of a local rural person in accordance with the relevant criteria of the development plan.

The proposed development, in the absence of any identified locally based need for a house at this location, would result in a haphazard and unsustainable form of development in an 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.

2. Notwithstanding the proposal to use a proprietary domestic wastewater treatment system on the site, having regard to the poor soil conditions and impermeable layer of subsoil, to the proliferation of domestic wastewater treatment systems in this rural area, and to the Sustainable Rural Housing Guidelines for Planning Authorities, which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities, the Board could not be satisfied, on the basis of the information on the file, that the impact of the proposed development in conjunction with existing waste water treatment systems in the area would not give rise to a risk of groundwater pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Liam Bowe
Planning Inspector

7th February 2023