



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314873-22

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<b>Development</b>	House and detached garage and all associated site works.
<b>Location</b>	Tullygullin, Kilcogy , Co. Cavan
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	22310
<b>Applicant(s)</b>	Brian and Fiona Comaskey.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Observer(s)</b>	Transport Infrastructure Ireland.
<b>Date of Site Inspection</b>	2 <sup>nd</sup> May 2023.
<b>Inspector</b>	Barry O'Donnell

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.3ha and is located in the townland of Tullygullin, approx. 4.5km north of Granard, in south County Cavan. It is accessed via a narrow stone track that connects directly to the N55 and which also serves the applicant's family home and farmyard complex.
- 1.2. The site is located toward the east end of the track and is opposite the existing family house. It comprises part of a field of improved grassland that, at the time of my inspection, was in use for livestock grazing.
- 1.3. The site is enclosed along the north boundary by a mix of hedging/mature trees and a raised earthen bank and along the west boundary by a hedge and mature trees. There is also an open drain adjacent to the west site boundary, which turns and runs parallel to the stone track.

## 2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of a house, detached garage, new entrance, wastewater treatment system and associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority refused permission on 21<sup>st</sup> September 2022, for 1 No. reason as follows: -
  1. *Having regard to the increased turning movements and crossover movements at this location on the National Road in an area where the maximum 100km/h speed limit applies, and to the proposed intensification of the existing laneway, it is considered that to permit this development would seriously prejudice safety and free flow of traffic on the public road and as such would constitute a serious traffic hazard and would have a detrimental impact on the efficient operation of the national route by its adverse effect on the safe overtaking capacity of this stretch of national road. It is further considered that the proposed development would be*

*at variance with national policy in relation to control of frontage development on national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012), as the proposed development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network.*

### 3.2. Planning Authority Reports

3.2.1. A Planning Report dated 15<sup>th</sup> September 2022 has been provided, which reflects the Planning Authority's decision to refuse permission. The report states that a rural housing need had been demonstrated and does not express any concerns regarding the proposed design and layout but, recommends that permission be refused, in view of the submissions received from the Roads Design Department and Transport Infrastructure Ireland. The recommended refusal reason is consistent with that attached to the Planning Authority's decision.

#### 3.2.2. Other Technical Reports

A **Municipal District Engineer** report dated 24<sup>th</sup> August 2022 has been provided, which expresses no objection to the development.

A **Roads Design** report dated 15<sup>th</sup> September 2022 has been provided, which recommends that permission should be refused on the basis of non-compliance with the DoECLG *Spatial Planning and National Roads Guidelines for Planning Authorities* (January 2012).

### 3.3. Prescribed Bodies

3.3.1. Transport Infrastructure Ireland made a submission dated 22<sup>nd</sup> August 2022, advising that the development is at variance with policy in relation to control of development on/affecting national roads, as contained within the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012).

### 3.4. Third Party Observations

3.4.1. The Planning Authority report indicates that no third party submissions were received.

## 4.0 Planning History

4.1. I did not encounter any recent planning records pertaining to the site.

## 5.0 Policy Context

### 5.1. Cavan County Development Plan 2022-2028

5.1.1. The site is in a rural area designated by the development plan as a Stronger Rural Area.

5.1.2. Chapter 12 contains the Rural development strategy and Section 12.13 relates to rural housing. It states that in Stronger Rural Areas it is the intention to facilitate the development of rural dwellings and that the main issues in this area are (a) ensuring that the urban generated housing needs are catered for in the towns and villages and (b) avoiding ribbon development extending out along radial roads from the towns.

5.1.3. The following policies are relevant to the appeal: -

**RH 01:** Ensure rural generated housing needs should be accommodated in the locality in which they arise and where the applicant comes within the development plan definition of need, subject to satisfying good planning practice in matters of location, siting, design, access, wastewater disposal and the protection of environmentally sensitive areas and areas of high landscape value.

**RH 08:** Ensure new rural housing comply with the Design Guide for Single One-Off Houses within Cavan Rural Countryside with respect to Site Selection, House Design, Landscaping, Sustainability and Design Statement.

**SRA 01:** Facilitate rural generated, social or economic housing needs subject to good planning practice in matters of location, siting, design and the protection of environmentally sensitive areas and areas of high landscape value, whilst directing urban generated housing need to areas identified for housing in the adjoining towns and villages.

### 5.2. National Planning Policy Framework

5.2.1. National Policy Objective 19 is of relevance to the proposed development. It requires the following:

*‘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’.*

### **5.3. Sustainable Rural Housing Guidelines for Planning Authorities**

5.3.1. The Guidelines identify a number of rural area typologies and accompanying Map 1 provides an indicative outline of these area typologies. According to this indicative map, the subject site is in a ‘stronger rural area’. It is noted from the Guidelines that this map is an indicative guide to the rural area types only and that the development plan process should be used to identify different types of rural area.

5.3.2. For stronger rural areas, the Guidelines outline that the development plan should strike an appropriate balance between development activity in smaller towns and villages and wider rural areas. The development plan should aim to strike a reasonable balance between: (1) Accommodating proposals for individual houses in rural areas subject to good practice in relation to matters such as siting and design as outlined elsewhere in these guidelines, (2) Actively stimulating and facilitating new housing development in smaller towns and villages to provide for balanced urban and rural choices in the new housing market and (3) Carefully monitoring development trends to avoid areas becoming overdeveloped in terms of leading, for example, to extensive ribbon development.

5.3.3. The Guidelines require a distinction to be made between urban and rural generated housing needs, in the different rural area types. In relation to the identification of people with rural generated housing needs, the Guidelines refer to 'Persons who are an intrinsic part of the rural community' and 'Persons working full-time or part-time in rural areas. Of relevance to this appeal, 'Persons who are an intrinsic part of the rural community' are identified as having "*spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes.*"

#### **5.1. Spatial Planning and National Roads: Guidelines for Planning Authorities**

5.1.1. Regarding accesses directly onto National Roads, the Guidelines require Planning Authorities to adopt a policy to avoid the creation of any additional access point from new development, or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60km/h apply. The provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

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

5.2.1. The site is not located within or adjacent to a designated European site, the closest such site being Lough Kinale and Derragh Lough SAC (Site Code 004061) which lies approx. 3.7km south-east.

#### **5.3. EIA Screening**

5.3.1. An Environmental Impact Assessment Screening report was not submitted with the application.

5.3.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,

- 5.3.3. The proposed development consists of one house and associated site works including a wastewater treatment system. It therefore falls well below the applicable threshold for mandatory EIA.
- 5.3.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, it is considered that 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: -
- There is no proposal to create a new entrance off the National Road. It will be serviced via an existing access that serves the applicant's parents' house.
  - There is no alternative means of access.
  - The development will reduce traffic movements as the applicants currently make multiple daily car trips to the family farm.
  - Permission has been granted in other instances for housing accessed from the N55, with reference to Reg. Refs. 22/46 and 21/758.
  - Sightline distances from the existing access onto the N55 exceed the 215m required and exceed the safe overtaking guidelines.

### **6.2. Planning Authority Response**

- 6.2.1. The Planning Authority made a submission on the appeal on 4<sup>th</sup> November 2022, the contents of which can be summarised as follows: -
- Permission was refused on the basis that the development would constitute a traffic hazard and would seriously prejudice safety and free-flow of traffic on the public road, in view of the submissions provided by TII and the Roads Design Department.

- The development of a further house on this site will intensify traffic movements along the access lane, contrary to the provisions of the development plan and also the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012).
- The Board is requested to uphold the decision to refuse permission.

### 6.3. **Observations**

6.3.1. Transport Infrastructure Ireland made a submission on the appeal on 28<sup>th</sup> October 2022, the contents of which can be summarised as follows: -

- The development conflicts with official policy, in that it is accessed from a section of the N55 where the 100km/h speed limit applies. The DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012) state that planning authorities should avoid additional access points for new development or the generation of increased traffic from existing accesses to national roads.
- The development will inevitably bring about additional vehicular movements, resulting in intensification of access onto and off the N55.
- The Board will be aware of NSO 2 of the National Planning Framework, which includes an objective to maintain the strategic capacity and safety of the national roads network.
- The precedent cases referenced by the appellants are materially different as both of the permitted developments access the public road before accessing the national road.

### 6.4. **Prescribed Bodies**

6.4.1. The appeal was circulated to The Heritage Council, the Department of Housing, Planning and Local Government and An Taisce. No responding submissions were received.



## 7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:

- Compliance with the rural housing strategy,
- Road safety,
- Drainage, and
- Appropriate assessment.

### 7.2. Compliance with the Rural Housing Strategy

- 7.2.1. The subject site is located in the townland of Tullygullin, approx. 4.5km north of Granard, in south County Cavan. It is in a rural area identified by the development plan as a Stronger Rural Area. Development plan objective SRA 01 states that in stronger rural areas, rural generated, social or economic housing needs will be facilitated, subject to good planning practice in matters of location, siting, design and the protection of environmentally sensitive areas and areas of high landscape value. The objective further states that urban generated housing needs will be directed to areas identified for housing in the adjoining towns and villages.
- 7.2.2. National Policy Objective (NPO) 19 of the National Planning Framework is also pertinent to the appeal and it states that in rural areas under urban influence the provision of single housing in the countryside will be facilitated based on the core consideration of demonstrable economic or social need to live in the 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.
- 7.2.3. In this instance a supplementary rural housing application form has been provided, within which the applicant Brian Comaskey states that he has lived at Tullygullion his entire life, on the family farm, and that both applicants currently live in rented accommodation on the opposite side of the N55, approx. 300m from the site. I note that the form indicates that documentary evidence of the longstanding connection to the area was provided as part of the application, but this information was not forwarded by the Planning Authority as part of the appeal documents.

7.2.4. The Planning Authority accepted that a rural housing need had been demonstrated and, from the information available to me, I see no reason to question this. Objective SRA 01 states that rural generated, social or economic housing needs will be facilitated and in this instance, I note that the applicant is proposing to build opposite his family home, on lands within the farmholding. It is also stated within the appeal document that the applicant Brian Comaskey farms the land in partnership with his father. I am satisfied that compliance with SRA 01 and NPO19 has been demonstrated and thus conclude that the proposal is acceptable in principle, subject to consideration of other relevant factors below.

### 7.3. Road Safety

7.3.1. The Planning Authority's refusal reason states that the proposal is at variance with national policy in relation to control of frontage development on national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012) as it would adversely affect the operation and safety of the national road network. The refusal reason further states that to permit the development would seriously prejudice the safety and free flow of traffic on the public road and as such would constitute a serious traffic hazard and would have a detrimental impact on the efficient operation of the N55 by its adverse effect on the safe overtaking capacity of this stretch of national road.

7.3.2. The Planning Authority's decision to refuse is set in the context of the Transport Infrastructure Ireland (TII) submission on the application, which advises that the development is at variance with policy in relation to control of development on/affecting national roads, as contained within Spatial Planning and National Roads Guidelines for Planning Authorities. TII has made a similar submission in respect of the appeal, arguing that the development will bring about an inevitable increase in traffic movements and intensification of access onto and off the N55.

7.3.3. In appealing the decision, the applicants argue that there is no proposal to create a new entrance off the N55 and that the development will give rise to a reduction in traffic movements along the lane, as the applicants are both required to drive to the farm at least twice daily as part of the farm operation. The applicants also refer to instances elsewhere in the local area, where permission has been granted for

housing that accesses the N55, with reference to permission Reg. Refs. 22/46 and 21/758.

- 7.3.4. Spatial Planning and National Roads Guidelines for Planning Authorities provides ministerial guidance in relation to development affecting national primary and secondary roads and, of relevance to the appeal, Section 2.5 states that on land adjoining National Roads to which speed limits greater than 60km/h apply, *'the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses'*.
- 7.3.5. In this instance, the site is accessed via a privately owned lane, which connects directly to the N55 to the west. The access lane also provides access to the applicant Brian Comaskey's family home and farm.
- 7.3.6. The development will give rise to modest levels of traffic during the construction and operational phases. Traffic during the construction phase will be for a temporary period and would not, in my view, be of such a level that would have any impact on the operation of or safety of motorists on the N55.
- 7.3.7. For the operational phase, the development will generate some additional traffic, associated with daily domestic activities. However, the level of such movements would not be of a significant order and, further, I consider this must be balanced against the without-development scenario, whereby the applicant will live away from the farm and will likely make multiple round trips each day, associated with the farming operation. It is my view that the intensity of the usage of the lane is likely to be of a similar degree in both scenarios.
- 7.3.8. It is also relevant to the issue that the access is located on a straight section of the N55, where there is a high level of visibility in both directions, far in excess of the 215m sightline ordinarily required for a road subject to the 100km/h speed limit.
- 7.3.9. In view of the above, and taking a balanced view, I am satisfied that no intensification of use of the junction at the N55 is likely to arise. I therefore conclude that the development is not at variance with policy in relation to control of development on/affecting national roads, as contained within Spatial Planning and National Roads Guidelines for Planning Authorities.

#### 7.4. **Drainage**

### Foul Drainage

- 7.4.1. The development includes the provision of a septic tank and percolation area, with treated waters thereafter discharging to groundwater. The Site Suitability Assessment Report submitted with the application identifies the category of aquifer as 'poor', with a vulnerability classification of 'Extreme'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R21' response category i.e., acceptable subject to normal good practice. The Code includes an additional note that where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Chapter 6 are met and the likelihood of microbial pollution is minimised.
- 7.4.2. The Report indicates that a trial hole with a depth of 2m recorded 300mm of silt/clay and the remaining 1700mm depth of the hole comprised clay intermixed with stone and gravel. Bedrock and the water table were stated to have not been encountered in the trial hole. In relation to the percolation characteristics of the soil, a subsurface percolation test result of 19.42 min/25mm was returned. A surface percolation test result of 10.20 min/25mm was returned.
- 7.4.3. The Report concludes that the site is suitable for the installation of a primary, secondary or tertiary treatment system and proposes that a septic tank and percolation area be installed.
- 7.4.4. Having regard to the site percolation test results, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. I note the Planning Authority did not express any concern regarding this aspect of the development. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the on-site wastewater treatment system with the Planning Authority.

### Surface Water Drainage

- 7.4.5. Surface water is identified on the site layout drawing as discharging to a local watercourse. The location of the watercourse is not identified. I noted on my site visit that there is a drain adjacent to the west site boundary, which runs parallel to the site boundary and also runs parallel to the access road. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the

detailed specification of the surface water drainage system with the Planning Authority.

#### **7.5. Appropriate Assessment**

- 7.5.1. The site is not located within or adjacent to a designated European site, the closest such site being Lough Kinale and Derragh Lough SAC (Site Code 004061) which lies approx. 3.7km south-east.
- 7.5.2. Lough Sheelin SPA (Site Code 004065), Moneybeg and Clareisland Bogs SAC (Site Code 002340) and Derragh Bog SAC (Site Code 002201) are also located within a c.6km search zone of the site.
- 7.5.3. The construction phase of the development may give rise to discharge of a small amount of suspended solid content to the adjacent drain but I am satisfied that the site is remote from any European site and there is no possibility of such discharge being transferred to a European site.
- 7.5.4. The operational phase involves surface waters being discharged to an adjacent watercourse and treated foul waters being discharged to groundwater, following treatment within an on-site septic tank and percolation area. Surface water discharges may contain suspended solid content and treated foul water discharges will include nutrient content. Again, I am satisfied that the site is remote from any European site and there is no possibility of such discharge being transferred to a European site.

#### *Screening Determination*

- 7.5.5. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.
- 7.5.6. This determination is based on the following:
  - The separation distance between the subject site and any European site.

- The smallscale nature of the development..

## 8.0 Recommendation

- 8.1. I recommend that permission for the proposed development be granted, subject to conditions as set out below.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Cavan County Development Plan 2022-2028, in particular objective SRA 01 which states that in stronger rural areas, rural generated, social or economic housing needs will be facilitated, subject to good planning practice, and the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities (2005) and the National Planning Framework, it is considered that, subject to compliance with the conditions set out below, the proposed development would not result in the creation of a road safety hazard and would not have a detrimental impact on the efficient operation of the N55 and would, therefore, be in accordance with the proper planning and sustainable development of the area

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter [unless consent is granted by the planning authority for its occupation by other persons who belong to the same</p>

	<p>category of housing need as the applicant]. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.</p> <p>(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.</p> <p>This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p><b>Reason:</b> To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.</p>
3.	<p>Water supply and surface water drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)" – Environmental Protection Agency, 2021.</p> <p><b>Reason:</b> In the interest of public health.</p>
5.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p>

	<p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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.

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Barry O'Donnell  
 Planning Inspector

12<sup>th</sup> May 2023.