



An
Bord
Pleanála

Inspector's Report ABP-316017-23

Development	Construction of a house and garage.
Location	Bredagh, Lorrha, Nenagh, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	22251
Applicant	Andrew Dagg
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant	Andrew Dagg
Observer	None.
Date of Site Inspection	9 th August 2024.
Inspector	Peter Nelson

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1.0 Site Location and Description

- 1.1. The site is located on the southern side of the R489 Regional Road and is in the townland of Bredagh, approximately 2 km west of Lorrha and less than 2 km east of the River Shannon.
- 1.2. The site is accessed from a local road, the L94891-4. The level of the site falls southwards from the regional road. To the east of the site is a two-storey detached dwelling. There are hedgerow boundaries on the northern and western boundaries. The site is currently in agricultural use. The site has a stated size of 0.4ha.
- 1.3. The site is in an area designated as an 'Open Countryside' in the Tipperary County Development Plan 2022.

2.0 Proposed Development

- 2.1. Permission is sought for a house and garage. The proposed single-storey dwelling is served by a new treatment plant and percolation area. The proposed garage is detached and to the side of the proposed dwelling.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Tipperary County Council request the applicant to submit Further Information on the 10th May 2022 relating to the fact that the applicant previously owned a dwelling in a rural area and the need for a dwelling and additional supporting information in relation to same. The applicant was also requested to submit a signed site suitability assessment.
- 3.1.2. Tipperary County Council refused permission for the development on the 10th February 2023, for the following reason:
 1. The application site is located in a rural area designated as Open Countryside under the Tipperary County Development Plan 2022, Section 5.5.2, Table 5.2 and Policy 5-11 of Tipperary County Development Plan 2022 set out the following requirements (inter alia) for new rural dwellings:

- An applicant seeking a new rural dwelling must be building their first home for their permanent occupation, demonstrate a housing need, and must not already own a dwelling in a rural area.
- The applicant must demonstrate an Economic or Social need to reside in the area in accordance with the requirements of policy 5-11 of the Tipperary County Development Plan.

The applicant currently owns a dwelling. The Planning Authority is not satisfied, having regard to the information submitted as part of this application that the applicant satisfies the requirements at this location. The proposed development would contravene the stated policy and objectives of the Development Plan and would, therefore, be contrary to the proper planning and development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the planner's first report, dated the 9th May 2022, can be summarised as follows:

- Further information will be requested with respect to the applicant's housing need.
- The design and layout of the proposed dwelling are acceptable and do not negatively impact the adjoining residential amenity.
- The applicant has demonstrated adequate sight lines.
- The Site Suitability Assessment has not been signed, and further information will be requested.
- An EIR and AA are not required.

The main points of the planner's second report dated the 3rd February 2023

- The planner was not satisfied with the details submitted that the applicant has demonstrated a housing need as the applicant currently owns a dwelling in a rural area.

- The applicant has submitted a signed Site Suitability Assessment, which is considered acceptable.

3.2.2. Other Technical Reports

- None

3.3. Prescribed Bodies

- None

3.4. Third Party Observations

- None

4.0 Planning History

P.A Ref: 21/894 Planning Application deemed to be withdrawn on the 20th February 2022 following a further information request for a dwelling house, entrance, domestic garage, on-site wastewater treatment system, percolation area and all associate site works. Applicant: Mr A. Dagg

P.A Ref: 512199 A planning application to erect a dwelling, garage, septic tank/percolation area, site access and associated works was withdrawn on the 19th January 2001. Applicant Mr A. Dagg

5.0 Policy Context

5.1. Development Plan

The Tipperary County Development 2022-2028 is the operational plan for the area. The plan came into effect on the 22nd August, 2022.

The site is in an area designated as '**Open Countryside**'

The site is on a road which is designated as part of the '**Strategic Road Network**'.

Relevant Policies

5-11

Facilitate proposals for dwellings in the countryside outside of settlements in accordance with NPF Policy NPO 19 for new Housing in the Open Countryside, and designations illustrated in Section 5.5.1, and Table 5.2: Rural Housing Technical Principles for Applicants.

In **'Areas Under Urban Influence'** and **'Primary Amenity Areas'**, the Council will consider single houses for persons where the criteria set out in Category 1A or B, or Category 2 hereunder are met:

Category 1: 'Economic Need' A:

The applicant must demonstrate an economic need to reside in the area through active employment in farming/agricultural activity (farming, horticulture, forestry, bloodstock). The farm must exceed 20ha in total. And all the criteria below is met:

- (i) The applicant must be actively engaged in farming,
- (ii) The applicant must demonstrate that they have been engaged in farming at that location for a continuous period of over 5 years prior to making the application,
- (iii) The applicant does not, or has never owned a house in the open countryside.

B: The applicant must demonstrate an economic need to reside in the area through active engagement in the running of a farming/horticultural/forestry/bloodstock activity on an area less than 20ha where it is demonstrated to form a significant part of the livelihood of the applicant who is engaged in farming activity on a daily basis, and/or where the farming/agricultural activity provides local employment.

And all the criteria below is met:

- (i) The applicant is trained in good farming practice (or qualifies for an exemption from training), owns or occupies, works and maintains land for the purposes of achieving outputs, and demonstrate that they have been engaged in farming/agricultural activity at that location for a continuous period of over 5 years prior to making the application
- (ii) The applicant does not, or has never owned a house in the open countryside,
- (iii) A detailed 5-year business plan will be required to demonstrate 'compliance with

Section (i).

Category 2: 'Social Need'

The applicant must demonstrate a social need to reside in the local rural area for social purposes in line with Table 5.3.

And all the criteria set out below is met:

- (i) Within a 'Primary Amenity Area', the applicant must have resided within 5km of the site where they intend to build for a substantial period of their lives (10 years),
- (ii) Within an 'Area of Urban Influence', the applicant must have resided within 10km of the site where they intend to build for a substantial period of their lives (10 years),

And

- (iii) The applicant does not, or has never owned a house in the open countryside.

In '**Open Countryside**' areas, the Council will consider single houses for persons where the development meets other relevant policies set out in the Plan, and where the proposed development is in accordance with all the criteria set out hereunder.

- (i) The proposed development must meet the normal planning and environmental criteria and development management standards,
- (ii) The applicant does not, or has never owned a house in the open countryside,
- (iii) To prohibit speculative development in these areas, any application for a single permanent dwelling must be made in the name of the person for whom it is intended. An occupancy condition will be attached to any grant of permission,
- (iv) An alternative site is not available within a settlement within 5km of the proposed site.

5-13

Preserve the carrying capacity of strategic regional roads, identified at Figures 5.3 and 12.2, and safeguard the investment in such infrastructure. The Council will facilitate proposals for new dwellings on strategic routes in the countryside outside of settlements in accordance with the following criteria:

a) Where the applicant meets an 'Economic Need' (see Table 5.3 and Planning Policy 5 - 11), and there is no availability of alternative sites to the applicant away from the strategic route. An existing and/or shared domestic dwelling entrance of the applicant's family dwelling should be used where practicable and it will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design and Visibility at a Direct Access.

OR

b) The applicant shall be a son or daughter of a person who meets an 'Economic Need' Category A (i) and (ii) and Category B (i), AND, the applicant meets a 'Social Need'. The new dwelling must share the existing domestic entrance of the applicant's family dwelling and will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design and Visibility at a Direct Access and there is no availability of alternative sites to the applicant away from the strategic route.

OR

c) Where an applicant meets a Social Need and the proposed site has been in the ownership of immediate family members for a minimum of 10 years, and there is no availability of alternative sites to the applicant away from the strategic route. The new dwelling must share the existing domestic entrance of the applicant's family dwelling and will meet sightline requirements set out in Volume 3, Appendix 6, Section 6.1 Road Design & Visibility at a Direct Access.

13-1

Encourage and support the sympathetic restoration, re-use and maintenance of protected structures thereby ensuring their conservation and protection. In

considering proposals for development, the Council will have regard to the Architectural Heritage Protection Guidelines for Planning Authorities, (DAHG 2011) or any amendment thereof, and proposals that will have an unacceptable impact on the character and integrity of a protected structure or adjoining protected structure will not be permitted.

Sustainable Rural Housing Guidelines for Planning Authorities

These guidelines differentiate between Urban Generated Housing and Rural Generated Housing and directs urban generated housing to towns and cities and lands zoned for such development.

National Planning Framework

National Policy Objective 15 Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities. 5.3.2.

National Policy Objective 19 makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Natural Heritage Designations

Middle Shannon Callows Special Protection Area is approximately 1.9km from the subject site.

5.3. EIA Screening

See Form 1 and Form 2. Concerning the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have

concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- The grounds for refusal, which state that the applicant currently owns a dwelling, are false.
- The applicant does not own any dwelling in their sole name.
- The appellant's divorce proceedings are ongoing.
- His family home was sold as part of a mediation agreement in 2020.
- A house bought in 2020 was sold in 2021 to finance the purchase of a home for his ex-wife, which is in her sole name.
- The applicant has been living in rental accommodation since June 2021 in Portumna.
- The applicant's 96-year-old father lives alone on the home farm and requires daily assistance.
- The applicant intends to use the 'Fresh Start' affordable housing and loan scheme.

6.2. Planning Authority Response

- None

6.3. Observations

- None

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issue in this appeal to be considered is as follows:

- Rural Settlement Policy

7.2. Rural Settlement Policy

7.2.1. The reason for refusal states that the application site is in an area designated as Open Countryside and that an applicant seeking a new rural dwelling must build their first home for their permanent occupation, demonstrate a housing need and not already own a dwelling in a rural area. The reason also stated that the applicant must demonstrate an Economic or Social need to reside in the area in accordance with the requirements of Policy 5-11. The Planning Authority was not satisfied that the applicant satisfied the requirements of the development plan.

7.2.2. Firstly, I note that Policy 5-11 of the Tipperary County Development Plan 2022-2208 states that for 'Open Countryside' areas, the Council will consider single houses where the proposed development is in accordance with the following criteria:

'(i) The proposed development must meet the normal planning and environmental criteria and development management standards,

(ii) The applicant does not, or has never owned a house in the open countryside,

(iii) To prohibit speculative development in these areas, any application for a single permanent dwelling must be made in the name of the person for whom it is intended.

An occupancy condition will be attached to any grant of permission,

(iv) An alternative site is not available within a settlement within 5km of the proposed site.'

7.2.3. The policy for single houses in 'Open Countryside' does not require that an applicant demonstrate an Economic or Social Need to reside in the area. Contrary to the stated reason for refusal, economic and social needs are not considered in this case.

- 7.2.4. The planning authority is not satisfied that the details submitted as part of further information demonstrate a housing need as the applicant currently owns a dwelling in a rural area.
- 7.2.5. The applicant's response to further information states that the applicant was born and reared in a home approximately 0.5km from the application site. The applicant's father still lives on the family farm.
- 7.2.6. The applicant's previous marital home was located approximately 1.5km from the application site. The applicant is now divorced, and as part of further information, a letter from the applicant's solicitor states that the applicant sold this dwelling in June 2020.
- 7.2.7. The applicant also states that he has no claim to the house in which his father lives. He states that he has been living in rented accommodation in Abbey Street, Portumna.
- 7.2.8. The applicant states that he continues to farm at lands owned by the applicant at Bredagh and that there is an old dwelling house on the farm, but it has been derelict since 1961 and is now used as a livestock shed for lambing. This dwelling is a substantial protected structure.
- 7.2.9. In the appeal, the applicant states that he owns no dwelling in his sole name. He reiterates that the family home was sold as part of the mediation agreement and that a house bought in 2020 opposite the family home in Bredagh was sold in 2021 to finance the purchase of a house for his ex-wife.
- 7.2.10. The Development Plan policy for housing in sites designated 'Open Countryside' clearly states that the Council will consider single houses where the applicant does not or has never owned a house in the open countryside. It is clear from the details submitted that the applicant has previously owned properties in the open countryside. The applicant also owns land containing a dwelling, a protected structure currently used for agricultural purposes.
- 7.2.11. I therefore consider that the applicant does not comply with Policy 5-11 of the Tipperary County Development Plan 2022-2208. Therefore, the proposed development would contribute to the encroachment of random rural development in

the area and mitigate against preserving the rural environment and providing public services and infrastructure.

8.0 AA Screening

- 8.1. I have considered the proposed dwelling in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.2. The subject site is located c.1.9km from the Middle Shannon Callows Special Protection Area.
- 8.3. The proposed development comprises a dwelling with a treatment plant, percolation area and garage.
- 8.4. No nature conservation concerns were raised in the planning appeal.
- 8.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
 - The small scale and nature of the development.
 - The location from the nearest European site and lack of connections.
 - Taking into account screening report and determination by LPA.
- 8.6. I conclude that on the basis of objective information, the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 8.7. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that permission be refused for the reason below.

10.0 Reasons and Considerations

1. The application site is in a rural area designated as 'Open Countryside' under the Tipperary County Development 2022, Section 5.5.2, Table 5.2. Policy 5-

11 of the Development Plan requires that for 'Open Countryside' areas, single dwellings will only be considered where the applicant does not, or has never owned a house in the open countryside. As the applicant has previously owned dwellings in the immediate area, the proposed development would be contrary to Policy 5-11. The proposed development, in absence of any identified need for the house on this site, would contribute to the encroachment of random rural development in the area and mitigate against the preservation of the rural environment and the provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

11.0 Conditions

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.

Peter Nelson
Planning Inspector

12th August 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	316017-23		
Proposed Development Summary	Dwelling House, domestic garage, on-site wastewater treatment system, percolation area and all associated site works.		
Development Address	Bredagh, Lorrha, Nenagh, Co. Tipperary		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		N/A	No EIAR or Preliminary Examination required
Yes		!0. b) (i) Construction of more than 500 dwelling units	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	316017-23	
Proposed Development Summary	Dwelling House, domestic garage, on-site wastewater treatment system, percolation area and all associated site works.	
Development Address	Bredagh, Lorrha, Nenagh, Co.Tipperary	
The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment? Will the development result in the production of any significant waste, emissions or pollutants?	A dwelling house in this location is not exceptional in the context of the existing environment. A dwelling with a wastewater treatment system will not result in the production of any significant waste, emissions or pollutants	No No
Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? Are there significant cumulative considerations having regard to other existing	A single dwelling house in this location is not exceptional in the context of the existing environment. There are no significant cumulative considerations having regard to other existing and/or permitted projects.	No NO

and/or permitted projects?		
Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location? Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	The site of the proposed development is not located on, in, adjoining or does not have the potential to significantly impact on an ecologically sensitive site or location. The proposed single-dwelling house does not have the potential to significantly affect other significant environmental sensitivities in the area.	
• Conclusion		
There is no real likelihood of significant effects on the environment. EIA not required.	There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	There is a real likelihood of significant effects on the environment.

Inspector: _____

Date: _____

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)