



An
Bord
Pleanála

Inspector's Report

ABP-316255-23

Development	Construction of a dwelling house with all associated site works
Location	Ballymacashel, Mungret , Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	22/423
Applicant(s)	Shane Conway
Type of Application	Permission
Planning Authority Decision	Grant subject to Conditions
Type of Appeal	Third Party
Appellant(s)	Pat McCormack
Observer(s)	None
Date of Site Inspection	8 th September 2023
Inspector	Ciara McGuinness

1.0 Site Location and Description

- 1.1. The site is situated in the townland of Ballymacashel, less than 1km from Ballybrown village and approximately 4km west of Limerick city. The N69 Road is located 600m to the south of the site. Access to the site is from the L1403 local road. The area is rural in nature and is characterised by farmland with a considerable level of one-off houses. There are two established houses located on either side of the subject site. The house to the west is owned and occupied by the third-party appellant.
- 1.2. The site of the development has a stated site area of 1.7 hectares and has frontage onto the local road on its northern boundary. The house is proposed on a rectangular portion of the site towards the road frontage. There is an existing agricultural entrance from the local road at the eastern end of the site frontage.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a dwelling with an on-site effluent treatment system. The proposed house has a stated floor area of 219.5sqm and a maximum ridge height of 7.9m. It is proposed to provide a septic tank with a percolation area in the south-western corner. Planting and a timber gate are proposed to separate the site of the house from the agricultural lands to the rear. The proposed development would be served by a mains water supply. Information submitted with the application include details of family land ownership, the applicant's connection with the area and a site suitability test report. A letter was enclosed from the applicant's father in which it was stated that he was giving permission to his son to apply for planning permission and build a house.
- 2.2. Further Information (FI) was submitted on the 27th of February and included folio map details of the original family home, a revised layout showing ditch removal and sightlines, and revised surface water disposal proposals.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission subject to 9 no. conditions. These were generally of a standard type. Condition 2 requires payment under the general Development Contribution Scheme. Condition 3 related to an occupancy condition requiring the dwelling house to be the first occupied by the applicant as a permanent place of residence for a period of 7 years. Condition 4 requires surface water run-off from the public road which flows into the site to be accommodated within the site unless alternative arrangements are agreed. Condition 5 requires all water run-off from roofs, entrances and parking areas within the site to be collected and disposed of within the site to soakpits/watercourses. Condition 6 requires the installation of the wastewater treatment system and polishing filter in accordance with the EPA COP, a certificate of installation, compliance with the EPA Code of Practice and the undertaking of a maintenance contract for the WWTP and the polishing filter. Condition 7 relates to materials and finishes. Condition 8 requires screen planting (native broadleaf species) along all boundaries. Condition 9 requires that an external wall of the dwelling/garage have appropriate ducting for a future charging point for electric vehicles.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's initial report noted that the location of the site is in an 'Area Under Strong Urban Influence'. No land registry or folio number details were provided for the subject site of the family home. Further information was required in this regard. The Further Information (FI) submitted on the 27th of February included folio map details of the original family home. The FI was considered acceptable by the Planner.

3.2.2. Other Technical Reports

Roads – The Roads Section report notes that the site is located on a local road in a built-up area with a speed limit of 80km/h. It was considered that the applicant had not demonstrated unobstructed sightlines and safe stopping distances. Revised

details on surface water disposal were also required. The FI submitted included a revised layout showing ditch removal and sightlines. Revised surface water disposal proposals were also submitted. The FI was considered acceptable by the Roads Section.

Environment – The site suitability assessment and proposed treatment system were considered acceptable subject to condition.

3.3. Prescribed Bodies

- 3.3.1. Irish Water (14/04/2023) - No objection. It was advised that the applicant must sign a connection agreement prior to the commencement of development. Such connections will be subject to IW Capital Investment Programme.

3.4. Third Party Observations

- 3.4.1. An observation was received from the adjoining landowner to the west. The concerns raised are similar to those raised in the third-party grounds of appeal. They relate to the issue of surface water retention on the subject site being exacerbated by the proposed development and the resultant impact on the neighbouring development.

4.0 Planning History

P.A Ref 04/1755 – Permission REFUSED in 2004 for the construction of dwelling, entrance, sewage treatment system and percolation area.

ABP Ref 13.130503 REFUSED in 2003. P.A. Ref 99/899 – Permission GRANTED in 2002 for construction of dormer bungalow, garage, septic tank and percolation area.

P.A. Ref 97/1513 - Outline permission REFUSED in 1997 for the erection of two-storey dwellinghouse, entrance and installation of biocycle treatment system.

5.0 Policy Context

5.1. Limerick Development Plan 2022-2028

- 5.1.1. **Objective HO O20 Rural Areas under Strong Urban Influence**

It is an objective of the Council to consider a single dwelling for the permanent occupation of an applicant in the area under Strong Urban Influence, subject to demonstrating compliance with ONE of the criteria below:

1. Persons with a demonstrable economic need to live in the particular local rural area;

Persons who have never owned a house in the rural area and are employed in rural-based activity such as farming/bloodstock, horticulture or other rural-based activity, in the area in which they wish to build, or whose employment is intrinsically linked to the rural area in which they wish to build, or other persons who by the nature of their work have a functional need to reside permanently in the rural area close to their place of work (within 10km). (Minimum farm size shall be 12 hectares for farming or bloodstock). The applicant must demonstrate that they have been actively engaged in farming/bloodstock/horticulture or other rural activity, at the proposed location for a continuous period of not less than 5 years, prior to making the application. In the event of newly acquired land, to demonstrate that the proposed activity would be of a viable commercial scale, a detailed 5-year business plan will be required.

2. Persons with a demonstrable social need to live in a particular local rural area;

Persons who have never owned a house in the rural area and who wish to build their first home on a site that is within 10km of where they have lived for a substantial period of their lives in the local rural area (Minimum 10 years). The local rural area is defined as the area outside all settlements identified in Levels 1 – 4 of the Settlement Hierarchy. Excluding Level 4 settlements, where there is no capacity in the treatment plant.

3. Persons with a demonstrable local exceptional need to live in a particular local rural area, examples include:

a) Returning emigrants who have never owned a house in the rural area, in which they lived for a substantial period of their lives (Minimum 10 years), then moved away or abroad and who now wish to return to reside in the local rural area (within 10km of where they lived for a substantial period of their lives). The local rural area is defined as the area outside all settlements identified in Levels 1 – 4 of the Settlement Hierarchy. Excluding Level 4 settlements, where there is no capacity in the treatment plant.

b) A person who has lived a substantial period of their lives in the local rural area, (at least 10 years), that previously owned a home and is no longer in possession of that home, due to the home having been disposed of following legal separation/ divorce/ repossession and can demonstrate a social or economic need for a new home in the rural area.

5.1.2. **Objective IN O12 Surface Water and SUDS**

A number of criteria are listed under this objective including the following;

h) Require all planning applications to include surface-water design calculations to establish the suitability of drainage between the site and the outfall point and require all new developments to include SuDS, to control surface water outfall and protect water quality in accordance with the requirements of Chapter 11: Development Management Standards of the Plan.

5.2. **National Planning Framework**

5.2.1. **National Policy Objective 15** supports 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.

5.2.2. **National Policy Objective 19** makes a distinction between rural areas under urban influence and rural areas elsewhere. It seeks to facilitate 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.

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

5.3.1. 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. Urban generated housing has been identified as development which is haphazard and piecemeal and gives rise to much greater

public infrastructure costs. Rural generated housing includes sons and daughters of families living in rural areas and having grown up in the area and perhaps seeking to build their first home near the family place of residence.

5.4. Natural Heritage Designations

Inner Shannon Estuary - South Shore pNHA - c.1km to the northeast

River Shannon and River Fergus Estuaries SPA – c.1.7km to the northeast

Lower River Shannon SAC – c1.7km to the northeast

5.5. EIA Screening

- 5.5.1. The proposed development is for the construction of a single dwelling house, and a private wastewater treatment system on a greenfield site in a rural area. Having regard to the nature, size and location of the proposed development, and to the nature of the receiving environment, 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

The appeal is a third-party appeal against the decision to grant planning permission. It was submitted by Pat McCormack, who is the owner/occupier of the house to the west of the subject site. The main points raised may be summarised as follows:

- Although sustainable drainage was addressed by way of a Further Information request, the Planning Authority failed to take into consideration the existing ground water conditions on site. Photographic evidence has been submitted showing the retention of ground water on the proposed site.
- The application has failed to deal with the issue of site retaining surface water. The proposed development will add to the issue of ground water retention. There is no discharge to the public storm network.

- An Bord Pleanála in their previous decision related to the subject site, Reg Ref PL30.1303503, dated 11th February 2003, stated they were not satisfied that the appeal site could be drained satisfactorily. The proposed development would therefore be prejudicial to public health. The appellant notes that in the subsequent years since, no drainage improvements works have been undertaken.

6.2. Applicant Response

The applicant's response may be summarised as follows;

- The water run-off from the applicant's site has been catered for as per the engineer's design submitted with the application and Further Information (FI) The appellant is contributing to the pluvial flooding as his ground levels along the western boundary are much higher.
- There is no known risk of flooding based on family knowledge and flood maps. The appellants house level is greater than 300m-400m over the existing ground level to the east where he is claiming there is pluvial flooding.
- Calculations were carried out to deal with all the surface water from the paved areas and roof areas, as detailed in the Further Information.
- Site Surveyor of MB Precision Land Info was retained to view levels in that area shown in the photographs taken by the appellant. Their submitted drawing as part of the appeal shows that the pluvial flooding is minuscule and there is not risk to the neighbouring site.
- The photographs submitted by the appellant are misleading and show the site after an isolated thunderstorm event.
- Reference is also made to condition no. 5 attached to the grant of permission which relates to the collection and disposal of surface water run-off.
- The applicant has made efforts to engage with the appellant in an attempt to alleviate their concerns.

6.3. **Planning Authority Response**

The Planning Authority has not responded to the grounds of appeal.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. The sole issue raised in the appeal relates to surface water drainage. I also consider That the issue of settlement policy should be addressed noting that it is a new issue in the appeal. Appropriate Assessment (AA) also needs to be addressed.

7.2. **Drainage**

7.2.1. Drainage issues have been raised, specifically in relation to surface water retention on the site at the boundary with the neighbouring property which is owned by the appellant. Following a request of Further Information by the Planning Authority, a revised surface water drainage system was proposed by the applicant's engineer to overcome the shortcomings of the original application. On the basis of a soil infiltration survey carried out on the site, it has been deemed that the most appropriate way of disposing of surface water from the site is by infiltrating to the ground. The engineers report notes that the due to the area of driveway proposed, the appropriate SuDS measures to drain the site would be the use of self-draining permeable paving to drain all impermeable surfaces to the ground. All surface stormwater from the site will discharge directly into the permeable paving system. Stormwater flow modelling calculations submitted with the Further Information response demonstrate that infiltration rates are more than adequate to contain worst case-scenario flood events.

- 7.2.2. It is also proposed to provide 2 no. new road gullies and a new channel drain system at the site entrance to accommodate the surface water draining to the site from the road and entrance. It is proposed to plant 2 no. rows of *carpinus fastiaga* trees along the western site boundary. Ground levels within 6m of the fence line to the west will not be interfered with and will remain as per the existing contours. The response in relation to surface water drainage was considered acceptable by the Planning Authority. On the basis of the information provided, I would agree that the drainage proposals are adequate to accommodate any surface water runoff and ensure that all surface water runoff will be contained on site and will not impact the neighbouring property.
- 7.2.3. The applicant contends that the photographs submitted by the appellant were taken after an isolated thunderstorm event. A site survey drawing prepared by MB precision Land Info (Drawing no. FR 2107-01 Rev 2) shows the topography of the site. A depression is indicated towards the western part of the site, with ground levels rising again towards the neighbouring site. The OPW's flood maps do not show the site as being the subject of any identified flood risk. Likewise, the local road to this site is shown to be risk free. It is further noted from my site inspection that the field within which the proposed development is to be located appeared to be very well drained.
- 7.2.4. I note the previous decision by An Bord Pleanála on the subject site (ABP Reg Ref PL13.130503), as referred to in the appellants submission. The refusal reason referenced related to wastewater drainage and stated that *"The board is not satisfied, based on the submissions made in connection with the planning application and the appeal, that the proposed dwelling can be drained satisfactorily. The proposed development would, therefore, be prejudicial to public health."* The Inspectors Report for that application considered that the increase in application site area from the previous application with the inclusion of the triangular field to the south, overcame that the problems concerning the percolation area which applied to the previous refusal on the site. Under the previous application, P.A Ref 97/1513, the proposed development was considered to result in an excessive density of wastewater treatments systems in an area where the ground water is categorised as "high to extreme vulnerability". The site area of the current application is measured at 1.7ha and includes the agricultural lands to the south. The application proposes

an on-site treatment unit and a percolation area located in excess of 100m from the proposed dwelling in the southwest corner of the site in an area classified as 'high vulnerability'. The application notes that the proposed percolation area will be located in a low-density area of onsite wastewater treatment systems (.i.e. less than 1 percolation area per hectare). The Planning Authority's Planner's Report considered that the site suitability assessment and proposed treatment system were acceptable subject to condition. I further note that the appellant has not specifically raised the issue of wastewater drainage in their appeal other than to reference the refusal reason by An Bord Pleanála. Having regard to the information submitted including the site characterisation report and the proposal to install a tertiary treatment system and percolation area, I would concur with the assessment of the planning authority that site is suitable for the proposed on-site effluent treatment system subject to the system being constructed and maintained in accordance with the details submitted.

- 7.2.5. It is considered that having regard to the information submitted with the application regarding the characteristics of the site and the design of the proposed drainage system, and to my observations on site, which are generally in accordance with those described in the applicant's Engineers report, the proposed drainage proposals would be appropriate. I am satisfied, therefore, that the site can be adequately drained to avoid any adverse impact on adjoining properties.

7.3. Settlement Policy – New Issue

- 7.3.1. With regard to compliance with rural housing policy the proposal should be in accordance with the provisions of the Sustainable Rural Housing Guidelines and the provisions of the Limerick Development Plan 2022 – 2028, as it relates to settlement in rural areas. Chapter 4 of the Limerick Development Plan 2022 – 2028 refers to Housing and Section 4.4 sets out policy in relation to rural housing. The site is located at Ballymacashel, Mungret, Co. Limerick within the countryside. Within the open countryside, the Plan identifies two types of areas for rural housing: 1. Areas under urban influence and 2. Rural areas elsewhere. These two areas are identified on Map 4.1: Rural Housing Strategy Map. As illustrated on this map the appeal site is located with the Area of Strong Urban Influence.

- 7.3.2. Objective HO O20 of the Plan refers to Rural Areas under Strong Urban Influence. It states that it is an objective of the Council to consider a single dwelling for the permanent occupation of an applicant in the area under Strong Urban Influence, subject to demonstrating compliance with one of three criteria as set out at Section 5.1.1 above.
- 7.3.3. The applicant is Shane Conway. The site is owned by the applicant's father and a letter of consent to make the application is noted on file. As detailed in the application form the applicant resides at his family home and has lived there his entire life. The applicant has submitted his birth cert and letters from his primary and secondary schools confirming he attended school locally. It is also noted that he plays for the local soccer team. Folio and mapping details of the original family landholding were submitted as Further Information and confirm the original family landholding is c.1km from the site.
- 7.3.4. In relation to Objective HO O20, criteria two refers to persons with a demonstrable social need to live in a particular local rural area and who have never owned a house in the rural area and who wish to build their first home on a site that is within 10km of where they have lived for a substantial period of their lives in the local rural area (Minimum 10 years). In relation to the issue of a demonstrable social need, the applicant states that he has never owned a home, and he wishes to build his first home on a site that is c.1km from his family home, where he has lived all his life.
- 7.3.5. On the basis of the information provided on file, the applicant has demonstrated that he has a housing need for the specific area and I conclude that the applicant falls into a category provided for in Objective HO O20 of the Limerick Development Plan 2022-2028. Therefore, I conclude that the applicant meets the qualification criteria to build a rural dwelling at this location in accordance with the provisions of the Development Plan.

7.4. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development, and the separation distance to any European site, 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

8.1. I recommend that permission is granted for the proposed development.

9.0 Reasons and Considerations

Having regard to the to the provisions of the Limerick Development Plan 2022-2028, the pattern of development in the area and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be an acceptable form of development at this location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 14th day of April, as amended by the further plans and particulars submitted on the 27th day of February 2023 and 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.

Reason: In the interest of clarity.

2. (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 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.

(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. 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.

Reason: 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.

3. The site shall be landscaped, using only indigenous deciduous plants and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All existing trees and hedgerow be retained except the extent that its removal is necessary to provide for the site entrance. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

4. (a) The effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 14th day of April 2022, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single

Houses”, Environmental Protection Agency (current edition). Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority within six months of the date of this Order.

(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

5. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.
- (b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

6. The roof colour of the proposed house shall be blue-black, black, dark brown or dark grey. The colour of the ridge tile shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

7. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

8. 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.

Reason: 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.

Ciara McGuinness
Planning Inspector

13th October 2023