



An
Bord
Pleanála

Inspector's Report

ABP-318084-23

Development	Dwelling house, entrance and all associated site works.		
Location	Caherhurley, Bodyke, Co. Clare.		
Planning Authority Ref.	23/187.		
Applicant(s)	Samuel Irwin.		
Type of Application	Permission	PA Decision	Refuse permission.
Type of Appeal	First Party.	Appellant	Samuel Irwin
Observer(s)	None		
Date of Site Inspection	25.03.2024.	Inspector	Des Johnson

1. Site Location/ and Description.

1.1 The site is located c. 2km south east of Bodyke and 3.3km south west of Tuamgraney, Co. Clare.

1.2 This is an elevated site currently covered by forestry and scrub. To the south the site is bounded by a narrow public road, which rises from east to west along the frontage. To the western site boundary there is a narrow road (shown as a private road) serving a small number of dwellings. There is an existing gateway at the south western corner of the site. A utility cable on poles runs along the proposed site frontage.

1.3 This is a rural agricultural area with a sparse settlement pattern, and significant areas of forestry

2. Description of development.

2.1 The proposal is for the construction of a single storey dwelling house, entrance and all associated site works. The gross floor space proposed is stated to be 160 sqm, and the site area is 0.675ha.

2.2 It is proposed to install a 'packaged treatment plant' and polishing filter. A 'Tricell Novo' type system is proposed.

2.3 The site is stated to be part of a larger family landholding. The applicant's father consents to the making of the application. It is currently afforested, and trees would be felled for the construction of the dwelling and entrance roadway. A tree felling licence is submitted.

3. Planning History.

3.1 No planning history relating to this site on file.

4. Planning Policy

4.1 The Clare County Development Plan 2023-2029 came into effect on 20th April 2023.

The site is in an area designated as an Area under Strong Urban Influence.

Objective CDP 4.14 refers to New Single Houses in the Countryside within the 'Areas of Special Control'. It is an objective within Areas of Special Control (Areas Under Strong Urban Influence) to permit new single houses for the permanent occupation of an applicant who meets the necessary criteria. 'Criteria' refers to persons with a demonstrable economic or social need to live in these rural areas. It is a further objective to direct urban-generated development to areas zoned for new housing in adjoining urban centres, villages, and clusters.

Economic Need – defined as persons who by the nature of their work have a demonstrable economic need to reside permanently in the rural area close to their work, or where a person is able to satisfy the planning authority of their commitment to operate a full-time business (not including B&B) from their proposed home in a rural area.

Social Need – defined as a person who is an intrinsic member of a local rural community who was born within the local rural area, or who is living or has lived permanently in the local rural area either as in one continuous period or cumulatively over a number of periods prior to making the application, and who as a demonstrable social need to live in the area. Alternatively, special consideration may be given in limited cases for persons who need a dwelling for permanent occupation in a rural area for exceptional health reasons.

5. Natural Heritage Designations

5.1 Slieve Bernagh Bog SAC is c. 400m to the south. Qualifying interests are Wet Heaths, Dry Heaths, and Blanket Bogs.

5.2 Lough Derg (Shannon) SPA is c. 5.6km to the north-east. Qualifying interests are Cormorant, Tufted Duck, Goldeneye, Common Tern, and Wetland and Waterbirds.

Development, Decision and Grounds of Appeal

6. PA Decision.

6.1 By Order dated 31st August 2023, Clare County Council decided to refuse permission for a single reason as follows:

- The site is in an area designated as an Area under Strong Urban Influence in the Clare CDP 2023-2029. It is an objective of the Plan to permit a single house for the permanent occupation and housing need of local rural persons with a demonstrable economic or social need to reside in the location. The planning authority is not satisfied, based on the information submitted, that the applicant complies with the CDP objectives as they relate to single houses in the countryside within Areas of Special Control. The proposed development would contravene the objectives of the CDP, would be contrary to proper planning and sustainable development, and would be contrary to the Section 28 Guidelines on Rural Housing.

6.2 The Planner's Report dated 15th May 2023 recommended Further Information relating to the following:

- Applicant requested to satisfactorily demonstrate compliance with Objective CDP4.14 of the CDP, and submit relevant documentary evidence.
- The planning authority is concerned that the proposed dwelling is on the highest point of the site, on the crest of a hill, and would be a prominent feature in the local landscape, particularly when viewed from the public road to the south and south-east. Applicant is requested to relocate to a less elevated and less prominent location, provide full details of tree felling, and submit details of proposed boundary treatment.

In response, the applicant stated as follows:

- The application was submitted before the current CDP came into effect, and should be assessed under the previous Plan in which the site was zoned as 'Structurally Weak' and outside the Areas of Special Control.
- Other family lands do not offer opportunities for building on. The applicant offers to sign an agreement not to develop further housing on the land at Caherhurly. The proposed dwelling would solve the applicant's housing need.
- The applicant works on the family farm, and hopes, in time, to take it over. The land has been in family ownership since 2014.
- The applicant is a member of the local community, and lived in Ballyquinmore, Kilbane from 2003 to 2014 in the family home. The distance was not more than 10km.
- A revised location for the proposed dwelling is proposed to the east of the site in a less prominent position, and with a 3m lower floor level. Forest cover would be maintained on the land providing screening. An Observer who made a submission on the original application is understood to have had his concerns alleviated by the revised position.
- Other than trees to be felled for the percolation area and house footprint, the site would remain forested and managed on a

continuous tree cover basis. No trees would be felled on the site periphery.

6.3 The Planner's Report dated 29th August 2023 (following the receipt of Further Information) states that the planning application should be assessed under the CDP in effect at the time of the making of the decision. The applicant has not submitted information to indicate that farming in the locality is his predominant occupation. The family landholding is 6.5ha, which is well below the minimum requirement to demonstrate an economic reason to reside in the local rural area. There is no documentary evidence to demonstrate that the applicant lived at Ballyquinmore, Kilbane from 2003 to 2014. This location is 10.1km from the appeal site. The Slieve Bernagh Mountains separate the two sites, and there is little connection between the two areas. The applicant has failed to demonstrate an economic or social need to reside at this location. The revised site location for the house would not have a negative impact on the visual amenities of the area.

6.4 A 3rd party observation was submitted and is summarised in the report. The report states that the issues raised were considered in the assessment of the application.

6.5 The Senior Executive Engineer's Report dated 16th May 2023 recommends Further Information relating to sightlines, and management of surface water run-off.

6.6 Environment Section Report dated 5th May 2023 recommends conditions relating to percolation area/polishing filter, treatment system, and surface water disposal.

7. First Party Appeal.

7.1 The grounds of appeal may be summarised as follows:

1. The 1st party is a member of the local rural community. He has a social need and the proposal accords with CDP 4.1.4 relating to social need.
2. The 1st party lived in Ballyquinmore, Kilbane, Broadford from 2013 to 2014. He attended Broadford National School (letter attached). He is a member of Bodyke golf club located 4km from the site. He has many friends and acquaintances in the area from school days.

3. The 1st party needs a permanent house. He currently lives with his elderly grandparents.
4. The site is on family owned lands (17 acres) and the 1st party offers to enter an agreement not to develop or sell any other sites on this land.
5. At the time of the application, the site was zoned as Structurally Weak (outside Areas of Special Control). Surely the proposed development should be assessed under the CDP in force at the time of the application. The 1st party is advised that there is no legal precedent for the approach taken by the planning authority.

8. PA Response

8.1 The application was assessed under the CDP in effect at the time of the decision. Based on the details submitted, the planning authority did not consider that the 1st party had demonstrated an economic or social need. The documentation submitted does not demonstrate compliance with Objective CDP 4.14 of the CDP.

Environmental Screening

9. EIA Screening

Having regard to the nature and scale of the proposal, the proposed house location and the absence of any connection to any area of significant environmental sensitivity in the vicinity of the site, 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.

10. AA Screening -

Having regard to the nature and scale of the proposal, the separation distance to Slieve Bernagh Bog SAC, its Qualifying Interests, and associated Conservation Objectives, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on Slieve Bernagh Bog SAC or any other European site.

2.0 **Assessment**

- 2.1. The proposal is for a single storey dwelling (160 sqm), entrance and all associated site works, on a site area of 0.675ha. Effluent treatment would be provided by a 'packaged treatment plant' and polishing filter. The site is elevated and prominent in the local area. It is currently covered by dense forestry and scrub. The site is owned by the applicant's father, and is part of a larger land holding stated to be 6.42ha. The siting of the house was amended by way of a submission of Further Information, from the western end of the site to the eastern end, and at a lower elevation.
- 2.2. The planning authority has refused permission for a single reason, stating that the site is in an area designated as an Area under Strong Urban Influence in the current Clare County Development Plan and that, based on the information submitted, the applicant has not demonstrated an economic or social need to permanently live at this location in accordance with County Development Plan objectives.
- 2.3. I consider that the key issues in this appeal fall under the following headings:
- Adequacy of public notices
 - Development Plan policy
 - Visual amenity
 - Site drainage
 - Access arrangements
 - Environmental assessments.

Public Notices

- 2.4. The public notices should provide an accurate description of the proposed development. In this case both the newspaper and site notices refer to 'dwelling house, entrance and all associated site works'. The notices do not make reference to the fact that effluent treatment is proposed using a 'packaged treatment plant' and polishing filter, but does refer to 'all associated works'. The planning authority is satisfied with the public notices. I consider that the wording of the notices is acceptable in this case, as the area is not connected to public services, and the provision of private treatment and disposal of effluent would be obvious to any interested party, while not referenced in the wording of the notices.

Development Plan Policy

- 2.5. The planning application was submitted to the planning authority on 23rd March 2023 at a time when the previous County Development Plan was in effect. The current Clare County Development Plan 2023-2029 came into effect on 20th April 2023. The Further Information submission was made to the planning authority on 4th August 2023. I submit that the proposed development should be assessed under the provisions of the current Clare County Development Plan.
- 2.6. The site is in an area designated as an Area under Strong Urban Influence. It is an Area of Special Control. It is an objective of the Plan to permit new single houses for permanent occupation by persons who can demonstrate an economic or social need to live in the area. The planning authority is not satisfied that the 1st party in this case has demonstrated an economic or social need to reside in this location. The planning application form submitted to the planning authority states that the 1st party is the son of the land owner, and that the site is part of a larger land holding of 6.42ha purchased in December 2014. The 1st party is stated to be an IT engineer working for a Kildare based company; he works one day per week in Kildare and the remainder of the week works at home. He states that he is a member of the local community, and lived in Ballyquinmore, Kilbane from 2003 to 2014 in the family home. He attended Broadford National School and is a member of Bodyke Golf Club. In response to a request for Further Information, it is stated that the 1st party works on the family farm, and hopes in time to take it over. The planning authority contend that Ballyquinmore, Kilbane is 10.1km from the appeal site and separated by the Slieve Bernagh Mountains, with little connection between the two areas. On this issue, based on the information on the file, I conclude that the 1st party has not demonstrated an economic or social need to reside permanently in the area, as set out in the provisions of the Clare County Development Plan

Visual Amenity

- 2.7. The proposal submitted to the planning authority on 23rd March 2023 is for a single storey dwelling 4.1m high and with FFL of 26.15 relative to a level of 26.59 on the public road adjacent to the south west corner of the site. The ridge of the proposed dwelling would be at 30.10m. The planning authority expressed concern that the proposed house was at the highest point of the site on the crest of a hill, and would

be a prominent feature in the local landscape. I share this concern. By way of Further Information submitted on 4th August 2023, the location of the proposed dwelling is moved to the eastern and lower end of the site, with a FFL of 23.15, and a ridge height of 26.66m. Trees would be felled to provide for the footprint of the proposed dwelling and proposed access. The Planner's report dated 29th August 2023 concludes that the revised site location would not have a negative impact on the visual amenities of the area, and I agree with this conclusion subject to the retention of trees on the boundaries of the site.

2.8. Site Drainage

2.9. A Site Characterisation Form was submitted with the application to the planning authority. This notes that the site is on a locally important aquifer with low vulnerability. The Anamullaghaun River is approximately 300m to the south of the site. There is a low density of on-site systems in the area. The depth from the ground surface to water table is recorded at 1.9m. Percolation test results were consistent with trial hole results, and a packaged treatment plant and polishing filter are proposed. Based on the information submitted, and observations made at the time of site inspection, subject to appropriate conditions, I consider that the proposal for effluent treatment and disposal is acceptable.

Access Arrangements

2.10. It is proposed to provide an access at the eastern end of the site. A sightline of 160m is shown to the west but none to the east. Based on observations made at the time of inspection, I agree with the conclusion in the Planner's report dated 15th May 2023, that safe sight distances are available at the proposed site entrance.

2.11. Environmental Assessments

2.11.1. Having regard to the nature and scale of the proposal, the proposed house location, and the absence of a connection to any area of significant environmental sensitivity in the vicinity of the site, 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.

2.12. Having regard to the nature and scale of the proposal, the separation distance to Slieve Bernagh Bog SAC, its Qualifying Interests, and associated Conservation

Objectives, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on Slieve Bernagh Bog SAC or any other European site.

3.0 Recommendation

3.1. I recommend that permission for the development be refused.

4.0 Reasons & Considerations

The site is located in a rural area designated in the current Clare County Development Plan 2023-2029 as being an Area under Strong Urban Influence and where it is an objective to restrict the development of new single houses for the permanent occupation of persons with a demonstrable economic or social need to live in such areas. It is considered that this designation and associated objective (CDP 4.14) are reasonable and worthy of support. Based on the information submitted, it is concluded that the applicant has failed to demonstrate an economic or social need to live at this location and, as such, the proposed development would contravene materially an objective of the Clare County Development Plan 2023-2029, and would be contrary to the proper planning and sustainable development of the area.

Des Johnson

Planning Inspector

27th March 2024.

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.