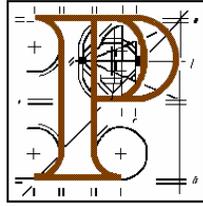


An Bord Pleanála



Inspector's Report

Development: Construction of house, domestic garage, effluent pump, rising main to connect to existing sewer, site entrance and associated works.

Site Address: Hillquarter, Coosan, Athlone, Co. Westmeath

Planning Application

Planning Authority: Athlone Town Council
Planning Authority Reg. Ref.: 09/3092
Applicants: Jarlaith and Amy Durkan
Type of Application: Permission
Planning Authority Decision: Grant Permission

Planning Appeal

Appellant: Dermot Kelly
J & A Durkan
Type of Appeal: Third Party v Grant
First Party v Condition
Observers:
Date of Site Inspection: 24th November 2010

Inspector: **Joanna Kelly**

Appendices:

Appendix 1 Site Location Map
Appendix 2 Photographs and Site key Plan
Appendix 3 Extracts from Athlone Town Plan 2008-2014

1.0 Site description

The appeal site is located on the edge of zoned lands located in the Hillquarter area, Coosan, north of Athlone town. The appeal site has a stated site area of 0.800 acres and is rectangular in shape. The site is located along a narrow public road with a grass edge which falls away into the site. It was not possible to access the appeal site as it is overgrown and very marshy. There are two bungalows to the west of the appeal site and three dormer style dwellings to the north of the appeal site. It is noted that there are public mains along this stretch of road.

2.0 Proposed Development

The proposal is to construct a two storey dwelling of ca. 400sq.m. It is also proposed to construct garage.

3.0 Technical Reports

Planning report

The first Planner's report sets out a site description, pre-planning discussion and refers to objection/submission received in respect of the proposed development. The submission makes reference to surface water drainage. The report sets out the policy context in which the application was assessed. It was recommended that further information be sought in relation to alternative proposals for drainage which provides for connection to an existing privately owned foul sewer pipe.

The second planner's report deals with the response to the further information request and indicates that the applicant set out that it was not feasible to connect to the existing pipe which is privately owned. It is proposed to install a 80mm rising main in the road carriageway/margin and to pump the effluent to an existing manhole on the existing Council gravity sewer network. It was recommended that permission be granted subject to conditions.

Area Engineer

No objection to response to further information subject all works being carried out under license.

Technician report

This report indicates that the site is '*very low-lying, marshy and wet and liable to flooding*'.

4.0 Planning Authority Decision

Athlone Town Council granted permission for the proposed development subject to 9 conditions as follows:-

- | | |
|-------------|---|
| Condition 1 | Compliance with plans and particulars |
| Condition 2 | External finishes |
| Condition 3 | No over-sailing to be permitted/protection of all property |
| Condition 4 | Section 48 contribution |
| Condition 5 | Section 49 contribution – Athlone Main Drainage |
| Condition 6 | Landscaping |
| Condition 7 | Pumping station to comply with plans and legal agreement re private property |
| Condition 8 | Limitations of use pertaining to garage |
| Condition 9 | Compliance with water service connections, sightlines, on site storage details. |

5.0 Appeal Grounds

5.1 The **Third Party** grounds of appeal are summarised as follows:

- Concerns are expressed regarding a suitable outfall for surface water. In winter, the appellant's property is saturated and it is contended that if there was adequate outfall this water logging would not occur. There are concerns that if the levels are raised to those proposed that the appellant's property would be subject to further flooding as a result of surface water discharge.
- Photographs have been submitted with the appeal demonstrating that the lands are water logged at times of heavy rainfall.

5.2 The **First Party** appeal grounds are summarised as follows:-

- The appeal pertains to Condition 5 which relates to the Supplementary Development Contribution Scheme - Athlone Main Drainage Scheme and to condition 7 which the applicants set out should be amended to provide for direct access to the public sewer rather than be conditioned to access a private third party sewer on lands outside the ownership of the applicant and the Council.
- It is set out that the imposition of Condition 5 is not reasonable although strictly speaking the terms of the Supplementary Development Contribution Scheme have been correctly applied. It is set out that the terms of the scheme failed to take due account of their particular situation and therefore the imposition of this condition is neither necessary nor reasonable given the scale of development proposed.
- Reference is made to the Development Management Guidelines and whether a condition is necessary. It is considered that Condition 5 fails the test of necessity.
- It is set out that based on Section 2 of the Supplementary Development Contribution Scheme the cost per hectare is 488,249 which at 35 units per hectare works out at €2,521.40 per residential unit. There is a significant difference between this figure and the figure of €26,113.32 which is applied in the decision of the Planning Authority decision. It is requested that the Board review Condition 5 with a view to reducing the costs imposed therein which would make the proposed development more viable in the current economic climate.
- With regard to Condition 7, it is set out that there are inconsistencies that need to be addressed in order to ensure that the First Party can connect into the public sewer from the subject site.
- The application sought to link into the public sewer but further information was sought to link the development into a private sewer in proximity to the subject site. In response to the further information request the applicants explained that originally they had sought to provide a new gravity sewer from the main Coosan sewer laid at minimum falls to the applicants lands but found that this was '*not a viable option as there is inadequate cover available over the proposed sewer*'. On foot of the FI request they carried out a visual and CCTV survey of the privately owned sewer owned by Dermot Kelly and Oliver Mulvey which revealed that the existing 225 mm diameter pipe had been laid to minimum falls with minimum cover along the length of the pipe and hence concluded that it was not possible to connect to the private sewer. It was set out that the only available option was to install an 80mm rising main in the road carriageway/margin and to pump the effluent to an existing manhole on the existing Council gravity sewer network. The problem with the condition is twofold, the privately owned sewer would not appear to be suitable for purpose and the second pertains to the wording of the condition which is an amended condition on foot of the Planner's recommendation refers to the need to enter into a legal agreement with the owners of the privately owned sewer to carry out proposed works. It is set out that as the proposal seeks to link directly into the public sewer in accordance with the detailed drawings provided, it is not necessary to enter into any legal agreement with the owners of the privately owned sewer however it is requested that the Board specify that the proposed development should link into the public sewer and remove any reference to the private sewer.

6.0 Responses

No responses noted on file.

7.0 Planning History

The Planners report sets out that there is no recent history with the appeal site.

8.0 Planning Policy

8.1 The Planning System and Flood Risk Management, Guidelines for Planning Authorities 2009

These Guidelines introduce mechanisms for the incorporation of flood risk identification assessment and management into the planning process. The core objectives of the Guidelines are, *inter alia*, to:-

- Avoid inappropriate development in areas at risk of flooding;
- Avoid new developments increasing flood risk elsewhere, including that which may arise from surface water run-off;
- Ensure effective management of residual risks for development permitted in floodplains;

8.2 Athlone Town Development Plan 2008-2014

The appeal site has a "residential" land use zoning objective as identified in the Town Plan.

Section 2.5 of the Athlone Town Development Plan deals with Infrastructure. Flood risk is also dealt with in this section and clearly sets out that '*the risk of flooding should be taken into account in new development. A flood risk assessment should be carried out where appropriate.*' It is noted that a flood envelope has been identified following the 1999/2000 flood event of River Shannon. The Plan sets out that '*in general, development in flood plains should be restricted and areas adjacent to maintainable channels should be reserved for maintenance.*'

8.3 Westmeath County Development Plan 2008-2014

Variation no. 4 to the County Development Plan refers to low density residential zoning which is located just north of the appeal site. An extract has been enclosed for ease of reference.

9.0 Assessment

The following is an assessment of the appeal having conducted a site inspection and reviewed all documentation on file. The main issues are:-

- Surface water drainage
- Foul sewer connection
- Section 49 Contribution

9.1 Surface Water Drainage

9.1.1 Notwithstanding the zoning of the appeal site, it is considered that there is a serious issue of potential flooding and/or exacerbation of surface water drainage in times of heavy rainfall. The physical characteristics of the appeal site as witnessed at time of inspection, is that the site is water-logged. The OS maps clearly indicate this to be the case. The appellant has voiced concerns about the increased risk of surface water run-off and associated flooding on his property as a result of the proposed development. It is noted that the documentation submitted with the planning application does not detail current levels of the site and the engineering report submitted sets out that '*from a survey we established that the site is approximately 1.5 metres lower than the road....*' Therefore there is serious filling and drainage works that would be required on site to accommodate any development.

9.1.2 The Town Plan sets out that *'it is a policy of the Council to ensure that new development is not subject to an inappropriate risk of flooding and does not create a flood risk or result in flood damage at other locations'*. It is also a policy *'to ensure that development that is sensitive to the effects of flooding will generally not be permitted in flood prone or marginal areas'*. The proposal in this application is to collect surface water run-off by gravity and discharge to the drain located at the rear of the site. It is considered that the information submitted on file and with the appeal has not addressed concerns with regard to surface water drainage and the increased possibility of flooding. The Flood Risk Management Guidelines for Planning Authorities, 2009, detail a risk-based sequential approach to managing flood risk in the planning system. The core principles of this approach are to

'avoid development in areas at risk of flooding; If this is not possible, consider substituting a land use that is less vulnerable to flooding. Only when both avoidance and **substitution** cannot take place should consideration be given to **mitigation and management of risk.**'

Notwithstanding the zoning of the appeal site for residential development, the applicant has not carried out a flood risk assessment. Whilst it is also acknowledged that the site does not form part of a flood plain not has it been subject to flooding as recorded on the OPW flood maps, details as to the expected volume of surface water discharge that is to discharge to the drain to the rear of the site should be submitted and an assessment carried out as to whether the lands in question can deal with the expected increase in surface water discharge levels. It is noted that the plans submitted do not detail specific construction methods that would be required to facilitate a dwelling on the appeal site.

10.2 Foul Sewer Connection

10.2 With regard to the connection to the foul sewer, the First Party has appealed the wording of Condition 7 which was amended following the Planners recommendation. The condition in the notification of grant of permission sets out that *'the applicant shall enter into a legal agreement with the owner of the existing privately owned 225 diameter sewer to carry out proposed works, copy of agreement shall be submitted to the planning authority prior to commencement of development works.'* It would appear that a section of the foul sewer is in private ownership. The First Party indicated in the response to the further information that it was not possible to connect to the sewer due to the condition of the sewer and cover levels over the pipe. It was therefore proposed to install a rising main in the road and pump effluent to an existing manhole on the existing Council gravity sewer network. It is considered that as the Planning Authority granted the proposed development that they are satisfied that the subject site can be serviced by the existing foul sewer. Whether a section of the foul sewer is within private/public ownership is considered to be a legal issue. It is considered that should the Board consider it appropriate to grant permission in this instance that a condition requiring the applicant to carry out the development in accordance with the Planning Authority's requirements is adequate to deal with the issue. The onus is then on the First Party and the Planning Authority to reach agreement on connections to the foul sewer.

10.3 Section 49 Contribution

The First Party have appealed the Condition pertaining to Section 49 Supplementary Contribution Scheme which pertains to the Athlone Main Drainage. As provided for in the Planning Acts, the Planning Authority has adopted a supplementary contribution scheme for main drainage works to the town of Athlone comprising all current and future zoned lands. The scheme provides that the basis for determining the contributions to be paid in respect of Athlone main drainage is calculated having regard to the estimated required cost recovery to Westmeath County Council under the Water Services Pricing Policy. As the scheme is adopted and as provided for in the Planning Act, no appeal may be brought to the Board in relation to a condition requiring a contribution to be paid in accordance with the scheme. However an appeal may be brought where it is considered that the terms of

the scheme have not been properly applied in respect of any condition. In this instance, the First Party are disputing the figure sought. The charge under the supplementary development contribution scheme is €89,860 per hectare. The stated site area (red line boundary) is .8 acre or 0.32 hectare. The contribution sought therefore equates to €28,081. There are no exemptions as provided for under the Scheme that are applicable in this instance. Whilst the figure maybe considered high for one dwelling, the calculation of the contribution as provided for in the Scheme is on site area and not per residential unit.

It is noted that the calculation in the Planners report was based on the same figures as set out above however a contribution of €28,755.20 was indicated. The Director of Services indicated that a reduction in the site area was applicable so as to omit the public road which was calculated to have an area of 294sq.m. The revised figure set out by the Planning Authority in the notification of the grant of permission was €26,113.32. The reduced site area was considered to be 0.2906 hectares. Having regard to the provisions of the Supplementary Development Contribution Scheme it is unclear whether the levy applies to the site area or otherwise. However the scheme sets out that *'the scheme applies to the town of Athlone and environs as defined by land zoned at the time a decision is made on a planning application'*. On that basis it would appear reasonable that a reduction in the site area to exclude the public road on the basis that it does not form part of the zoned lands per se is permissible.

12.0 Recommendation

Having regard to the poor drainage characteristics on site notwithstanding the zoning of the appeal site, I recommend that planning permission be refused for the proposed development for following reason and considerations:

Reasons and Considerations

Having regard to the water logged nature of the appeal site and in the absence of a flood risk assessment, it is considered that the proposed development would give rise to additional surface water run-off where it has not been demonstrated that the existing drain has the capacity to deal with increased volumes. The proposed development would therefore exacerbate surface water flooding in the area, would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

Joanna Kelly
Inspectorate
25th November 2010