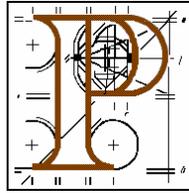


An Bord Pleanála Ref.: PL01.238714

An Bord Pleanála



Inspector's Report

Development: House and all associated site works.

Site Address: Knockballystine, Tullow, Co.Carlow.

PLANNING APPLICATION

Planning Authority: Carlow County Council
Planning Authority Reg. Ref.: 10/199
Applicants: Gerard Cole
Type of Application: Application for permission
Planning Authority Decision: Refuse permission for 2no. reasons.

Planning Appeal

Appellant: Gerard Cole
Type of Appeal: First party against decision.
Date of Site Inspection: 18/07/11

Inspector: John Desmond

SITE DESCRIPTION

The application site is located in the deeply rural area in northeast Carlow County, c.8km northeast of Tullow, c.6km southwest of Hacketstown, almost 20km east of Carlow town and c.200m or so inside the county boundary with Wicklow to the south.

The lands are rolling in nature and are generally set out as agricultural fields, in a mix of pasture and grain, and interspersed with traditional field boundary ditch and hedegrows and also with new post and wire fencing.

The application site was altered over the course of the application. The initial application site was situated adjacent to and south of a farmyard and cluster of farm buildings and barns, within a larger landholding of in the region of c.32ha¹. The farmyard is adjacent to another farmyard to the north which in separate ownership (of an observer to the appeal and an objector to the application). The site was subsequently relocated c.45m to the southwest of the farmyard complex (as measured from the southwest-facing elevation of the southernmost barn) by way of further information submission. The site dimensions remained constant and the stated site area was 0.6ha, which seems to be accurate.

The initial application site currently accommodates a mobile home which would seem to have been in place for a prolonged period. It is set up as a habitable dwelling, although there was no one at home at the time of inspection and there did not appear to be frequent traffic to the structure as evidenced by the long grass surrounding the structure. To the rear of the site there would appear to be a septic tank of sorts, partly exposed above ground level and to which the mobile home structure may be connected.

The initial application site sloped up generally from south to north and may possibly incline from the east and from the west to the centre also. The site boundaries are unclear, but the post and wire fence to the south may form the southern boundary, with the other boundaries currently open. The site is intersected with post and wire fencing to the rear of the mobile home structure.

The lands to the south and east are in agricultural use for cattle grazing. The land to the north of the site and south of the farmyard has been subject of soil mounding. The lands to the south-southwest drop away to a shallow valley running from northwest to southeast. There are a number of ringforts in the vicinity, the nearest being c.85m to the north of the site and adjacent to the farmyard. The site (and revised site) and the farmyard are accessed from the rural local road network via the neighbouring farmyard and via a narrow rural lane of unfavourable horizontal and vertical alignment.

The revised site proposed to the southwest is lower down on the valley slope but follows a similar gradient. As noted above, it is of the same dimensions as initially proposed. It forms part of a field that it currently used for grazing cattle. The exact line of the northeast boundary is unclear but it is either demarcated by a post and wire fence, or runs parallel a metre or two to the north of that fence. The other boundaries are open to the wider field.

¹ The farm is stated as 80ha in the appeal submission.

PROPOSED DEVELOPMENT:

It is proposed to erect a dormer-style dwelling over basement, with a stated gross floor area of 408-sq.m stated gross floor area and with 3no. bedrooms at first floor level.

A proprietary treatment system and percolation area.

A private well water supply.

The proposed development was materially altered by way of further information submission when the application site was relocated c.46m to the south and the proposed dwelling was relocated 42m to the south.

HISTORY

On subject landholding

Reg.ref.09/296: Permission **REFUSED** (29/10/09) by Carlow County Council Planning Authority to Gerard Cole to construct a split level 2-storey / dormer style dwelling, proprietary treatment system, associated percolation area, new site entrance and all associated works and services on this site. The 2no. reasons for refusal related to haphazard backland development and visual obtrusion.

Reg.ref.08/416: Permission **REFUSED** (11/03/09) by Carlow County Council Planning Authority to Gerard Cole to construct a split level 2-storey / dormer style dwelling, proprietary treatment system, associated percolation area, new site entrance and all associated works and services on land to the south (adjacent initial application site and comprising mostly that of the site as revised by further information). The 2no. reasons for refusal related to haphazard backland development and visual obtrusion.

PLANNING AUTHORITY DECISION

To **REFUSE** permission for 2no. reasons, which can be summarised as follows:

1. Haphazard backland development, undesirable precedent, and contrary to rural settlement policy.
2. Visual obtrusive development with serious injury to amenities and detracting from scenic views.

REPORTS TO THE PLANNING AUTHORITY

Planning Officers report

Further information was sought contrary to the recommendation of the Council's Planning Officer to refuse permission in her report dated 18/08/10. The report of the Council's Planning Officer dated 08/03/11 is consistent with the decision of the Planning Authority to refuse permission.

Departmental Reports & Reports from Prescribed bodies

S.E.E: No objection subject to standard roads, drainage and water conditions (17/02/11). No objection (23/08/10)

Infrastructure, Environment & Water Services: Raises no objection. Conditions recommended (28/07/10).

Housing, Roads & Emergency Services: No objections subject to report of AE (20/07/10).

Observations

2no. letters of objection were received from Seamus O'Brien (owners/occupants of adjacent property to north) on 15/07/10 and 24/02/11. The main points of the objection are repeated in his observations to the appeal and are summarised in the appropriate section below. However, in his objection to the application Mr O'Brien also submitted that the new entrance would require the opening of a ditch that is in his ownership and that he has not given consent for same. And that pedestrian access through the lane would be hazardous and put a strain on cordial relations.

GROUND OFS OF APPEAL

First party appeal submitted by Dean Design (Engineering Consultants) on behalf of the applicant, Gerard Cole on 01/04/11.

The main grounds of appeal can be summarised as follows:

- As a small farmer of 80acres (c.32hectares), the applicant wishes to be located in close proximity to the agricultural buildings on his farm to be available at unsociable hours to assist in lambing and calving.
- On site discussions were held with the Director of planning resulting in the relocation of the dwelling 30m downhill and with a finished floor level dropped by 2m.
- Does not accept that this can be construed as backland development.
- Overlooking will not result – see sections submitted during the course of the application.
- It is the natural progression of an existing laneway which provides access to an 80-acre farm and associated farm buildings.
- The application included a comprehensive landscaping plan in addition to the house being dug into the ground to minimise obtrusion.
- The applicant will accept compromise in design as he must have a dwelling on his farm.
- The Board should inspect permission reg.ref.07/291 granted for a very large dwelling (7.98m) close to the top of a hill at Lisnavagh (photo of same attached).

OBSERVATIONS

Seamus O'Brien

The main points raised in the observations received 26/04/11 can be summarised as follows:

- Alleged unauthorised development of a mobile home and airstrip on the lands, which are accessed through the observer's farmyard.
- Priority is to ensure viability of his farm.
- Understands that the Council may refuse permission for previous and repeated breaches of planning law, submits that the alleged unauthorised developments constitute same and request the Inspector and the Board to make comment on same.
- The applicant's family have managed the farm from a distance since purchasing it in the 1970's. This is common practice for farmers who lease land away from the homestead.
- The applicant grew up in Ballykillduff where the family have their homestead, and permission has been granted for two dwellings there, one of which was sold.
- There is better road access to the lands in Ballykillduff.
- Refers to planning history on the site and the consistent refusal reasons for same relating to backland development and visual obtrusion.
- The application is practically the same as that under reg.ref.09/296 refused and appeal withdrawn.
- The application is not self-contained and the Planning Authority is required to refer back to application reg.ref.08/416 for percolation and local needs assessment.
- EPA 2000 standards have been superceded since 08/416 submitted.
- An impact assessment should have taken place having regard to the effect on the adjacent cSAC as referred to in the Planner's Report.
- No notes [official] minutes were kept of the meeting between the County Manager Tom Barry and the applicant's agent
- Submits that the further information request referred to the family landholding not the applicant's limited landholding which suggests the Council were mindful to consider permission on another site.
- No note [official] minutes were kept of the meeting between the Director of services and the agent which took place during the course of the application.
- The proposed alternative roadway is on the lands of the objector. He has not given consent for same and the road would not be possible or practical given the current agricultural use of these lands and is the best agricultural land within the objector's farm.
- The proposed road would be inappropriate in proximity to the ringfort and would be contrary to REPS.
- The proposed route effectively acknowledges the proposed development is backland development.
- The route is contrary to the Carlow Rural Development Strategy 2007-2013 to preserve high quality agricultural lands.
- The applicant's family have successfully managed lambing and calving from a neighbouring townland in the past.
- No verified details on file of applicant's current employment, residence and etc.
- Doubts that the Local Authority would have given reassurance that a house would be acceptable if sunk into the ground.
- Overlooking never was suggested as an issue.

- Reason for objecting is the house location not its design.
- Backland development (proposed house located behind a farmyard located behind a house) contrary to CDP 2009-2015.
- The erection of a dwelling adjacent to the farmyard would compromise the day-to-day running of neighbouring farm business.
- Visual intrusion / house design / landscape character – the design does not comply with guidance in the CDP.
- The site is unsuitable for the development proposed having regard to guidance in the CDP regarding the River Slaney / East rolling farmland landscape category.
- The alternative access is unacceptable – it traverses the observers land, would damage grazing land, frustrate compliance with REPS scheme and there's no guarantee that the existing access would not be used in any case.
- Local need entitlement – it is not essential to live on top of sheep or cows to tend appropriately to them when lambing or calving.
- Change of use / intensification of use of lane for access through two farmyards would result in conflicting use and give rise to a traffic hazard contrary to the CDP.
- The laneway is used to move 70 cows for milking twice per day and is in use throughout the day with the activities, vehicles and machinery of a working farm and the proposed development would compromise the use of the lane for farming associated uses.
- The Planning Authority has not attempted to rectify the matter of unauthorised mobile home which has the potential to negatively affect ground water, or the hanger and airstrip along the banks of the River Derreen cSAC. Lax enforcement begets further breaches.
- Alleges that construction of an airstrip began on these lands in September 2010.
- Animal health and disease control will be compromised, for example the control of an outbreak of foot and mouth disease would become impossible and the occupants of the dwelling may become isolated and quarantined.
- Inappropriate to located dwelling adjacent farmyard due to slurry pit, noise and smells.

POLICY

CARLOW COUNTY DEVELOPMENT PLAN 2009-2015

The site is in the rural countryside and is not zoned.

Relevant Sections:

Chapter 2 – Settlement Strategy

Rural Settlement - Policy Background

Chapter 10 – Requirements for New Development

Rural Housing

Wastewater Treatment (refers to EPA Wastewater Treatment Manual 2000)

RELEVANT MINISTERIAL GUIDELINES

'Sustainable Rural Housing, Guidelines for Planning Authorities', DoEHLG (2005): The location of the site is within that area identified as strong urban influence.

'Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses', EPA (2009).

'Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities', DoEHLG (2009).

ASSESSMENT

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following broad headings:

- 1.0 Principle / policy issues
- 2.0 Design / visual impact
- 3.0 Impact on residential amenities
- 4.0 Wastewater treatment
- 5.0 Roads / traffic issues
- 6.0 Other issues
- 7.0 Conclusion and recommendation

1.0 Principle / policy issues:

- 1.1 The site is within a rural area which is not zoned for development. The site is not within one of the designated rural settlements identified under the CDP 2009-2015.
- 1.2 It is the policy of Carlow County Council to facilitate the development of one off rural housing throughout the county by persons demonstrating local rural generated housing needs. The Council sets out 2no. categories of persons (basically locals and agricultural workers) to whom a positive presumption will be given for the development of a dwellinghouse where, inter alia, the dwelling will be for the persons own occupation and is required having regard to housing need and the applicants wish to live in the local area.
- 1.3 The applicant did not fully complete section B of the planning application form regarding rural housing compliance. Relevant sections, 3-13, of the form are not addressed. His response to section 1 of the form, although incorrectly completed, would seem to imply that the proposed dwelling is for his own occupation. In his appeal, the applicant's agent indicates that Mr Cole proposes to build a house on his own farm of c.32ha because he is a farmer and wishes to live in close proximity to the farmbuildings to assist in lambing and calving at unsociable hours. The agent submits that if it were a speculative development the applicant would not be proposing a dwelling adjacent to agricultural buildings. The applicant has provided no evidence that he is a fulltime or part time farmer, nor has he submitted evidence (or asserted) that he is a local. The applicant's cover letter refers the Planning Authority back to application reg.ref.08/416 for details of compliance with rural

housing policy. The onus is on the applicant to provide all relevant details and information in support of their application. The Planning Authority did not forward the said historic planning file with the current file under appeal. The initial report of the Council's Planning Officer (18/08/10) considered the applicant to have established a housing need on the grounds that he owns the land and states that he is currently residing with his parents, however I could not locate a statement on file from the applicant that he currently resides with his parents. The report of the Planning Officer (08/03/11) subsequent to receipt of further information considered that the applicant has failed to demonstrate compliance with the Council's rural housing policy. The assertions of the third party objector / observer would seem to support that the applicant is a local. On balance, I would suspect that the applicant would comply with the Council's rural housing policy.

- 1.4 The site is within the 'stronger rural area' set out in map 1 'Indicative Outline of NSS Rural Area Types' in the SRH Guidelines 2005. Within such areas the guidelines indicate that it should be a key objective to consolidate and sustain the population and to strike an appropriate balance between the development of smaller towns and the wider rural area whilst preventing overdevelopment and, in particular, ribbon development. The proposed development is not in a designated rural settlement. There is a moderate level of one-off housing in this area but the proposed development would not constitute ribbon development. Assuming the applicant is a local and a fulltime farmer, the applicant should be given a positive presumption under the guidelines.
- 1.5 The Planning Authority refused permission on grounds of haphazard backland development and undesirable precedent contrary to the stated Council policy on same. Under the CDP 2009-2015 the Council generally discourages backland development in rural areas but will give positive consideration to such development where there is an established practice of permitting backland development in the immediate area and the development is otherwise compliant with normal planning considerations including the protection of the amenity value of existing developments. There is no precedent for backland development in the immediate area. The applicant submits that the development is not backland development but merely continues the existing public road. I can see some logic in this as the application site would front onto a rural access track that is, in effect, an extension of the public road cul-de-sac. I consider the proposed development open for consideration under the development plan.

2.0 Design / visual impact

- 2.1 The applicant proposes a large (408-sq.m) dormer dwelling over basement. The Planning Authority does not appear to have produced rural housing design guideline following the adoption of the development plan, as is the stated intention of the Council under the plan. The proposed dormer design is not dissimilar to the design of one-off dwellings proposed throughout the country and is generally an acceptable design approach. Given its location at a distance from the surrounding public road network and not within proximity to any designated scenic view or prospect, I consider the height and scale of the dwelling, as shown on drawings nos.03-GC-09

and 04-GC-09 submitted 29/06/10, showing a 7m ground floor to ceiling height, to be generally acceptable.

2.2 However, I am concerned that the drawings do not accurately reflect the full height of the south elevation, in particular. The site slopes significantly downwards from northeast to southwest and commands broad views over the valley below. It is possible that the proposed basement level will be largely exposed on its southern side, significantly increasing the visible height of the structure and its overall massing and scale. The applicant submitted a site section 'A, B & C' (Site layout drawing no. 05-GC-09) with the application (29/06/11) and a revised section as further information (drawing and section of same name and number submitted 11/02/11). The sections are of little practical use for the assessment given its scale (1:500), its length (c.320m), its seemingly irrelevant and circuitous route through surrounding lands, its failure to demonstrably cut through the proposed dwelling perpendicular to the contours of the slope, its failure to cut through the nearest farm buildings to the north to provide context, and its failure to extend down slope of the dwelling for any significant distance.

2.3 No existing contours, spot heights or sections are provided for the site. No proposed contours are provided; the proposed spot heights that are indicated are insufficient in number, cannot be compared to existing levels (as they're not provided), and are not to OS datum but are relative to the proposed finished ground floor level (again this is not fixed to OS datum). Based on the level of detail on file, I consider the visual impact of the proposed development would be excessive and undesirable, would seriously injure the amenities of property in the vicinity, would set an undesirable precedent for similar such structures and be contrary to the proper planning and sustainable development of the area.

3.0 Impact on residential amenities:

3.1 The proposed development would not significantly impact on the amenities of residential property in the vicinity.

4.0 Wastewater treatment:

4.1 The area would appear to be served only by onsite wastewater treatment systems and private wells. The site lies above a locally important bedrock aquifer that is moderately productive in zones. The proposed percolation area is within an area of extreme vulnerability for groundwater. The groundwater response is R2¹ where onsite wastewater treatment is acceptable subject to normal good practice but particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required are met to prevent microbial pollution. There was no indication of poor drainage on the site.

4.2 The applicant neglected to submit a site suitability assessment with the application but, instead, referred the Planning Authority back to a previous application (reg.ref.08/416) for a dwelling on this site that was refused. No details of that application have been forwarded by the Planning Authority. The site suitability

assessment report on that file would have preceded the EPA's Code of Practice (2009) document and therefore is unlikely to be adequate. The applicant has failed to demonstrate that the site is suitable to accommodate an onsite wastewater treatment system for the dwelling of this size proposed. The details of the proposed treatment system are inadequate and the details of the percolation area (on site layout plans) do not comply with the EPA's Code of Practice for onsite wastewater treatment systems. The proposed development would therefore be prejudicial to public health by reason of potential to contaminate ground water.

5.0 Roads / traffic issues:

- 5.1 The application site is currently accessed via an agricultural track, a loose-surfaced dirt track running along the eastern boundary. The track extends from the public road (a cul-de-sac) which terminates c.170m to the north. The access route extends as a loose-surfaced track, through the applicants farmyard complex, up to the boundary with the adjacent farm. The final section of the route runs through the neighbour's concrete-surfaced farmyard before it meets the public road. The third party observer to the appeal (objector to the application) has raised concern about the provision of a residential access route through his yard. He considers that this is a material change in the nature of use of the access which, heretofore, has only been used as an agricultural access. He submits that the additional traffic will compromise his use of his farmyard and that conflict will arise between incompatible agricultural and residential traffic pointing out that cows are brought through the yard twice a day for milking in addition to the manoeuvring of farm machinery and vehicles. He considers that the proposed development and the traffic it generates will result in a traffic hazard. Having inspected the site and the proposed access, I would share the concerns of the observer and I do not consider it appropriate to permit access to a residential dwelling through a working farmyard complex in the ownership of a third party.
- 5.2 The revised site layout plans submitted as further information 11/02/11 would appear to show an alternative access route from the north, running to the west of the farmyard complexes and ringfort. The applicant's cover letter makes no reference to any proposal to provide an alternative site access along this route, no revised notices have been re-advertised referring to revised access, the indicated route is not shown actually connecting to the applicant's landholding or to the application site and the said route falls entirely outside the redline application site boundary. Therefore the provision of an alternative access does not form part of this application. The observer / objector, Seamus O'Brien, points out that the said route is located on his land and that he has not consented to the provision of access through those lands.
- 5.3 The rural lane between the farmyard and the main public road to the northeast is of poor horizontal and vertical alignment and is without street lighting or road markings. The report from the Council's Senior Executive Engineer raised no objections subject to standard road conditions. The number of dwellings and farmsteads accessing onto the cul-de-sac is relatively limited. The applicant already uses the route for access to farming activities. I do not believe that the proposed

development of a new farm dwelling for the applicant on his farm will result in an excessive level of traffic on the public road cul-de-sac, or result in an excessive traffic hazard risk on the public road.

5.4 The proposed development, by reason of the proposal to provide a residential access through a working farmyard complex in separate ownership, would compromise the operations of the existing neighbouring farming operations, would constitute a traffic hazard and be contrary to the proper planning and sustainable development of the area.

6.0 Appropriate assessment:

6.1 The application was screened for appropriate assessment (natura impact) by the Planning Authority and a copy of the screening assessment is appended to the final report of the Council's Planning Officer. The report notes the proximity of the nearest Natura 2000 site, the River Dereen forming part of the River Slaney Valley Special Area of Conservation (Site no.000781) is within 2.4km of the site (I measure it closer to 2.2km) and within c.250m of a pathway stream which flows into the River Dereen (I measure this at 210m, or 160m for site as revised at further information stage). It considered the potential for the development to impact on an Annex 1 habitat to be uncertain, the potential for direct / indirect damage to the physical quality of the environment in the Natura 2000 site to be uncertain and the potential direct / indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site to be uncertain. The report therefore recommended that stage 1 Appropriate Assessment (Natura Impact) Screening is required.

6.2 I consider the most likely potential adverse impact arising from the proposed development on the cSAC is the contamination from the wastewater effluent generated by the new dwelling. The nearest pathway watercourse connecting to the River Slaney cSAC is located at least 210m southwest of the site (c.160m from revised site) down gradient. The applicant proposes a proprietary wastewater treatment system and percolation area but the details of the system are inadequate and the details of the percolation area do not comply with the EPA's Code of Practice for onsite wastewater treatment systems. Notwithstanding this, I consider it highly unlikely that potential contaminants, including nutrients, disposed to ground from the onsite treatment system's percolation area, could make its way 210m to the pathway watercourse and from there to the Dereen River and impact on the cSAC. In my opinion appropriate assessment is unnecessary.

7.0 Other issues:

7.1 The applicant submitted revised site layout plans as further information. This entailed the provision of a new application site (of same size and dimensions) adjacent the southern side of the original application site, perhaps with a very slight overlap. This constitutes a materially revision to the application and should have been subject of revised notices. The report of the Council's Planning Officer subsequent to receipt of further information states that the applicant "*has not*

identified any alternative location on lands in [his] ownership but has proposed to alter the levels of the dwelling by 2.0m” and the report does not acknowledge the provision of an alternative site. It is not clear that the decision of the Planning Authority takes account of the revised site location. Should the Board decide to grant permission in respect of the development as revised by further information received 11/02/11, I would advise that the proposed development should be subject of revised notices.

8.0 CONCLUSION AND RECOMMENDATION

- 8.1 The proposed development, including as revised by way of further information received 11/02/11, would be prejudicial to public health, would compromise the operations of the existing neighbouring farming operations and constitute a traffic hazard within the farmyard and would likely be unduly visually obtrusive and be contrary to the proper planning and sustainable development of the area. I therefore recommend that permission be refused.

REASONS AND CONSIDERATIONS

- 1 The applicant has not demonstrated that the site is suitable to accommodate an on-site wastewater treatment system to serve the proposed dwelling in accordance with the “Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)” (Environmental Protection Agency, 2009). The applicant has not demonstrated that a suitable wastewater treatment system is proposed in compliance with the said EPA standards, and the proposed percolation area does not comply with the said EPA standards. The Board therefore considers that the proposed development would be prejudicial to public health by reason of the potential to contaminate ground waters.
- 2 The proposed development, by reason of the proposal to provide a residential access through a working farmyard complex in separate ownership, would compromise the operations of the existing neighbouring farming operations, would constitute a traffic hazard and be contrary to the proper planning and sustainable development of the area.
- 3 The Board is not satisfied that the proposed development would not be unduly visually obtrusive and would not seriously injure the amenities of the rural area, by reason of the scale and design of the proposed dwelling located on an exposed and sloping and exposed site, and by reason of the inadequate level of detail regarding existing and proposed site contours or site levels.

John Desmond
Planning Inspector
29/07/11