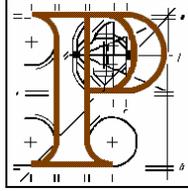


# An Bord Pleanála



## Inspector's Report

**Development:** House and associated site works at Kingsfurze, Naas, Co. Kildare.

### Planning Application

Planning Authority: Kildare County Council  
Planning Authority Reg. Ref.: 12/955  
Applicant: Stephen Dunbar  
Type of Application: Permission  
Planning Authority Decision: Refuse Permission

### Planning Appeal

Appellant(s): As above  
Type of Appeal: First Party V Refusal  
Observers: Caitriona Dunbar & John Malone  
Date of Site Inspection: 8<sup>th</sup> May 2013

**Inspector:** Kenneth Moloney

## **1.0 SITE DESCRIPTION**

The subject site is located in a rural area situated approximately 1.2 km from Johnstown Village. Although the immediate area of the appeal site is rural in character there is sporadic housing in the area and this includes a 1½ storey house immediately north of the appeal site and a single storey cottage on the opposite side of the public road from the appeal site. The local area is generally characterised by mature trees particularly on the opposite side of the public road.

The size of the appeal site is approximately 0.39 ha (0.9633 acres) and the shape of the appeal site is irregular. The gradient of the subject site is generally even and there is marshy grass on the subject site which generally indicates poor drainage.

There is a hedgerow to the front of the site which has been recently trimmed and also there is a small flowing stream between the hedgerow and the roadside. There are overhead power lines that transverse the front of the site.

There is a small flowing river / stream situated immediately south of the appeal site and this watercourse flows in a western direction.

The subject site is located on a bend on the public road and there is a T-junction on the opposite side of the public road from the appeal site.

## **2.0 PROPOSED DEVELOPMENT**

The proposed development is for the removal of condition no. 7 of planning reference L.A. Ref. 73/1155 and the construction of a dormer style dwelling, garage with hobbies room.

The proposed house is 1½ storey in height and the maximum height of the proposed dwelling is approximately 7.92 metres above ground level. The proposed house is finished in cut stone on the ground floor elevation and plaster finish at first floor level.

The proposed house has a floor area of approximately 211 sq. metres and the floor plan comprises of living area at ground floor area and four bedrooms at first floor level.

The proposed development also includes a detached garage with a floor area of approximately 67 metres. The proposed detached garage is a double height garage with a maximum height of approximately 6.2 metres above ground level.

The proposal will include a vehicular access off the main public road. The proposed house is to be served by an effluent treatment plant and a raised percolation area. The water supply to serve the proposed house is by connection to the existing public mains. The proposal is to include landscaping throughout the site.

### **3.0 PLANNING AUTHORITY'S DECISION**

The Planning Authority decided to refuse planning permission for the following reasons;

1. Taken in conjunction with the level of existing and permitted development in the area, the development would contribute to the further encroachment of such development in this area, would give rise to an excessive density of development in a rural area and conflict with planning authority's policy of channelling housing into serviced centres (as set out under Policies RH5, RH11 and RH12) and restricting development in rural areas to that necessary to serve the needs of the indigenous population and those genuinely engaged in agriculture or other rural industries and would represent an undesirable precedent for further such development. The proposal would therefore contravene the policies of the Kildare County Development Plan, 2011 – 2017, and would lead to demands for uneconomic provision of public services and facilities where they are neither available nor proposed and would therefore be contrary to the proper planning and sustainable development of the area.
2. The application site was sterilised under Condition no. 7 of planning reference 73/1155 from future residential development. The reason for the condition was "to ensure preservation of the rural character and amenities of the area". Having regard to the location of the proposed development in Zone 1 of the Kildare County Development Plan, 2011 – 2017, (Rural Housing Policy Zones), to the location of the proposed site in the hinterland area identified in the Regional Planning Guidelines for the Greater Dublin Area 2010 – 2022, and to the 'Sustainable Rural Housing – Guidelines for Planning Authorities' issued to planning authorities by the Dept. of Environment, Heritage & Local Government where the site is located in a rural area under strong development pressure it is considered that the retention of the sterilisation of the lands from further residential development is reasonable. The development would further exacerbate a pattern of random residential development in an un-serviced rural area, would be contrary to the provisions of the County Development Plan, 2011 – 2017, and to the aforementioned guidelines, would materially contravene a condition attached to a previous permission and would be contrary to the proper planning and sustainable development of the area.

Internal Reports: There are 2 internal reports on the file:

- Environment Section: No objections subject to conditions.
- Area Engineer: No objections subject to conditions.

Objections: There are no third party objections on the planning file.

#### **4.0 PLANNING HISTORY**

- L.A. Ref. 12/275 – Planning permission **refused** to Stephen Dunbar for a dormer style dwelling (a) development would further contribute to the encroachment of existing and permitted development in a rural area, and (b) contravene condition no. 7 of L.A. Ref. 73/115 (sterilisation).
- L.A. Ref. 11/108 – Planning permission **refused** to Stephen Dunbar for a dormer style dwelling (a) development would further contribute to the encroachment of existing and permitted development in a rural area.
- L.A. Ref. 09/599 – Planning permission **refused** to Stephen Dunbar for a storey and half house for the following reasons (a) the site was not considered suitable for the safe disposal of effluent, (b) the applicant had not demonstrated genuine rural housing need in accordance with rural housing policy, (c) development would further contribute to the encroachment of existing and permitted development in a rural area, and (d) visual impact.

#### **5.0 DEVELOPMENT PLAN**

The operational development plan is the Kildare County Development Plan, 2011 – 2017.

##### Chapter 4 - Rural Housing

- Section 4.11.5 of the County Development Plan sets out the Rural Housing Strategy and it is stated that the focus of the rural strategy is to facilitate the legitimate needs of the rural Kildare people and / or those who by their occupation or employment can make a significant contribution to community life in the country.
- The appeal site is located within Rural Housing Policy Zone 1. This zone covers northern and central areas of the county, which are more populated with higher levels of environmental sensitivity and significant development pressure.
- The Local Need Criteria is set out in Table 4.3 and this provides for (a) persons engaged full-time agriculture, (b) persons who have spent a substantial period of their life in a rural area, (c) persons who wish to return to an area where they have previously spent a substantial period of their life, (d) persons operating small businesses that will contribute to and enhance the rural community.
- Section 4.12 sets out Rural Housing Policies
- Section 4.13 sets out Rural Housing Objectives

Chapter 16 sets out Rural Design Guidelines

## **6.0 NATIONAL POLICY**

### **Sustainable Rural Housing Guidelines**

The subject site is located within an 'Area under Strong Urban Influence' as identified in Map 1: Indicative Outline of the NSS rural areas types in the DOEHLG Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines note that in these areas the objective should be to on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

## **7.0 GROUNDS OF APPEAL**

David Mulcahy Planning Consultants Ltd., lodged an appeal on behalf of the applicant Mr Stephen Dunbar. The submission outlines the site description and context, planning history, proposed development, the local authority decision, the national guidelines and relevant development plan provisions. The main grounds of appeal are summarised as relating to the following; -

### **Case Law**

- The relevant case law is Langarth properties v Bray Urban District Council (High Court, Morris P., June 25<sup>th</sup>, 2001).
- Bray UDC refused permission on the basis of a statutory agreement from a previous legislation (1963 PDA). An Bord Pleanala subsequently granted planning permission following an appeal.
- The local authority proceeded with legal action on the basis that a statutory agreement prohibited further development on lands.
- Judge P. Morris made the judgement that the planning authority, when considering a planning application was limited to considering the proper planning and sustainable development.
- The judge concluded that to prevent or inhibit the development of lands for any reason other than the proper planning and sustainable development was an unconstitutional interference with the rights of private ownership.
- This case law demonstrates that (a) the planning authority cannot solely rely upon that there is a sterilisation agreement in place, and (b) the planning authority is limited to considering any such agreement only if it is in the interest of the proper planning and sustainable development of the area.

### **Relevant Precedent**

- It is submitted that there are several precedents for the relaxation of sterilization agreements by Kildare County Council.
- These include the following;
  - a. L.A Ref. 05/746 (appeal ref. 213778)
  - b. L.A. Ref. 04/1700 (appeal ref. 215106)
  - c. L.A. Ref. 11/1078.
  - d. L.A Ref. 05/1127 (appeal ref. 215404)
- In relation to excessive density it is submitted that there was an application for a dwelling outside Straffan (Ovidstown) under L.A. Ref. 11/1078. In this

particular case permission was granted for a dwelling despite 60 dwellings being located with an area of 1km squared.

## **Grounds of Appeal**

### **Reason no. 1 – Overdevelopment / Excessive Density**

#### Guidelines

- The guidelines to not refer to excessive density or overdevelopment.
- The approach taken by the guidelines is to ensure that genuine members of the local rural area are accommodated.
- Members of the local community must comply with the local authority strict criteria for local needs.
- This strict criterion ensures that overdevelopment is avoided.
- The proposed development represents an example of rural generated housing.
- As there are no issues of good planning practice outstanding the applicant should be facilitated.
- The guidelines outline that sterilisation measures should not be used except in exceptional circumstances.
- It is contended that exceptional circumstances only relate to overdevelopment which threatens rural generated development.

#### Development Plan Policy

- The local authority accepts that the applicant meets local need criteria.
- The Roads and Environmental Departments have confirmed that they have no objections.
- It is submitted that as the applicant fulfils all the tests permission should be facilitated.
- There is no specific policy in the CDP which relates to overdevelopment.
- The only policy which addresses development at the edge of towns and villages is RH11. The local authority has not given any indication of planned new development on these un-zoned lands.

#### Planner's Report

- It is submitted that the planner's calculation of existing houses within a 250m radius is incorrect.
- There is no statutory basis for choosing this 250m radius.
- It is submitted that the radius could have been smaller or larger.
- It is submitted that the local needs criteria, in addition to issues of siting and design, can be relied upon in determining overdevelopment.
- Policies in relation to overdevelopment need to be publically accountable.
- It is submitted that the local authority cannot sterilise an entire area based on an arbitrary radii.

#### Limited Area for New Development

- It is submitted that there is very limited area for new development in the Kingsfuzee area.
- Landuse in the area is dominated by stud farms and woodlands and therefore act as a natural greenbelt and will sterilise land for the future.

- Naas race course forms a buffer between the appeal site and its immediate area and the town.
- It is submitted that the area of the appeal site is one of the few areas that can be developed.
- The applicant's stepfather is prepared to enter an agreement for the remainder of the landholding.

#### Evidence-based Facts

- It is submitted that there are only 10 no. dwellings within 250m radius not 15 no. dwellings.
- It is submitted that there are only 7 dwellings on the east side of the public road onto which the subject site fronts, and only 3 dwellings on the west side.
- It is submitted that Appendix H sets out the density for the area and the density does not appear excessive.
- There are a total number of 96 no. houses in 8.3 km<sup>2</sup> and this equates to a density of 11.6 units per km<sup>2</sup>.

#### Pressure for new development

- It is submitted that in a 1 km<sup>2</sup> area around the appeal site there has been only two dwellings built in 10 years.

#### Effluent Treatment Systems

- There is no reference in the planners report or the Environmental Department about excessive density of effluent treatment systems
- Dr, Bolton's report concludes that nitrates and phosphate levels are low in the area.

#### Conclusion

- It has been demonstrated that the area does not suffer from overdevelopment.
- Overdevelopment is controlled by limiting such houses to those who comply with local needs.
- This particular area does not have an excessive density of houses.
- The land-use in the area is dominated by stud farms and woodlands which acts as greenbelts.

#### Reason no. 2 Sterilisation

- Case law demonstrates that An Bord Pleanala can relax or remove a sterilization agreement imposed by a council.
- The local authority is limited to considering a sterilisation agreement only if it is in the interest of proper planning and sustainable development.
- It is submitted that the removal of the sterilisation agreement does not materially contravene a previous condition given the restricted nature of the site to the overall landholding.
- Kildare County Council has relaxed sterilisation agreements previously.
- It is submitted that the applicant has no alternative site. Although the applicant's step-father has a larger landholding the presence of the flood relief channel means it would be impossible to build a house on the adjoining portion of land immediately to the south.

- Having regard to the wording of refusal reason no. 1 and reason no. 2 it is considered that the Board is not restricted by Section 37 (1) (b) of the Planning Act.

## **8.0 OBSERVERS**

The following is the summary of an observation submitted by Catriona Dunbar and John Malone.

### Density of Development

- This issue is clarified in an appendix to the main submission. It is concluded that the housing density from the 1 km<sup>2</sup> from the centre of the appeal site is 22 dwellings per km<sup>2</sup>.

### Sterilisation

- It is submitted that there are two recent cases which demonstrate that previous sterilisation agreements can not be used for refusal reasons of new cases.
- This includes appeal ref. 240537 (Wicklow Co. Co. L.A. Ref. 12/6098). Wicklow County Council refused permission for a development and the third reason for refusal related to previous sterilisation agreement on the subject site. The Board refused permission for the rural dwelling but did not use the sterilisation agreement as the basis for refusing development.
- In relation to L.A. Ref. 13/34 Kildare County Council granted permission for an amendment to a sterilisation agreement for a one-off rural house.

### Infill Development

- The appeal site is an infill site and is located in an established group of houses.

### Improper Influence of local authority

- It is contended that the reason for refusing development is that Kildare County Council are reluctant to grant planning permission while negotiations in relation to land acquisition for flood relief are completed.

### Local Need

- In plan ref. L.A. Ref. 11/108 the local authority acknowledged that the applicant complies with local need criteria.
- However the applicant's local need status has been questioned by the local authority.
- The local authority has stated that the applicant is not part of the indigenous population.
- It is submitted that the sterilisation agreement should be amended to accommodate an immediate family member.
- The applicant complies with Section 4.11.2 of the County Development Plan.

### Personal Family Circumstances

- The applicant's mother never married the applicant's natural father nor did the applicant or his mother ever live with the applicant's natural father.
- The applicant lived with his mother, as a single parent up to 1995, and with his mother and stepfather since their marriage in 1996.

- The applicant now lives with his mother and stepfather and his two younger siblings.
- The applicant owns no other property and his financial situation is that he can not afford to build on any other site other than that gifted to him by his stepfather.
- It is submitted that the applicant wants to live close to his parents (both approaching 60 years of age) as they get older.
- The applicant's stepfather's family have lived in this family home for over 90 years.

## **9.0 RESPONSES**

### **Second Party Response**

The following is the summary of a response submitted by the local authority;

- A pre-planning consultation cannot not be relied upon in the formal planning process.
- In the previous planning application (L.A. Ref. 12/275) on the appeal site there were two reasons for refusal. It is considered that these reasons for refusal were not addressed in the current planning application.
- Current practice in relation to sterilisation of land is not relevant to this planning application.
- It is submitted that to grant planning permission would materially contravene a condition on an existing permission.
- The granting of permission on this site, which is sterilised, would set an undesirable precedent in the area.
- The planning authority has consistently taken the view that the granting of permission on this site would contribute to an encroachment of such development in this rural area.
- The proposal would be contrary to Policy RH5 and Policy RH11 of the County Development Plan.
- The proposed development would give rise to excessive density in this rural area and would impact on the orderly and efficient development of Naas and Johnstown urban areas.
- It is considered that the proposed development would materially contravene the policies of the County Development Plan.

### **First Party Response**

- This is a submission from the applicant's agent stating that he fully concurs with the submitted observation from Catriona Dunbar and John Malone.

## **10.0 ASSESSMENT**

The main issues to be considered in this case are: -

- Principle of Development
- Sterilisation Agreement
- Ribbon Development
- Other Issues

## **Principle of Development**

A key consideration in this appeal relates to the applicants housing need in the area and as such whether this housing need complies with the provisions of the Kildare County Development Plan, 2011 – 2017, and the Sustainable Rural Housing Guidelines, 2005.

In accordance with the information on the file the applicant lives with his mother and his stepfather in a house adjoining the appeal site. The application includes documentation which documents the applicant living at this address from 1999 to 2010. The applicant's mother and stepfather married in 1996 (marriage certificate included with application) and it is stated that the applicant has lived at the current address with his parents since their marriage. The applicant currently works for Cadbury in Coolock, Dublin 5 which is situated 46 km from the appeal site.

The application and appeal submission contend that the applicant would comply with Rural Housing Policy Zone 1 of the County Development Plan on the basis that the applicant is a local rural person. The application documentation outlines that the applicant's stepfather's family have owned the subject landholding since 1920.

In accordance with Map 4.1 of the County Development Plan the appeal site is situated within Rural Housing Policy Zone 1 and therefore any applicant for a rural house must satisfy one of the local need criterion, as set out in Table 4.3, in order to be considered eligible for a one off rural house. The local need criterion includes the following;

- *Persons engaged in full-time agricultural employment building on their own landholding and who have been farming for a continuous period of 7 years prior to making the application:*

This is not the case.

- *A person who was born and lived for substantial parts of their lives (12 years) in a specific rural area or within 5km of the family home, and currently living in the area:*

The applicant was not born in this area however has lived in this area for a substantial period, i.e. from 1996 to 2010.

- *A person who was born and lived for substantial parts of their lives (12 years) in the area and now wish to return to this area to reside close to family:*

This is not the case.

- *Persons employed full time in farming in the locality, within 5km of the site, and need to be close to their employment and have been engaged in such employment, at that location, for a continuous period of over 7 years;*

This is not the case.

- *Persons who operate a small scale, full time business from a proposed house and that the business will contribute to and enhance the rural community and that the nature of such business is more appropriate to a rural area;*

This is not the case.

In assessing whether the applicant has a rural housing need I would consider that **Policy RH3** of the County Development Plan, 2011 – 2017, would be relevant. This policy states that it is a policy objective *‘to implement policies in relation to rural areas to meet the needs of the indigenous rural population and those working in rural areas’*. It is evident from the information on the file that the applicant is not a person working full-time or part-time in a rural area. Therefore the applicant’s strongest case, in my view, in demonstrating that he has a rural housing need would be on the basis that he is a person who is an intrinsic part of the rural community.

I would note that Policy RH 11 of the County Development Plan aims to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. In this regard the policy provision has regard to potential impacts on the orderly and efficient development of newly developing areas on the edges of towns and villages and the future provision of infrastructure and the viability of urban public transport due to low density development.

In relation to the applicant’s local ties to the area this primarily comprises of his parent’s living on the adjoining site to the appeal site and also that the applicant, who was born in 1976, has lived at this address since 1996.

I would consider on the basis of the nature of the applicant’s employment which is based in Coolock that it is not necessary for him to live on the subject rural site. In relation to the applicant’s close family links to this rural area I would acknowledge that the applicant’s parents live adjoining the appeal site however I would consider that the applicant has not adequately demonstrated why he could not live in a higher order settlement such as Johnstown, which is situated approximately 1.2 km from the appeal site, as opposed to this rural location. This would be relevant as it is the policy (SS1) of the planning authority, as expressed in the current County Development Plan, to *‘direct growth into the large growth towns, followed by moderate sustainable growth towns and small towns, whilst also recognising the settlement requirements of rural communities’* and additionally having regard to Policy RH11 of the County Development Plan. I would consider that the proposed development would be contrary to Policy SS1 and Policy RH11 of the County Development Plan. Furthermore I would note that the appeal site is located within an area designated, in accordance with the Sustainable Rural Housing Guidelines, 2005, as having a strong urban influence and is under pressure for housing due to the proximity of such urban areas or major transport corridors with ready access to the urban area. I would not consider that the applicant would have sufficiently strong ties to this area to justify a rural housing need.

I would consider having regard to the applicant's occupation, the submitted information with the application, and principally that it has not been adequately demonstrated that the applicant cannot live closer to a higher order zoned settlement than the appeal site, given the location of his employment, that the applicant has not adequately demonstrated that he has a rural housing need on the appeal site.

### **Sterilisation Agreement**

In relation to refusal reason no. 2 of the local authority decision I would concur with the appellant that a sterilisation agreement of a previous permission on a site is not sufficient in itself to refuse permission for development on the same site. Furthermore and allowing for the time period in which the sterilisation agreement was conditioned and also given that there is now a different owner of the same land I would consider the validity of the sterilisation agreement is less significant. I would consider that the applicant would be allowed to make a planning application for the proposed development on the appeal site which would be judged on its own merits. I also would acknowledge the details of the case law submitted in the appellant's submission and its relevance to the current case.

In conclusion therefore I would not concur with the local authority that the proposed development should be refused permission on the basis that it contravenes a condition of a previous permission.

### **Ribbon Development**

I noted from a visual inspection of the area that there is a high concentration of rural houses in the immediate area of the appeal site.

The Sustainable Rural Housing Guidelines, 2005, recommend against the creation of ribbon development due to road safety, future demands for provision of public infrastructure as well as visual impacts. The guidelines state that ribbon development is referred to as that which is '*located on the edges of cities and towns and will exhibit characteristics such as high density of almost continuous road frontage type development, where 5 or more houses exist on any side of a given 250 metres of road frontage*'. The Guidelines further state that whether a given proposal will exacerbate such ribbon development will depend on (a) the type of rural area and the circumstances of the applicant, (b) the degree to which the proposal might be considered infill, (c) the degree to which existing ribbon development would be extended or whether distinct areas of ribbon development would coalesce as a result of the development.

The appeal site is effectively an infill site as there are two established rural houses immediately north of the appeal site and there is an established house to the south of the appeal site. These existing houses are situated on sizable sites however should the proposed development obtain planning permission an infill site immediately south of the appeal site would become available. Additionally I noted from a visual observation of the area that there is a current infill site situated between the house immediately south of the appeal site and the subsequent house to the south. The creation of infill sites, in my view, would set an undesirable

precedent for other such development in the area which would make it more difficult to resist similar proposals in the future.

Although the length of road frontage would not correspond with the ribbon development definition in the 2005 guidelines I would consider that given the existing housing in the area, including that on the opposite side of the public road that areas of ribbon development would coalesce as a result of the proposed development.

I would therefore consider that the proposed development would exacerbate ribbon development in the area and would set an undesirable precedent for other such development in the area.

### **Other Issues**

The site suitability report, submitted with the planning application, indicated that a 'T' value of 41.36 was recorded and according to the E.P.A. publication, '*Code of Practice, Wastewater Treatment and Disposal Systems Serving Single Houses*' this is an acceptable value. The site suitability assessment recommends installing a packaged wastewater treatment system and polishing filter as a method of wastewater treatment.

I would note that reports from the Environment Section of the local authority have indicated no objections to the proposed waste water treatment.

I would consider on the basis of the information on the file that the applicant has adequately demonstrated that the site is suitable for the wastewater treatment proposals.

## **11.0 RECOMMENDATION**

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be refused for the reasons set out below.

### **REASONS AND CONSIDERATIONS**

1. The proposed development would constitute random residential development in a rural area which is under strong development pressure from the Naas and Johnstown Area, and which is lacking in certain public services. It is the policy of the planning authority, as expressed in the current Kildare County Development Plan, to divert development into existing urban areas and to restrict development in rural areas to serve the needs of certain defined categories of person, including those engaged in agriculture or with strong ties to the area. It is considered that the applicant does not come within the scope of the housing need criteria as set out in the Development Plan or the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005. The proposed development would conflict with the policies of the planning authority, would lead to demands for the uneconomic provision of

further public services and facilities in an area where these are not proposed and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Taken in conjunction with existing housing in the area, the proposed development would reinforce a pattern of undesirable ribbon development along the public road, constituting an excessive density of housing development in this rural area, outside lands zoned for residential development, which would detract from the character of the area, would lead to demands for the uneconomic provision of services and facilities and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Kenneth Moloney  
Planning Inspector  
26<sup>th</sup> June 2013