



An  
Bord  
Pleanála

## Inspector's Report ABP-306792-20

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<b>Development</b>	Construction of a single storey detached bungalow, secondary effluent treatment system and the replacement of an existing septic tank with a secondary effluent treatment system.
<b>Location</b>	Raheen, Rathcoffey, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	19/1385
<b>Applicant(s)</b>	Michelle English
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party V. Refusal
<b>Appellant(s)</b>	Michelle English
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	20 <sup>th</sup> May 2020
<b>Inspector</b>	Elaine Power

## 1.0 Site Location and Description

- 1.1. The site is located in the townland of Raheen, approx. 1.8km north east of the village of Rathcoffey. Raheen is a rural area characterised by agricultural lands and associated dwellings and agricultural buildings. The appeal site forms one of 4 no. detached dwellings which front onto the public road. It is bound to the north by a detached dwelling, to the south and west by agricultural lands and to the east by the public road.
- 1.2. The site has a stated area of 0.258ha. The proposed house is located in the rear garden of the applicant's family home, which is included in the red line boundary. The existing house on site is a traditional style, single storey bungalow, which is set back approx. 25m from the public road.
- 1.3. There is an existing 4m wide vehicular access to the site.

## 2.0 Proposed Development

- 2.1. It is proposed to subdivide an existing site, which currently accommodates a single storey dwelling, and construct a single storey, 2-bedroomed house to the rear of the site. Access to the proposed house would be via a shared driveway, approx. 4m in width. The proposed house is located approx. 56m from the front (eastern) site boundary and approx. 26m from the rear building line of the existing house. It has a gross floor area of 156sqm and has a gable ended pitched roof with a maximum height of 4.9m. The external materials include render and a brick finish to sections of the front elevation.
- 2.2. The works include the provision of a waste water treatment system to serve the proposed house. It also proposed to remove an existing septic tank located in the rear garden of the existing house and replace it with a new wastewater treatment system located to the front of the site.
- 2.3. A letter of consent to make the application has been submitted by the applicant's father, who is the landowner.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was refused for the following reasons: -

1. Policy RH9(iv) of the Kildare County Development Plan 2017 – 2023 seeks to ensure that, notwithstanding compliance with the local need criteria, Applicants comply with all other siting and design considerations, including the capacity of the area to absorb further development. Having regard to the extent of existing development in the immediate vicinity of the subject site, it is considered that the proposed development would exacerbate an excessive density of development in this rural area, would contribute to the increasing suburbanisation of the area, would materially contravene Policy RH9 (iv) of the Kildare County Development Plan 2017 – 2023 and would therefore be contrary to the proper planning and sustainable development of the area.
2. Policy RD10 of the Kildare County Development Plan 2017 – 2023 seeks to control the level of piecemeal and haphazard development of rural areas close to designated settlement centres. It is considered that the proposed development by reason of its location in close proximity to the designated rural settlement of Rathcoffey, would further exacerbate the level of development in proximity to this settlement. It is therefore considered that the proposed development would set an undesirable precedent for further unsustainable development of this rural area, would materially contravene Policy RD10 of the Kildare County Development Plan 2017 – 2023 and would therefore be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

The Area Planners report raised concerns regarding the proposed development and recommended that permission be refused for the reasons outlined above.

### 3.2.2. **Other Technical Reports**

**Water Services:** The report noted in the planner's report is not on file.

**Roads, Transportation and public Safety Department:** No objection subject to conditions

**Environment Section:** Recommended that further information be sought regarding the proposed wastewater treatment system.

**Area Engineer:** No objection subject to conditions.

### 3.3. **Prescribed Bodies**

Irish Water: No objection

### 3.4. **Third Party Observations**

None

## 4.0 **Planning History**

### **Appeal Site**

**Reg. Ref. 19/374:** Permission was refused in 2019 for the subdivision of the existing site, construct a single storey detached house with a wastewater treatment system and to remove an existing septic tank and replace it with a wastewater treatment system for existing house. The reasons for refusal related to (1) the development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities and would contribute to the increasing suburbanisation of the area, which would contravene Policy RH9(iv) and (2) the proposed development by reason of its proximity to Rathcoffey would contravene policy RH10 to control the level of piecemeal and haphazard development of rural areas close to urban centers and settlements.

### **Surrounding Sites**

**Reg. Ref. 17/1441:** Permission was refused in 2018 for the construction of a two-storey house, a garage / fuel store, a wastewater treatment system and new vehicular

entrance on a site located approx. 400m south of the appeal site. The reasons for refusal related to (1) the development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities and contravene Policy RH4 to restrict residential development on a landholding where there is a history of speculative sale of development sites, (2) the development would exacerbate an excessive density of development in a rural area lacking certain public services and would contribute to the increasing suburbanisation of the area, which would contravene Policy RH9(iv), (3) the proposed development would constitute ribbon development and would be contrary to Policy RH12 and (4) the proposed development by reason of its proximity to Rathcoffey and Clane would contravene policy RH10 to control the level of piecemeal and haphazard development of rural areas close to urban centers and settlements.

## **5.0 Policy Context**

### **5.1. Kildare County Development Plan 2017 - 2023**

The appeal site is located outside of the settlement boundary for Rathcoffey on unzoned lands. Map 4.4 of the plan identifies that the site as being located in Rural Housing Policy Zone 1. Zone 1 generally comprises the northern, central and eastern areas of the county which are more populated with higher levels of environmental sensitivity and significant development pressure. Therefore, applicants are required to demonstrate that their proposal complies with a genuine housing need.

Table 4.3(b) requires that the applicant must demonstrate a genuine local need to reside close to their family home by reason of immediate family ties or their active and direct involvement in a rural based enterprise. Of relevance is Category 2(i): -

Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area. Where no land is available in the family ownership, a site within 2km the original family home may be considered.

The following policies are considered relevant: -

**Policy RH 2:** To manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

**Policy RH9(iv)** 'To ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations (refer to chapter 16 for further guidance) including the following:

The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing development in the area, the extent of ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding.

**Policy RH 10:** 'To control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:

- (i) The orderly and efficient development of newly developing areas on the edges of towns and villages;
- (ii) The future provision of infrastructure such as roads and electricity lines; and
- (iii) The potential to undermine the viability of urban public transport due to low density development'.

**Policy RH 11:** To preserve and protect the open character of transitional lands outside of settlements in order to prevent linear sprawl near towns, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside.

**Policy RH 14:** To only consider family members for backland development. The proposed development shall have no negative impact on third parties/ neighbouring property owners and viable sites with sufficient independent percolation areas will be

required in order to meet technical guidelines. Sufficient screening will be required to screen the house from adjacent homes, and this has to be in place prior to occupation of the house. Single storey bungalow (including attic accommodation) type houses only will be allowed in such backland locations to limit visual impact and overlooking.

**Policy RS 6** Recognise and promote the agricultural and landscape value of the rural area and prohibit the development of urban generated housing in the rural area.

The Kildare Rural Housing Report, 2016 is also considered relevant.

## 5.2. ***Sustainable Rural Housing Development Guidelines***

The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

## 5.3. ***National Planning Framework***

Policy Objective 19: 'Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements'.

#### **5.4. Natural Heritage Designations**

There are no designated areas in the immediate vicinity of the site.

#### **5.5. EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

This is a first party appeal against the Planning Authority's decision to refuse permission. The submission addresses the 2 no. reasons for refusal and is summarised below: -

- The reasons for refusal are based on a subjective assessment of the application. The applicant wishes to build a modest house beside her ageing parents. Backland development is clearly supported in policy RH 14 of the development plan. This development is a perfect example of what the plan promotes.
- The applicant can not afford to move to the nearby settlement of Rathcoffey as the house prices are excessive. It is acknowledged that lands are zoned for housing in Rathcoffey, however, this is entirely developer led and market driven. In reality there is no housing options available to the applicant. It is unrealistic to assume that the applicant's accommodation needs can be met elsewhere. While it is noted that the economic circumstances of the applicant are outside of the planning assessment, the reality of the situation cannot be ignored.

- The development plan does not provide information on what is an appropriate rural density. It is unfair and unreasonable to refuse an application based on the entirely subjective criteria and the subjective nature of the planning authority's assessment needs to be highlighted.
- It is unfair to allow the planning authority to determine what is overdevelopment, without some quantitative analysis or some form of discourse or analysis to enable the applicant to address the concerns. There is no consistency from the planning authority regarding one-off rural housing.
- A planning history for the general area has been provided and it is considered that the area is not under pressure for development, since 2000. This would indicate that the area is not in an urban generated rural development pressure.
- An aerial map of the vicinity of the site has been submitted. It is considered that this is a normal Irish rural form with individual one-off houses, most of which were granted prior to 2000. The built environment of Raheen, Rathcoffey is not a recent phenomenon. The applicant has not contributed to this arrangement and is not the cause of this form of development.
- The applicant has intrinsic rural connections which would be given considerations in the assessment in this application.
- The proposed house has been designed in accordance with all development control objectives.

## 6.2. **Planning Authority Response**

No further comments

## 7.0 **Assessment**

7.1. The main issue in this appeal relates to the reasons for refusal, in this regard compliance with rural housing policy. Water Services and Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Compliance with Rural Housing Policy

- Water Services
- Appropriate Assessment

## **7.2. Compliance with Rural Housing Policy**

- 7.2.1. The appeal site is located on unzoned lands approx. 1.8km north east of the village of Rathcoffey. The general area is characterised by agricultural lands and associated dwellings and agricultural buildings. There is significant linear development on both sides of the road on the approach to Rathcoffey village. The appeal site forms one of 4 no. detached dwellings which front onto the public road and there are 19 no. houses fronting onto the public road within 850m of the appeal site.
- 7.2.2. The planning authority's first reason for refusal indicates that the proposed development would not be in accordance with policy RH9(iv) as the development would exacerbate an excessive density of development in this rural area and would contribute to the suburbanisation of the area. The planning authority's second reason for refusal indicates that the proposed development would not be in accordance with policy RH10 which seeks to control the level of piecemeal and haphazard development of rural areas close to designated settlement centres.
- 7.2.3. The applicant has stated that the reasons for refusal are subjective and that no quantitative reason for refusal has been provided. It is considered that this is unreasonable and unfair on the applicant. A planning history for the general area was provided with the appeal and the applicant considers that the area is not under pressure for development. It is stated that this pattern of linear development is a normal Irish rural form with individual one-off houses, most of which were granted prior to 2000. The applicant has intrinsic rural connections to this rural area, this link was not given due consideration by the planning authority when assessing the application. It is stated that planning authority's assumption that the applicant's accommodation needs can be met within the settlement boundary of Rathcoffey is incorrect, this is due to the applicant's economic circumstances and the excessive house prices in vicinity of the site.
- 7.2.4. The Sustainable Rural Housing Guidelines define rural areas under strong urban influence as those within proximity to the immediate environs or close commuting

catchment of large cities and towns. The appeal site is located approx. 5km north east of Clane and approx. 6km south west of Maynooth. The development plan identifies the site as being located in Zone 1 which is an area with significant development pressure. Having regard to the sites location in Zone 1 and the existing concentration of housing in the immediate vicinity of the site, it is my view that the provision of an additional dwelling, on unzoned and unserviced lands would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and, therefore, would not be in accordance with policy RH9(vi) and RH 10. It is also considered that the proposed development would contravene policy RH 11 to preserve and protect the open character of transitional lands outside of settlements and to maintain a clear demarcation and distinction between urban areas and the countryside.

7.2.5. It is noted that the planning authority considered that the applicant had demonstrated a genuine rural housing need to reside at this site. Map 4.4 of the development plan identifies that the site as being located in Rural Housing Policy Zone 1. Zone 1 generally comprises the northern, central and eastern areas of the county which are more populated with higher levels of environmental sensitivity and significant development pressure. Table 4.3(b) requires that the applicant must demonstrate a genuine local need to reside close to their family home by reason of immediate family ties or their active and direct involvement in a rural based enterprise. Of relevance is Category 2(i) which relates to persons who have spent substantial period, over 12 years) living in the rural area of Kildare. The appeal site forms part of a larger site with an overall area of 0.258 ha, this larger site was purchased in 1997/1998 by the applicant's father. It is acknowledged that the applicant has lived in the local area for approx. 23 years and, therefore, in my view is in accordance with the criteria set out in Table 4.3(b) of the development plan.

7.2.6. Notwithstanding compliance with development plan policy regarding a genuine housing need, the Sustainable Rural Housing Guidelines note that circumstances for which a genuine housing need might apply include persons who are an intrinsic part of the rural community and persons working full time or part time in rural areas. In addition, Policy Objective 19 of the National Planning Framework requires that, in rural

areas under urban influence, the core consideration for the provision of a one-off rural house should be based on the demonstratable economic or social need to live in the rural area and should have regard to the viability of smaller towns and rural settlements.

7.2.7. The proposed development results in the sub-division of the family home to accommodate the proposed house. It is noted that the overall appeal site does not relate to any agricultural landholding. The applicant submitted a personal letter with the application to the planning authority which states that she has lived at the site since her family purchased it and currently resides in the family home with her partner. It also notes that the applicant has strong familial links to the area, attended local schools in the Maynooth area and that due to her mother's medical circumstances she wishes to remain close to the family home to provide additional support to her parents. It is noted that the applicant's employment status is noted as a self-employed consultant on the planning application form. However, no further details have been provided. Having regard to the information submitted, it is my view that the applicant has not demonstrated a sufficient economic or social need to live in the area, as set out in the Sustainable Rural Housing Guidelines and Policy Objective 19 of the National Planning Framework.

7.2.8. It is noted that the design and layout of the house are in accordance with development plan standards and would not negatively impact on the existing residential or visual amenities. However, it is my view that in the absence of an identified locally based economic or social need to live in the area the proposed development would contribute to the encroachment of random rural development and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would negatively impact on the viability of smaller towns and villages.

### 7.3. **Water Services**

7.3.1. It is proposed to install a packaged wastewater treatment system and polishing filter to serve the proposed house. It is also proposed to remove an existing septic tank in the rear garden of the existing house and install a packaged wastewater treatment system and polishing filter in the front garden of the existing house, to serve the

existing house. The proposed systems reach and exceed the recommended separation distances as set out in the EPA Code of Practice.

- 7.3.2. It is noted that 2 no. site characterisation forms have been submitted for each proposed system. As expected, the submitted site characterisation forms for both sites have similar results. Both trial holes were 2.5m in depth and recorded 300mm topsoil; 600mm of Clay; 1600mm of gravelly silt / clay, with occasional cobbles. With regard to the percolation characteristics of the soil, a T value of 32.97 was recorded for the proposed house and 21.36 minutes was recorded for the existing house. This indicates that the site is suitable for the installation of on-site domestic wastewater treatment systems.
- 7.3.3. It is noted that the Area Engineer recommended that further information be sought regarding a cross section and a site suitability report for each of the wastewater systems. This issue has not been addressed by the applicant in the appeal.
- 7.3.4. In conclusion, having regard to the information submitted I am satisfied that that the subject site is suitable for the installation of the proposed packaged wastewater treatment system and polishing filter.
- 7.3.5. It is proposed to connect the house to the existing public water mains. By reference to the OPW Flood Maps the subject site is not located in an area liable to flooding. To reduce the potential for surface water runoff it is proposed to provide soakaways on site. The location of the soakaways has not been indicated on the submitted drawings. It is noted that the Area Engineer raised no objection to surface water disposal.

#### 7.4. ***Appropriate Assessment***

Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

## 8.0 Recommendation (1)

- (1) Refuse permission for the construction of a single storey detached bungalow, secondary effluent treatment system and all associated site works based on the reasons and considerations marked (1) under section 9 below
- (2) Grant permission to remove an existing septic tank and replace with a secondary effluent treatment system for the existing house on site and all associated works based on the reasons and considerations marked (2) under and subject to the conditions set out below section 10 below.

## 9.0 Reasons and Considerations (1)

1. The subject site is located in area under significant pressure for rural housing, as identified in the Kildare County Development Plan 2017 - 2023. Furthermore, the site is located in an area that is designated as under urban influence in the Sustainable Rural Housing Guidelines and in the National Planning Framework, where National Policy Objective 19 aims to facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in a rural area. Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria as set out in the Kildare County Development Plan, 2017 - 2023 or in national policy for a house at this location. The proposed development would, therefore, contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would negatively impact on the viability of smaller towns and villages.
2. The proposed development, when taken in conjunction with existing development in the vicinity of the site would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities. The proposed development would contravene policy RH 9 (iv)

and RH 10 which seek to control the level of piecemeal and haphazard development in rural areas and Policy 11 which aims to preserve and protect the open character of transitional lands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## 10.0 Reasons and Considerations (2)

Having regard to the nature and small scale of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the amenities of the area or be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

**Reason:** In the interest of public health.

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Elaine Power  
Planning Inspector

3<sup>rd</sup> June 2020