



An
Bord
Pleanála

Inspector's Report

ABP-307643-20

Development	For single storey split level style dwelling
Location	Mullaghland, Mullagh, Co Cavan
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	2079
Applicant(s)	Patrick McKenna & Aideen Quealy.
Type of Application	Permission.
Planning Authority Decision	To refuse.
Type of Appeal	First Party
Appellant(s)	Patrick McKenna & Aideen Quealy.
Observer(s)	Anne O'Connell
Date of Site Inspection	10 th September 2020
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The 0.368ha appeal site lies c.6km to the south east of Virginia and c.1.5km to the north west of the village of Mullagh, in the townland of Mullaghland, County Cavan. The site lies to the east of the regional road (R194), on the mid-slopes of Mullagh Hill, overlooking Mullagh Lough. Access to the site is via a minor lane off the regional road which currently serves a dwelling at the foot of the lane and agricultural land alongside the lane. It also forms part of Mullagh Hill Walking Route which provides access to a public viewing point to the north west of the appeal site, overlooking Mullagh Lough and surrounding lands.
- 1.2. The appeal site comprises the southwest corner of a larger agricultural field. It is bound by mature vegetation along its southern boundary and part of its western boundary. Access to the site is via gated entrance from the access lane (photograph 7). To the immediate west of the entrance is another gated entrance and stile to the Mullagh Hill walkway, which leads to the Mullagh Hill viewing point to the north west of the site (photographs 7, 9 and 10). The appeal site is not visible from the viewing point but is visible from the walkway (photograph 11).

2.0 Proposed Development

- 2.1. The proposed development comprises a contemporary single storey split level style dwelling (220.5m²), cut into the rising topography, and situated towards the north east of the site. Water supply is proposed from a well to the east of the dwelling and a proprietary effluent treatment system with percolation area is proposed to the west of the dwelling. Rainwater will be disposed of via a rainwater harvesting system. A new hedgerow is proposed along the northern and western boundaries of the site and southern and eastern boundaries will be retained and filled, as necessary.
- 2.2. The planning application includes drawings, a design statement, photomontages of the development, site assessment and Rural Housing Form, letter of consent from landowner of subject site and land to west of the access lane. Plans for the development indicate a right of way over the access lane, from the regional road, which will be widened by moving back the stone ditch along its western boundary.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 22nd June 2020, the planning authority decided to refuse permission for the development on three grounds, impact on visual amenity (siting and location of dwelling), impact on public right of way and walking route and traffic hazard (inadequate sightlines).

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 18th June 2020 – Refers to the location of the development in a rural area under ‘Strong Urban Influence’ of Cavan town, relevant policies of the County Development Plan, planning history of land to the north of the site (Mullagh Hill tourism developments), pre-planning consultations and the observations made. It considers that the applicant has demonstrated a rural housing need and that the design of the dwelling is acceptable. However, it raises concerns regarding guidelines set out in the County Development Plan and:
 - The siting of the development - Elevated position of the site on Mullagh Hill, overlooking Mullagh Lough and the visual and landscape impacts of this.
 - The location of the development - On a public right of way and walking route listed in the County Development Plan and the impact of the development on the established walkway as a recreational amenity in the area.
 - Residential amenity - The development may result in overlooking of the dwellings along the regional road.
 - Traffic Safety/Access – Inadequate sightlines available in each direction at junction of access lane and regional road. Concerns regarding increase in vehicular traffic using the junction. Impact of proposals to widen the lane and the impact of these works on the appeal and character of the walkway.

No appropriate assessment issues are identified given the distance of the site from European sites. The report recommends refusing permission for the development.

3.2.2. Other Technical Reports

- Roads (26th March 2020) – Recommends further information on the entrance to the site (inadequate details).
- Environment (2nd April 2020) – Recommends approval subject to conditions.
- Road Design (19th May 2020) – Referred to in Planning Report (not on file). No impact on N3 Virginia Bypass.

3.3. Prescribed Bodies

- None.

3.4. Third Party Observations

3.4.1. Observations on the proposed development raise the following issues:

- Impact on recognised and publicly funded Walking and Hiking Trail, Mullagh Hill Walk (widening of lane, change from walkway to vehicular road) and amenity of laneway. Impact on future development of the laneway, with other walking routes.
- Impact on amenity, landscape and heritage of Mullagh Hill, including when viewed from the Hill. More elevated than other recent development/Virginia Road and would set a precedent. Development would impact of views from the Hill Walk (especially when viewed from above and when coming down). No details on colour of building materials or landscape/planting to screen house. Poor soils and excessive wind would prevent effective screening.
- Inadequate lane to serve the site, traffic safety. Increase in traffic on lane, conflict with pedestrian traffic/walkers, risk to walkers and other road users, could not accommodate two way traffic even if widened, inadequate and busy junction with the main road with cars often parked opposite the entrance to the Hill Walk.

- Loss of historic stone walls and hedgerows and impacts on associated flora and fauna. Wall is present on the 1836 Ordnance Survey map and is of heritage significance. No information on what will replace the wall or surface of laneway.
- Impact on privacy of nearby dwellings.
- No consent from one of shared landowners to widen the lane. Applicant has alternative means to access the site.

4.0 Planning History

4.1. There is no planning history in respect of the appeal site. The following have been referred to in the course of the planning application and appeal:

- PA ref. 04/2607 - Permission granted for the upgrading and extension of the existing walkway to the summit of Mullagh Hill, provision a seating and picnic area on the summit (Appendix 10 of appeal).
- PA ref. 05/1266 - Permission was granted to retain works carried out to new walkway to the summit of Mullagh Hill (Appendix 9 of appeal).
- PA ref. 09/502 – Permission granted for dwelling at the foot of the access lane to the appeal site, with access from the laneway and upgrading of entrance onto the R194 to facilitate improved sightlines (Appendix 8 of appeal).

5.0 Policy Context

5.1. Cavan County Development Plan 2014 - 2020

5.1.1. The appeal site lies in an area under ‘Strong Urban Influence’ of Cavan Town, Navan and Greater Dublin. Rural housing needs can be accommodated in the area, under Policy RHP1, subject to satisfying development plan requirements for rural housing need (landowners and immediate family only) and good practice in terms of location, siting, design, wastewater disposal and protection of environmentally sensitive areas and high value landscapes. Development management guidelines for one-off rural houses, set out in section 10.14 of the Plan, require, in respect of the

design and siting, that rural houses comply with the ‘Design Guide for Single One-off Rural Houses within Cavan Rural Countryside’ (Policy RTO8). These guidelines are set out in Appendix 7 of the Plan and include that construction of houses on elevated and exposed sites which will be obtrusive, and which will reduce the visual character of the rural area will not be permitted (section 1.1).

- 5.1.2. Chapter 8 of the Plan sets out policies in respect of Natural Heritage and the Environment. In section 8.10 the Plan refers to Public Rights of Way and includes in Table 8.4 Mullagh Hill Walk in the Preliminary List of Public Rights of Way. Policy NHEP22 of the Plan seeks to *‘preserve and protect for the common good, existing public rights of way which give access to places of natural beauty or recreational utility’*.
- 5.1.3. Chapter 9 of the Plan deals with Recreation and Tourism and in section 9.6.1, walking and cycling. It identifies Mullagh Walk as a documented walk and Policy RTO3 seeks to *‘promote the development of walking and cycling routes in the county, and ensure their protection, maintenance and where feasible improvement’*.
- 5.1.4. Chapter 14 sets out policies in respect of Medium Sized Towns. For Mullagh, policies include Specific Objective 4, *‘To facilitate the provision of a footpath from the Town to Mullagh Lake and on to Mullagh Hill, as important local amenities with strong tourism potential’*.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is removed from any sites of natural heritage interest. The nearest national site is c.2.8km to the south of the site and comprises Killyconny Bog (Cloghbally) proposed Natural Heritage Area. It is also designated as a European site, Killyconny Bog (Cloghbally) Special Area of Conservation (shared site code 000006). Lough Ramor lies c.5km to the west of the site and also comprises a proposed NHA (site code 000008).

5.3. EIA Screening

- 5.3.1. The proposed development is of a type that constitutes an EIA project (involving construction works). However, it is a single dwelling with associated infrastructure and falls far short of the threshold for environmental impact assessment set out in

Part 2 of the Schedule 5 of the Planning and Development Regulations 2001, as amended (Class 10 Infrastructure projects, construction of dwelling units). Further, the development is not situated on a sensitive site, will not use significant natural resources or give rise to significant environmental emissions. There is therefore no real likelihood of significant effects on the environment arising from the proposed development and the need for environmental impact assessment can be excluded at preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. First party grounds of appeal are:

- Visual impact. The house has been designed in accordance with the Design Guide for Single One-off Houses and in consultation with the planning authority. It is sited at the lowest point of the landholding, against a backdrop of rising land and makes use of the surrounding contours and existing mature hedges. Landscaping is proposed where the hedging is weak and to the rear of the site. House design is consistent with design guidelines (shape and form, proportions, windows, roof and sustainability). The development minimises any effect to the surrounding area and is consistent in form with other rural development (see Appendix 1). Planning officer was satisfied with the design of the dwelling.
- Impact on public walkway – Mullagh Hill Walk is situated north of the entrance to the appeal site. South of the appeal site, the lower right of way is not part of the Walk and only provides access to the Walk. The Walk should not be listed as a public right of way as no legal right of way exists. Any right of way granted by the landowner would be for the benefit of St. Killian's Heritage Trust (to whom land is leased) and not for general members of the public. The applicant has a legal right of way over the access road to the site (granted by the landowner) and it does not interfere with the walkway. The laneway south of the gateway to the subject site is an official historic Registered Right of Way. The lower laneway is used by three local farmers

for the daily use of their landholdings (see photograph nos. 3, 4, 5 and 6 on updated Site Layout Plan attached to appeal).

- Traffic – Under Condition no. 3 of PA ref. 05/1266 it is a requirement that no parking take place along the public road. Parking at the entrance to the laneway is therefore a matter for enforcement and has no bearing of vehicles using the laneway. Landowners who have a right of way to their lands are not precluded from using vehicle to access it (lower part of the laneway). Under PA ref. 04/2607 the applicant stated that it was not the intention to use the laneway for vehicular traffic. The Trust cannot restrict the use of vehicles by landowners who use the right of way to access their lands (sign at bottom of lane in respect of no vehicular traffic is misleading).
- Sightlines – There was a typographical error in the applicant’s drawings and the sightlines shown should have read 80m. Under PA ref. 09/502 (new dwelling at entrance to lane), 80m sightlines were required in each direction and are not maintained. No additional vehicles will use the lane as it is already in use by the applicant’s brother to access his land. Under condition no. 3 of PA ref. 05/1266 parking along the public road is prohibited.
- Planner’s Report – The lane is a private right of way, with rights of way over it by adjoining landowners to access their lands by vehicle. There is no vehicular access to the Mullagh Hill Walk lands, except for management and emergency vehicles. A precedent was set under PA ref. 4/2607 for the widening of the laneway, stone wall along the north of the existing lane was removed and replaced with a timber post and rail fence, with hedgerow planted inside the fence, and under PA ref. 09/502 for removal of ditch and its replacement to facilitate sightlines. Planning permission is not required to widen a private laneway and it should not have been used as a reason to refuse permission. Widening of the access lane would improve access to the lane for all, including emergency vehicles. The ditch will be reinstated to match the existing finish (native plants and stone wall) and surfaced in gravel.
- Overlooking – Dwelling is designed to prevent overlooking. Considerable screening in place which will be retained and added to (Appendix 1). Hedgerow along the southern side of the lane will prevent overlooking of

properties on regional road. Proposed dwelling is not visible from the look out at the top of Mullagh Hill (Appendix 1). The existing break in the hedgerow along Mullagh Hill Walk will be reinforced with native hedging. Works carried out under PA ref. 04/2607 have impacted on the amenity the lane and Mullagh hill.

6.2. Planning Authority Response

- None.

6.3. Observations

6.3.1. There is one third party observation of file. It raises the following additional issues:

- Lease signed by observers father with St. Kilian's Heritage Trust to give right of way for creation of a footpath along the boundary of his field north of the current path. Pedestrian right of way on the path from the road was already implied. By its nature, the Right of Way is a shared construct. The proposed dwelling would increase use of the lane and change the nature of the Right of Way from occasional/necessary vehicle to that of a driveway/road.
- The applicant's right of way does not extend to a private dwelling.
- Risk of impact of development on future footpaths (between Virginia, Mullagh and Mullagh Hill).

6.4. Further Responses

- None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file and inspected the site, I consider that the main issues in this appeal relate to:

- Impact on landscape/visual amenity.
- Impact on public right of way.
- Traffic safety/sightlines.

- Overlooking.

7.1.1. The appellant refers to the various rights of way over the access lane to the appeal site and to Mullagh Hill. He states, and provides evidence, that the landowner (his brother) has a right of way over the land which serves to provide access to the appeal site. For the purposes of this appeal, I am satisfied therefore that the applicant has provided sufficient evidence to demonstrate that he can access the appeal site via the proposed laneway. Other matters concerning the status of Mullagh Hill as a Right of Way or Historic Right of Way, are legal matters and lie outside the scope of this appeal.

7.1.2. The appellant also refers to other permissions granted in respect of Mullagh Hill walkway (PA ref. 04/2607 and 05/1266) and the dwelling to the foot of the laneway (PA ref. 09/502). These planning applications were granted having regard to their site specific context and prevailing planning policies at the time. Works which were carried out and conditions, which the permissions were subject to lie outside the scope of this appeal.

7.2. Impact on landscape/visual amenity

The appeal site lies in a rural area that is 'Strong Urban Influence'. Policies of the County Development Plan provide that rural generated housing needs can be accommodated subject to satisfying good planning practice in matters including of location, siting and design and the protection of areas of high landscape value (policy RHP1). The planning authority has accepted that the applicant has demonstrated a rural housing need.

7.2.1. The current County Development Plan also requires that proposals for rural housing comply with the Design Guide for Single One-off Houses within Rural Cavan Countryside. These guidelines include that the construction of houses on elevated and exposed sites which will be obtrusive, and which will reduce the visual character of the rural area will not be permitted.

7.2.2. The proposed development comprises a contemporary residential dwelling, with the scale of the structure broken down into different elements, which together read well, and which use architectural concepts and features, borrowed from the rural

environment. In this regard the proposed development is consistent with rural design guidelines.

- 7.2.3. With regard to its setting, the appeal site lies on an elevated site on the mid slopes of Mullagh Hill. The site is screened in views from the public road by existing mature trees which lie to the south, south west and east of the site. However it is visible from public roads to the south of the site and from Mullagh Hill walk (not the summit).
- 7.2.4. The applicant proposes additional screen planting to the south of the site, along its northern and eastern boundaries and in gaps in the existing hedgerow alongside Mullagh Hill walk. Notwithstanding these proposals, which would increase screening of the development, it is evident from inspection of the site and photomontages produced by the applicant (Photograph C in Appendix 1 of appeal) that by virtue of the elevation of the site and the location of the development within it, the proposed dwelling would be visible in views from the public roads to the south of the site and from Mullagh Hill walk.
- 7.2.5. The applicant argues that the development is located within the established building line of development along the hill side, and whilst I would accept that there are a small number of properties at a similar elevation/distance from the public road, the pattern of development is more typically one where dwellings are confined to the lower slopes of Mullagh Hill.
- 7.2.6. In summary, I would consider, therefore, that the development would be sited on an elevated and exposed site, despite the proposals for additional landscaping, and would therefore be obtrusive in the attractive rural landscape of Mullagh Hill. I refer below to the proposals to widen the access lane to the appeal site to the west and consider that these works would detract from the amenity of the laneway and therefore, also, the visual amenity of the area.

7.3. Impact on public right of way.

- 7.3.1. Mullagh Hill Walk is identified in the current Cavan County Development Plan as a Public Right of Way and is afforded protection by policy NHEP22 of the Plan. It is also a documented walk, protected under Policy RTO3 of the Plan and identified in Chapter 14 as part of a wider plan to connect the Mullagh town to Mullagh Lake and Hill.

- 7.3.2. Currently, the lane serving the appeal site, as it joins the public road, is attractive, with its narrow single track width (<3m) and tight boundaries formed by a stonewall/bank with mature vegetation above. Approximately 150m north of its junction with the public road the lane turns east and increases in width, but remains in character as minor rural lane, with the surface not made up and mature boundary hedgerows.
- 7.3.3. Currently the lane provides vehicular access to the residential property at the foot of the access road and vehicular access to agricultural land that adjoins the lane, and which is accessible from it via field entrances. It also provides pedestrian access to Mullagh Hill Walk.
- 7.3.4. The proposed development would introduce vehicular access to the hill and widen the lane to the west. Given status of the Mullagh Hill Walk as an established walking route in the County Development Plan and as a listed Public Right of Way, the introduction of residential traffic to a minor laneway and pedestrian route would seem contradictory. Further, the widening of the laneway along its western side have a significant impact on the historic form and amenity of the lane, and again would be inconsistent with policies of the Plan which seek to protect the route.

7.4. **Traffic safety/sightlines.**

- 7.4.1. At the time of site inspection, sightlines at the junction of the access lane to the appeal site and R194, were restricted, at 3m back from the roadside edge, due to the roadside boundaries, in particular to the est. Further, the horizontal alignment of the R194 to the east creates a ridge in the road, obscuring views of oncoming traffic and limiting the forward sight distance of traffic approaching from the east.
- 7.4.2. The appellant argues that (a) there was a typographical error in the applicant's drawings and the sightlines shown should have read 80m (not 60m), and (b) under PA ref. 09/502 (new dwelling at entrance to lane), 80m sightlines were required in each direction and are not maintained (Appendix 8 of appeal).
- 7.4.3. No information is provided by the applicant to demonstrate that 80m sightlines can be provided within the current planning application and it would appear from the foregoing that the appellant is relying on the provision of 80m sightlines by way of a previous planning permission, which has not been enforced.

7.4.4. Residential use of the appeal site would inevitably increase vehicle turning movements at the junction of the access lane and regional road over and above existing agricultural traffic which uses the lane. Having regard to the sub-standard nature of junction with the regional road, poor sightlines and inadequate horizontal alignment of the public road to the east, any such increase in vehicle movements would give rise to an increased risk of traffic hazard and compromise the safety of the public road.

7.5. **Overlooking.**

7.5.1. Parties to the appeal argue that the proposed development would give rise to overlooking of properties along the regional road, to the south of the appeal site. As stated there is existing mature vegetation to the south west of the appeal site. This, and the additional planting proposed along the southern and western boundaries of the site, together with the distance of the proposed dwelling from existing properties, would prevent any significant overlooking from the proposed development.

8.0 **Appropriate Assessment**

8.1. Having regard to modest nature of the proposed development and its location significantly removed from any 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.

9.0 **Recommendation**

9.1. Having regard to the foregoing, I recommend that permission be refused for the proposed development.

10.0 **Reasons and Considerations**

1. The site of the proposed development is located within an area under 'Strong Urban Influence' as set out in the current Development Plan for the area, where emphasis is placed on designing with the landscape and of siting of development

to minimise visual intrusion as set out in the current Design Guide for Single One-off Houses within Cavan Rural Countryside, which Guidelines are considered to be reasonable. Having regard to the topography of the site, the elevated positioning of the proposed development, widening of the laneway to access the site, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area and would set an undesirable precedent for other development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development, by virtue of the proposed works widen the existing Mullagh Hill Walkway and introduction of residential traffic to it, would be inconsistent with the objectives of the Cavan County Development Plan 2014-2020 which afford protection to existing rights of way and established walking routes. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
3. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a substandard road at a point where sightlines are restricted in an easterly direction.

Deirdre MacGabhann
Planning Inspector

28th October 2020