

An
Bord
Pleanála

Board Order
ABP-318245-23

Planning and Development Acts 2000 to 2022

Planning Authority: Kildare County Council

Planning Register Reference Number: 23/650

Appeal by David Donnellan of 'Lexington', Painestown, Kill, County Kildare .
against the decision made on the 18th day of September, 2023 by Kildare
County Council to grant subject to conditions a permission to Tammy Talbot
care of Whyte Planning Consultants Limited of Great Connell, Newbridge,
County Kildare in accordance with plans and particulars lodged with the said
Council:

Proposed Development: The sub-division of existing site for the
construction of a single storey detached bungalow, single storey domestic
garage, shared use of existing and permitted entrance to adjacent house,
secondary effluent treatment system and all associated site works at
Painestown, Kill, County Kildare.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to the policies of the Kildare County Development Plan 2023-2029, including policy HOP11 which facilitates new dwellings outside of settlement boundaries subject to compliance with local need criteria, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the zoning objective for the site, that the applicant has demonstrated a local housing need, would not detract from the visual amenity of the area, would provide an acceptable standard of residential amenity for the prospective residents, would not seriously injure the residential amenity of surrounding properties, would not endanger public safety by reason of access, traffic generation, drainage proposals, or otherwise and would not be at risk of flooding. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board, noting the letter on file from the planning authority's Water Services department dated the 14th day of June 2023 seeking a Site Specific Flood Risk Assessment (SSFRA) and also noting the planning authority did not follow up on this, had regard to the current flood risk information available for the site on the Office of Public Works www.floodinfo.ie service. Based on this information, the Board considered that the site does not appear to be at risk of flooding and the requirement for a SSFRA is unwarranted. Having regard to the remainder of the Inspector's report, where in his view the applicant met all other relevant policies and objectives in the current Development Plan, the Board concluded that the proposed development would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the planning authority as amended by the further plans and particulars received by the planning authority on the 30th day of August 2023, 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 dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least ten years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.
- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation. This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. Surface water drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such services and works.

Reason: In the interest of public health.

4. Where the applicant proposes to connect to a public water/wastewater network, the developer shall enter into water and wastewater connection agreements with Uisce Éireann prior to the commencement of development and adhere to the standards and conditions set out in that agreement.

Reason: In the interest of public health.

5. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 14th day of June 2023, and 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, 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.
- (b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

- (e) Within three months of the first occupation of the dwelling, 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 and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

6. Prior to the commencement of development, the existing tree to the eastern side of the existing entrance shall be removed so as not to obstruct sight lines and visibility for traffic exiting the site. Prior to the commencement of development, photographic evidence shall be submitted for the written approval of the planning authority.

Reason: In the interest of traffic safety.

7. Prior to the commencement of development, the applicant shall submit evidence in writing for the agreement of the planning authority of a legal right of way over the shared driveway in order to access the public road and also the necessary rights to maintain sightlines at, and, to either side of the front entranceway.

Reason: In the interest of traffic safety.

8. The applicant shall ensure that if electrical charge points are provided at the driveway of the new dwelling to allow for the night-time charging of electric vehicles, linked to the individual domestic electricity meter. The electric vehicle charger shall be compatible with The Sustainable Energy Authority of Ireland's Triple E Register.

Reason: To promote the use of night-time renewable energy.

9. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble, or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

10. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.


Reason: In order to safeguard the residential amenities of property in the vicinity.

11. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.



Martina Hennessy
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board

Dated this ^{9th} day of *July* 2024