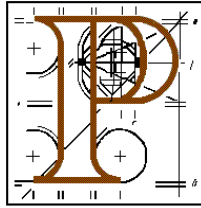


An Bord Pleanála



Inspector's Report

PL25.245523

DEVELOPMENT: Permission to construct new single-storey dwellinghouse, domestic garage and proprietary wastewater treatment system and soil polishing filter and all ancillary site services, at Correllstown, Kinnegad, County Westmeath.

PLANNING APPLICATION

Planning Authority: Westmeath County Council

Planning Authority Reg. No.: 15/6127

Applicants: Jimmy and Philis Flaherty

Application Type: Permission

Planning Authority Decision: **REFUSE PERMISSION**
for Reasons and Considerations (3)

APPEAL

Appellants: Jimmy and Philis Flaherty

Type of Appeal: **FIRST PARTY**

Observer: None

DATE OF SITE INSPECTION: 4th December, 2015.

INSPECTOR: Dermot Kelly

1. SITE LOCATION

The subject site is located at Correllstown, Kinnegad, County Westmeath, as indicated on **APPENDIX A - LOCATION MAP**.

2. SITE DESCRIPTION

2.1 The subject site lands at Correllstown, Kinnegad, County Westmeath are approximately 0.63 hectares in area and were described in the Planning Report for the Planning Authority as follows:

‘Site located in the rural area to the north-west of Kinnegad. The site lies adjacent to (south-west of) and takes access from the local primary road L1026 which was previously the N4 before the opening of the M4 motorway. The M4 motorway on an elevated bank lies to the south-west of the site.

The site comprises the remainder of a field laid to grass. A house exists to the immediate south-east of the site which would appear to have taken a portion of the field. A laurel hedge defines the neighbour’s boundary to the south-east. The motorway lands to the south-west have juvenile planting. The north-west lateral boundary of the field is a mature rural hedge/tree line, gappy, significant ivy growth and appears in poor condition, the local roadside boundary is marked by a post and rail fence. Two dwellings exist on the opposite side of the local roadway’.

2.2 The attached Photographs in **APPENDIX B – PHOTOGRAPHS** (including Key Plan which indicates the approximate Photograph locations) illustrate the nature of the subject site and its context.

3. PROPOSED DEVELOPMENT

3.1 Planning Application

- The proposed development comprises as specified in the Public Notices: Permission to construct new single-storey dwellinghouse, domestic garage and proprietary wastewater treatment system and soil polishing filter and all ancillary site services, at Correllstown, Kinnegad, County Westmeath.

- The submitted drawings of the proposed single-storey dwelling (area 155 square metres) and proposed garage (area 60 square metres) are noted. The submitted Site Characterisation Report is noted and also the Planning Report for the Applicant including the submissions in regard to the four reasons of refusal of the previous decision of the Planning Authority (Ref. 15/6002) in regard to the proposed development of a dwelling for the Applicant on the subject site.

4. NOTIFICATION OF DECISION OF PLANNING AUTHORITY - Submissions and Relevant Reports

4.1 Submission of National Roads Authority on Planning Application

- The Submission received is noted and included as follows:
'In the case of this planning application, the Authority will rely on the planning authority to abide by official policy in relation to development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012)'.

4.2 Area Engineer's Report

This report, dated 27th July, 2015 included recommending permission for the proposed development subject to Conditions as specified.

4.3 Westmeath National Roads Office Report

This report, dated 7th August, 2015 included as follows:
'This planning application is not within the study area of any proposed national road improvements but adjoins the existing M4 Motorway. In considering the Spatial Planning and National Roads Guidelines the applicant should be made aware of the possibility of adverse effects that extend beyond the boundary of national roads. In particular any development should not create any adverse safety effects for the existing national road. It is noted that the applicant proposed to construct a 2 metre high timber sound baffle fence to block sound from the Motorway'.

It was stated that there was no objection to the proposed development.

4.4 Planning Report for Planning Authority

- This report, dated 21st August, 2015 included a Site Description and the Planning History of the subject site and noted the Submissions/Technical Reports on file.
- The Planning Report under ‘Local Need’ stated as follows:
‘No details as regards local need have been supplied.....
Within the development plan section 11.5 relates to development outside the rural areas and identifies two rural typologies being strong rural areas under significant urban influence and structurally weak areas. The application site falls within a strong rural area under significant urban influence. In addition section 11.8 relates to local housing need and outlines Policies P-LHN1 and P-LHN2.
.....Based on the information supplied under the 2006, 2007 and 2015 files it is not considered that the applicant has demonstrated strong links to the area or being an intrinsic part of the rural community and therefore fails to meet Policy P-SRA1’.
- The Planning Report under ‘Noise’ stated as follows:
‘Noise from motorway adjacent to site was considerable. Planning Report submitted with the application (also included with 15/6002) makes reference to noise levels and mitigation measures that have been designed for the dwelling and garden to bring levels to acceptable standards. The roadway landscaping will not have a significant impact on noise levels, if any’.
- Under ‘Conclusion’ was stated:
‘There has been no change in circumstances or new information submitted that warrants a reversal of the previous reasons to refuse planning permission as issued under 15/6002.
It is not considered that the applicant qualifies for the consideration of a rural dwelling and furthermore the dwelling design is not considered to accord with policies’.
- Refusal of permission was recommended for the Reasons and Considerations (3) as stated in the notification of decision of the Planning Authority.

4.5 Notification of Decision of Planning Authority

- The Planning Authority, Westmeath County Council, issued a notification of decision to **REFUSE PERMISSION** for the proposed development for Reasons and Considerations (3) as follows:
 1. The site is located in a rural area outside any designated settlement and in an area under strong urban influence where development which is not rural generated should be more properly located in towns and villages and designated settlements. On the basis of the documentation submitted in this application and previously (under applications Reg. Ref. 06/5214 and 07/5496) it is considered that the applicant does not come within the scope of the criteria for rural residential development in this location. The proposed development 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. The development is contrary to sections 2.17 Core Strategy Policy P-CS11, 11.3, 11.6, 11.7 and policy P-SRA1 contained within the Westmeath County Development Plan 2014-2020 and the Sustainable Rural Housing – Guidelines for Planning Authorities, DoE,H&LG 2005.
 2. The development by virtue of its mass, span, length, form and general design would cause harm to the character and appearance of the countryside area. The development is contrary to sections 11.13 and 11.15 and Policy P-GRH1 of the Westmeath County Development Plan 2014-2020 and the Westmeath Rural Design Guidelines.
 3. Insufficient information has been supplied to demonstrate that the development will not be subject to adverse noise impact from the adjacent elevated motorway. As such the development will have an inadequate level of amenity and is contrary to section 9.16 and Policy P-NAL1 of the Westmeath County Development Plan 2014-2020 and to the proper planning and sustainable development of the area.

5. APPEAL GROUNDS

First Party Appeal

The First Party Appeal Grounds included submissions as follows:

Reason of Refusal No. 1

'The proposed development is located within an area of the County designated as a strong rural area under significant urban influence. This is the normal designation which affects the majority of the County. The assessment of the Planners in respect of Planning Files, P.A. Reg. Refs. 15/6002 and 07/5496 are noted, as is the fact that a decision to grant planning permission to the applicants was made in the case of 07/5496 on foot of a direction from the Director of Services that stated, correctly, that the applicants qualified for a house in this rural area under the policies and objectives of the Westmeath County Development Plan by virtue of the fact that they were landowners since 1986' and also in regard to the Development Plan:

'In the case of our clients, who are landowners as defined in Westmeath County Development Plan 2014-2020, the fact of being landowners satisfies the assessment criteria within the plan for Local Housing Need and thus, as they satisfy Local Housing Need policy it is submitted that they have a strong link to the rural area by virtue of the fact of being a landowner within that area.

No assessment of their local need should find that they comply with P-LHN1 but not comply with P-SRA1 as this would indicate that these two rural housing policies are in conflict with each other. In such a case the detailed Policy P-LHN1 must take precedence over the non-specific Policy P-SRA1.

As the Statutory document, the policies and objectives contained within the adopted Westmeath County Development Plan 2014-2020 take precedence over the Rural Housing Guidelines for Planning Authorities, having taken full account of the guidelines in their preparation'.

Reason of Refusal No. 2

'Under the heading 'Siting and Design' the Planner simply states: *No objection*. The redesign of the single-storey dwellinghouse is in keeping with surrounding dwellings and is non-intrusive at this location.

We respectfully submit that, given the lack of objection on the part of the Planner, Reason for Refusal No. 2 has remained on the final decision in error'.

Reason of Refusal No. 3

'The following noise mitigation measures are proposed to reduce the impact of the motorway on the application site, as part of the overall future residential development of the site.

1. It is proposed to construct a 2 metre high sound baffle board fence along the rear of the site to reduce noise from the adjacent motorway.
2. It is also proposed to plant semi-mature trees inside this fence to further reduce the impact of the motorway on the site.

It is noted that the site is at a lower point than the motorway and that significant planting is already in situ along the motorway itself. It is considered that the measures proposed, in conjunction with existing planting, will lead to a significant improvement in the residential environment at this location'.

6. APPEAL RESPONSES

6.1 Appeal Observation

No Appeal Observation was received.

6.2 Planning Authority Appeal Response

No Appeal Response was received.

7. PLANNING HISTORY

The Planning Report for the Planning Authority documented the Planning History of the subject site/area including as follows:

15/6002 – New Dwellinghouse and Domestic Garage. Refused for the following reasons:

1. The site is located in a rural area outside any designated settlement and in an area under strong urban influence where development which is not rural generated should be more properly located in towns and villages and designated settlements. On the basis of the documentation submitted in this application and previously (under applications Reg. Ref. 06/5214 and 07/5496) it is considered that the applicant does not come within the scope of the criteria for rural residential development in this location. The proposed development 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. The development is contrary to sections 2.17 Core Strategy Policy P-CS11, 11.3, 11.6, 11.7 and policy P-SRA1 contained within the Westmeath County Development Plan 2014-2020 and the Sustainable Rural Housing – Guidelines for Planning Authorities, DoE,H&LG 2005.

2. The development by virtue of its mass, span, length, form and general design would cause harm to the character and appearance of the countryside area. The development is contrary to sections 11.13 and 11.15 and Policy P-GRH1 of the Westmeath County Development Plan 2014-2020 and the Westmeath Rural Design Guidelines.
3. The application has not demonstrated that the proposed wastewater treatment system accords with EPA Code of Practice for wastewater treatment and disposal systems serving single houses, 2009. As such the development may cause pollution and is contrary to sections 9.5 and 9.7 and Policies P-GW4 and P-WST1, P-WST4 of the Westmeath County Development Plan 2014-2020 and to the proper planning and sustainable development of the area.
4. Insufficient information has been supplied to demonstrate that the development will not be subject to adverse noise impact from the adjacent elevated motorway. As such the development will have an inadequate level of amenity and is contrary to section 9.16 and Policy P-NAL1 of the Westmeath County Development Plan 2014-2020 and to the proper planning and sustainable development of the area.

- The Planning Report for the Planning Authority also noted:
‘The applicant together with his wife Phyllis Flaherty was previously refused a dwelling on this site under application ref: 06/5214. Similarly Jimmy and Phyllis Flaherty were recommended to be refused on the basis of not complying with local need policies under application ref: 07/5496. This recommendation was overturned and permission was granted. A copy of the final report on 07/5496 is attached as an appendix to 15/6002.
The basis for the overturn is that the landowners are eligible for rural residential development as they have owned the land since 1986 and qualify. At the time of decision the County Development Plan in force was 2002-2008. Since then however two plans have subsequently been adopted and policies have changed’.

8. DEVELOPMENT PLAN / GUIDELINES

8.1 The provisions of the 2014-2020 Westmeath County Development Plan have been considered, and in particular the following provisions which are attached in **Appendix C – Development Plan:-**

- Section 11.6 – ‘Strong Rural Areas Under Significant Urban Influence’ including the subject site at Correllstown.
- Section 11.7 – ‘Strong Rural Areas under Significant Urban Influence Policy’ and Policy P-SRA1:-
*‘It is a policy of Westmeath County Council
P-SRA1 – To accommodate demand from individuals for permanent residential development in strong rural areas who have strong links to the area and who are an intrinsic part of the rural community, subject to good planning practice, environmental carrying capacity and landscape protection considerations’.*
- Section 11.8 ‘Local Housing Need’ and Policy P-LHN1 including:
*‘Local Housing Need within Strong Rural Areas under Significant Urban Influence, will be assessed having regard to local need housing policy outlined below:
It is a policy of Westmeath County Council
P-LHN1 To permit residential development in areas outside of the development boundaries of the settlement hierarchy subject to the following circumstances.....
(3) Landowners and members of landowners’ families (landowner for this purpose being defined as persons who owned the land in question since the year 2000).....’, and also*

*‘It is a policy of Westmeath County Council
P-LHN2 To manage the development of one-off rural housing in conjunction with the Rural Typology Map and Local Need criteria. Applicants must submit documentary evidence of compliance with the rural housing policy and comply with local need criteria’.*
- Section 9.16.1 – ‘Noise’ including as follows:
‘The Council will require the submission of Noise Impact Assessments where it is proposed to introduce noise creating uses in proximity to noise sensitive uses, such as residential areas, and if permission is being granted may impose conditions mitigating impact. Similarly, where noise sensitive uses are proposed within proximity to a noise source, such as national roads, rail lines, etc.,

proposals shall include noise and/or vibration attenuation measures in any planning application’.

- 8.2** The ‘Sustainable Rural Housing – Guidelines for Planning Authorities’ published by the Department of the Environment, Heritage and Local Government in 2005, have also been noted including the following provisions:

The subject site is located within an ‘*Area under Strong Urban Influence*’ where the Guidelines include stating under Appendix 3:

‘The key development plan objectives in these areas 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.....’

9. PLANNING ASSESSMENT – Issues and Evaluation

Having regard to the above and having inspected the site and having reviewed all documents on file, the following is my assessment of this case where the major planning issues for consideration are as follows:

Proposed Development and First Party Appeal Grounds

- The subject site lands at Correllstown, Kinnegad, County Westmeath are approximately 0.63 hectares in area and were described in the Planning Report for the Planning Authority:
‘Site located in the rural area to the north-west of Kinnegad. The site lies adjacent to (south-west of) and takes access from the local primary road L1026 which was previously the N4 before the opening of the M4 motorway. The M4 motorway on an elevated bank lies to the south-west of the site’.
There is an existing house on the adjoining site to the south-east and two dwellings on the opposite side of the local roadway’.
- The proposed development comprises as specified in the Public Notices: Permission to construct new single-storey dwellinghouse, domestic garage and proprietary wastewater treatment system and soil polishing filter and all ancillary site services, at Correllstown, Kinnegad, County Westmeath.

- The Westmeath National Roads Office Report included:
‘This planning application is not within the study area of any proposed national road improvements but adjoins the existing M4 Motorway’. It was stated that there was no objection to the proposed development.
- I note the Planning Report for the Planning Authority:
‘No details as regards local need have been supplied.....
Within the development plan section 11.5 relates to development outside the rural areas and identifies two rural typologies being strong rural areas under significant urban influence and structurally weak areas. *The application site falls within a strong rural area under significant urban influence.* In addition section 11.8 relates to local housing need and outlines Policies P-LHN1 and P-LHN2’.
- The Planning Report under ‘Noise’ stated as follows:
‘Noise from motorway adjacent to site was considerable. Planning Report submitted with the application (also included with 15/6002) makes reference to noise levels and mitigation measures that have been designed for the dwelling and garden to bring levels to acceptable standards. The roadway landscaping will not have a significant impact on noise levels, if any’.
- The Planning Authority, Westmeath County Council, issued a notification of decision to **REFUSE PERMISSION** for the proposed development for Reasons and Considerations (3) as follows:
 1. The site is located in a rural area outside any designated settlement and in an area under strong urban influence where development which is not rural generated should be more properly located in towns and villages and designated settlements. On the basis of the documentation submitted in this application and previously (under applications Reg. Ref. 06/5214 and 07/5496) it is considered that the applicant does not come within the scope of the criteria for rural residential development in this location. The proposed development 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. The development is contrary to sections 2.17 Core Strategy Policy P-CS11, 11.3, 11.6, 11.7 and policy P-SRA1 contained within the Westmeath County Development Plan 2014-2020 and the Sustainable Rural Housing – Guidelines for Planning Authorities, DoE,H&LG 2005.

2. The development by virtue of its mass, span, length, form and general design would cause harm to the character and appearance of the countryside area. The development is contrary to sections 11.13 and 11.15 and Policy P-GRH1 of the Westmeath County Development Plan 2014-2020 and the Westmeath Rural Design Guidelines.
 3. Insufficient information has been supplied to demonstrate that the development will not be subject to adverse noise impact from the adjacent elevated motorway. As such the development will have an inadequate level of amenity and is contrary to section 9.16 and Policy P-NAL1 of the Westmeath County Development Plan 2014-2020 and to the proper planning and sustainable development of the area.
- The First Party Appeal Grounds included detailed submissions relating to *Reason of Refusal No. 1, Reason of Refusal No. 2 and Reason of Refusal No. 3* in the notification of decision of the Planning Authority which Appeal Grounds are now considered.
 - Further to site inspection, see Photographs in Appendix B, I note that there are a number of existing houses in the vicinity of the subject site which is located within a 'Strong Rural Area under Significant Urban Influence' as identified in the Rural Typologies Map in the 2014-2020 Westmeath County Development Plan.
 - Under Section 11.7 – 'Strong Rural Areas under Significant Urban Influence Policy' in the Development Plan Policy P-SRA1 states:
*'It is a policy of Westmeath County Council
P-SRA1 – To accommodate demand from individuals for permanent residential development in strong rural areas who have strong links to the area and who are an intrinsic part of the rural community, subject to good planning practice, environmental carrying capacity and landscape protection considerations'.*
 - The Applicants have not submitted in my opinion evidence that they *have strong links to the area* and that they *are an intrinsic part of the rural community*. I concur with the Planning Report for the Planning Authority where stated as follows:
'.....Based on the information supplied under the 2006, 2007 and 2015 files it is not considered that the applicant has demonstrated strong links to the area or being an intrinsic part of the rural community and therefore fails to meet Policy P-SRA1'.

- I note also Policy P-LHN2 in the Development Plan states:
*'It is a policy of Westmeath County Council
 P-LHN2 To manage the development of one-off rural housing in conjunction with the Rural Typology Map and Local Need criteria. Applicants must submit documentary evidence of compliance with the rural housing policy and comply with local need criteria'*.
 The Applicants have not submitted such 'documentary evidence of compliance with the rural housing policy and comply with local need criteria' as required under Policy P-LHN2 above.
- I note the First Party Appeal Grounds submission that the Applicants are 'landowners since 1986' in regard to their ownership of the subject site (area 0.63 hectares); and that as such 'being landowners satisfies the assessment criteria within the plan for Local Housing Need and thus, as they satisfy Local Housing Need policy it is submitted that they have a strong link to the rural area by virtue of the fact of being a landowner within that area' as submitted in the First Party Appeal Grounds.
- In this regard I note Section 11.8 'Local Housing Need' and Policy P-LHN1 in the Development Plan including:
'Local Housing Need within Strong Rural Areas under Significant Urban Influence, will be assessed having regard to local need housing policy outlined below:
 It is a policy of Westmeath County Council
 P-LHN1 To permit residential development in areas outside of the development boundaries of the settlement hierarchy subject to the following circumstances.....
(3) Landowners and members of landowners' families (landowner for this purpose being defined as persons who owned the land in question since the year 2000).....'
- In my opinion the fact of *ownership of the subject site (area 0.63 hectares)* does not qualify the Applicants and family members further to policy P-LHN1 in the Development Plan as *landowners* and as such fulfilling the local *rural housing policy and local need criteria* as set out above under Policy P-SRA1 and Policy P-LHN1 in the Development Plan, and on this matter I concur with the Planning Authority.
- In this regard I have noted the Appeal Grounds Submission:
 'No assessment of their local need should find that they comply with P-LHN1 but not comply with P-SRA1 as this would indicate that these two rural housing policies are in conflict with each other.

In such a case the detailed Policy P-LHN1 must take precedence over the non-specific Policy P-SRA1.

As the Statutory document, the policies and objectives contained within the adopted Westmeath County Development Plan 2014-2020 take precedence over the Rural Housing Guidelines for Planning Authorities, having taken full account of the guidelines in their preparation’.

- As stated above I consider that the proposed development which is located within a ‘Strong Rural Area under Significant Urban Influence’ as identified in the Development Plan, would contravene the requirements of Policy P-LHN1 and Policy P-SRA1 in the Development Plan as set out above.
- I note also the submitted First Party Appeal Grounds in regard to *Reason of Refusal No. 2* in the notification of decision of the Planning Authority including as stated: ‘The redesign of the single-storey dwellinghouse is in keeping with surrounding dwellings and is non-intrusive at this location’.
- While I note that the Planning Report for the Planning Authority included stating: that ‘the dwelling design is not considered to accord with policies’, in my opinion the design of the proposed single-storey dwelling would not unduly ‘cause harm to the character and appearance of the countryside area’ as stated in Reason of Refusal No. 2, and I concur with the submitted Appeal Grounds in this regard.
- I note the Appeal Grounds submissions in regard to *Reason of Refusal No. 3* in the notification of decision of the Planning Authority commencing as follows: ‘Insufficient information has been supplied to demonstrate that the development will not be subject to adverse noise impact from the adjacent elevated motorway’.
- I note the specified noise mitigation measures as indicated on the submitted Proposed Site Plan drawing including a 2 metre high sound baffle board fence and planting semi-mature trees along and inside the rear site boundary with the elevated M4 Motorway and that there is already existing planting in this area, see Photograph 2 in Appendix B.
- On balance in my opinion in the context of such proposed noise mitigation measures and the location of the proposed dwelling over 50 metres from the rear site boundary, Reason of Refusal No. 3 is

not considered appropriate in this case. In this regard I particularly note that the Westmeath National Roads Office Report raised no objection to the proposed development.

- I also note that Reason of Refusal No. 3 in the notification of decision of the Planning Authority refers to ‘Section 9.16 and Policy P-NAL1’ in the Development Plan and that the proposed development includes ‘noise attenuation measures’ as required under Section 9.16 and that Policy P-NAL1 is not relevant as stating: ‘To promote the implementation of Noise Directive 2002/49/EC and associated Environmental Noise Regulation 2006’.

Appropriate Assessment

Having regard to the location of the subject site and to the nature and scale of the proposed development, I consider that no Appropriate Assessment issues arise in this case. It is not considered that the proposed development either individually or in combination with other plans or projects, would be likely to have a significant effect on a European Site.

10. CONCLUSIONS AND RECOMMENDATION

In conclusion, further to the above planning assessment of matters pertaining to this appeal, including consideration of the submissions of each party to the appeal, and including the site inspection, I consider that the proposed development would be contrary to the proper planning and sustainable development of the area, having regard to the relevant provisions of the 2014-2020 Westmeath County Development Plan which are considered reasonable. Accordingly, I recommend that permission be refused for the proposed development for the Reasons and Considerations stated in the Schedule below.

DECISION

REFUSE permission for the proposed development for the Reasons and Considerations set out below.

REASONS AND CONSIDERATIONS

The site is located within a Strong Rural Area Under Significant Urban Influence as identified in the Rural Typologies Map in the 2014-2020 Westmeath County Development Plan. On the basis of the documentation submitted in this application, it is considered that the applicants fail to comply with the local need criteria for residential development in such rural location as required under Policy P-SRA1 and Policy P-LHN2 in the Development Plan and no documentary evidence of compliance with such housing policy and local need criteria has been submitted. The proposed development 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.

DERMOT KELLY
SENIOR PLANNING INSPECTOR

6th January, 2016.

sg

APPENDIX A - LOCATION MAP
APPENDIX B - PHOTOGRAPHS (incl. KEY PLAN)
APPENDIX C - DEVELOPMENT PLAN / GUIDELINES