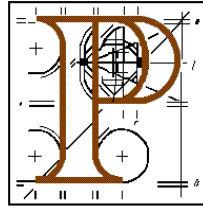


An Bord Pleanála



Inspector's Report

Reference: PL19.245539

P.A. Reference: 15/139

Title: House, garage and all associated site works

Location: Frankfort, Dunkerrin, County Offaly.

Applicant: Jackie Reidy and Rory Teirney

Appellants: Same

Observers: None

PA: Offaly County Council

Type of Appeal: First party against refusal

Decision: Planning permission refused

Date of Site Visit: 16th December 2015

Inspector: Philip Davis

1. Introduction

This appeal is by the applicants against the decision of the planning authority to refuse planning permission for a dwelling in a rural area in south Offaly – the reasons for refusal relate to material contravention of settlement policy.

2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

Dunkerrin, County Offaly

Dunkerrin is a small village in south Offaly on the R445 Nenagh to Moneygall Road (the former Dublin-Limerick Road). The village is just south of a former 18th Century fortified house at Frankfort. The village consists of a prominent early 19th Century Church of Ireland church on high ground, with a mid-sized hotel opposite, in addition to a small number of shops and houses, an RC church and a community centre. There is a scattering of houses and some commercial operations at either end of the village and along the R445. Prior to the R445 being bypassed by the M7 to the south, the R445 was itself a bypass of the old road running through the village. The R445 is a wide single carriage road with hard shoulder running along a valley base south of the village.

The site and environs

The appeal site is a triangular field of land on the southern side of the R445, south of the village centre. The site area is given as 0.809 hectares. It is at the foot of the shallow valley side running up to the south, and is somewhat elevated relative to the nearby road and adjoining lands. It is bounded by low ditches and fences and surrounded on all three sides by public highway.

North-west of the site, on slightly lower ground, is the R445 at a point where there is a slight outward bend. Across the road, and to the **north**, is a road running directly uphill to the Dunkerrin Arms hotel and the church at the centre of the village.

East of the site is a narrow third class road, which has been shut off for vehicular access where it meets the R445 – there is a gap for pedestrians. Across the road are four small detached cottages, with fields beyond them.

West of the site is a third class road with a junction on the R445. The road runs uphill south from Dunkerrin. Across the road is a single dwelling.

South of the site, on rising ground, are fields of low quality grazing.

3. **Proposal**

The proposed development is described on the site notice as follows:

The development will consist of the construction of a proposed two-storey dwelling, carport and domestic garage, a proposed wastewater treatment system and a raised soil polishing filter and associated site works, including a proposed site entrance.

4. **Technical Reports and other planning file correspondence**

Planning application

The planning application, with plans and supporting documentation including a site suitability report and details of family background was submitted to the planning authority on the 26th May 2015. Following a further information request, revised plans and additional information was submitted on the 5th August 2015.

Internal and External reports and correspondence.

Environment and Water Services: The site is within the outer source protection area of Dunkerrin PWS SPA and the percolation rate is 'fast'. Tertiary treatment is required. Following the submission of further information, the details were considered acceptable and a number of standard conditions were recommended.

Irish Water: No objections subject to conditions.

Area Engineer: Requests additional information.

AA Screening: Concludes that there would be no significant impact on a European site.

Planners report: It is considered that the applicant is a 'local person' in the context of SSP-18. Concerns are expressed at visual impacts, potential impacts on the aquifer protection zone and the design of the wastewater treatment system. Further information is requested. Following the submission of further information, which included alternative lands within the applicant's ownership, the planning authority considered that the applicant did not qualify for an exemption under SSP-19 and that the design was not acceptable visually. Refusal was recommended.

5. Decision

The planning authority decided to refuse permission for the following two reasons:

- 1. The proposed site is located within an Aquifer Protection Zone where under the provision of Policy SSP-19 of the Offaly County Development Plan 2014-220 states that the applicant(s) must have no alternative site available outside the areas of special control. The Council considers that the applicants do not comply with the above policy as there is an alternative site within the family landholding outside the area of special control and accordingly the proposed development would materially contravene the 2014-2020 Offaly County Development Plan and would be contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the nature of housing in the immediate locality and the rural character of the area, and the location of the proposed dwelling on an exposed elevated site, it is considered that, the proposed dormer style dwelling, by reason of its siting and design would fail to integrate into the rural landscape and would be visually incongruous in this rural area and would therefore seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

6. Planning Context

Planning permissions – appeal site

In 2010 the planning authority decided to grant permission for a dwelling on the site, with conditions including an occupancy condition (10/9).

In August 2008 the planning authority decided to refuse permission for two dwellings on the site (05/690) for reasons relating to the aquifer protection zone.

In March 2004 the planning authority decided to refuse permission for a dwelling on the site (04/157)

In 1997 the planning authority decided to refuse permission for two dwellings on the site (97/305)

In 1995 the planning authority decided to refuse permission for two dwellings on the site (95/141).

Planning permissions – adjoining areas

None relevant on file.

Development Plan

The site is in open countryside in an area identified as one of ‘special control’ on the basis of it being within over an Aquifer Protection Zone. For rural housing in these areas, policy objectives SSP-18 and SSP-19 apply. Dunkerrin is identified as a ‘Sráid’ (an informal village) in the Plan – the appeal site is outside the envelope of the designated area.

Relevant extracts from the 2014 Offaly County Development Plan are attached in the appendix to this report.

7. Grounds of Appeal

- It is submitted that the applicant cannot build on the alternative site identified by the planning authority, as the applicants father says he will not provide the land for the purposes of a new dwelling.
- With regards to visual impacts, revised plans are submitted to the Board with the appeal.

8. Planning Authority’s Comments

The planning authority states that the applicant informed them that he had no alternative site, but that more information came to light – it is stated that this is contrary to what was told to Offaly County Council in their letter under 10/9. The Board is requested to uphold the decision of the planning authority.

9. Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- **Material contravention**
- **Principle of development**
- **Visual impact**
- **Public health**
- **Appropriate Assessment and EIA**
- **Other issues**

Material contravention

I note that the reason for refusal represents a material contravention of Policies SSP-19 of the 2014-2020 Offaly County Development Plan. In

such circumstances, Section 37(2) of the 2000 Act as amended states that:

- (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.*
- (b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—*
 - (i) the proposed development is of strategic or national importance,*
 - (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
 - (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
 - (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*
- (c) Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan.*

While I will address the specific issues raised by the appeal further below, I would state with regard to (i) to (iv) above that:

- i. The proposed development is not of strategic or national importance.
- ii. I do not consider that there are any conflicting objectives in the development plan with regard to the stated reason for refusal, or that the policy objective is not clearly stated.
- iii. The reason for refusal appears to be fully in line with regional and national guidance and other stated policies, in particular the Sustainable Rural Housing Guidelines 2005.
- iv. I note that the site had planning permission for a dwelling dating from 2010 – while this predates the current development plan,

the zoning designation for the area and the general policy provisions are the same.

I would therefore conclude that pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, the Board may grant planning permission for the proposed development having regard to the previous planning permission on the site and the provisions of subsection 37(2)(b)(iv) of the said Act.

Principle of Development

The appeal site is on the opposite side of the R445 from the 'Sráid' of Dunkerrin. The village is small, but attractive, although unfortunately haphazard signage and other features ensure that the best aspects of the village are not visible from the main road. The site adjoins a small cluster of dwellings, but is functionally separate from the village and is not within the development envelope of the settlement. The site is somewhat elevated and quite prominent when viewed from the R445 and from parts of the village, most notably the carpark of the Dunkerrin Arms Hotel.

Chapter 1 of the 2014-2020 Offaly County Development Plan sets out broad policy for settlement in rural areas. The general policy provisions follow the Sustainable Rural Housing Guidelines 2005. The development plan recognises much of the southern part of the County, including the area around Dunkerrin, as a Strong Rural Area (Map 1.3). In the Rural Housing Policy Map (Map 1.4) the site is identified as being within a Source Protection Zone for groundwater. Within such restricted areas, policy SSP-18 applies – that rural housing development would only be permitted for 'local persons'. The applicants are from Dunkerrin and work in a business just outside the village. As such, the planning authority accepts that they qualify under SSP-18.

In addition to the above, there are additional restrictions with regard to Areas of Special Control set out in SSP-19. The restrictions in SSP-19 include having to demonstrate a functional need to reside in the area. Of particular regard to this appeal, it states that the applicant needs to demonstrate that there is not an alternative site outside the Area of Special Control. The applicant provided information on alternative lands in the family ownership – this is land just east of Dunkerrin, in a low lying area next to a commercial premises owned by the family and in which the applicant apparently works.

In the planning submission, the applicant stated that the family land is either unavailable for development or is unsuitable. It extends from the edge of the village east to the junction with the R445. Certainly the area west of the commercial premises owned by the family is unsuitable – it is low-lying and prone to flooding. The land to the east is next to the junction and the applicants state that it is unsuitable due

to the proximity to the junction, but the planning authority state that the Area Engineer considers that it is acceptable.

The planning authority granted the applicant permission for a dwelling on the appeal site in 2010, and it is implied in the response letter from the planning authority that they were given contradictory information by the family as to the true availability of alternative lands – although this letter is itself a little confusing. While it may well be that there is confusion in the various statements by the applicant, I would conclude that it is not clear from the evidence available that the site on the family landholding east of Dunkerrin is either available, or suitable for a dwelling, and I'm not convinced that even if it was, it represents a better site in planning terms – it is slightly farther from the village and it is visible from the R445 – the only real advantage being that it is not within the Aquifer control zone.

As always with these issues there is an element of subjectivity and judgement over whether the applicant qualifies. I do not consider the situation clear cut, but on balance, and having specific regard to the previous permission on the site and the proximity of the lands to the village, I would give the benefit of the doubt to the applicant. I therefore conclude that the applicant qualifies under the provisions of SSP-19.

Visual Impact

The site is somewhat elevated above the road level and the adjoining dwellings, and is very prominent when viewed from the R445, from the rear of the Dunkerrin Arms opposite, and from the adjoining minor road. Any dwelling on the site will be unavoidably very visible. The proposed house is large and sprawling, resulting in what would be a very substantive feature when viewed from the main road or the other two nearby L-roads. The site is however quite substantial so has the capacity to absorb a larger dwelling if it is appropriately landscaped. I note that while the surrounding countryside is attractive, there are no designated scenic areas or views or prospects in the vicinity. The immediate vicinity of the R445 around Dunkerrin has been somewhat scarred by the amount of signage associated with various businesses in the area.

The overall impact is likely to be significant, but having regard to the history of the site and the context so close to Dunkerrin, I would consider it acceptable, subject to conditions relating to landscaping around the house in order to soften the impact.

Public health

The site is over what appear to be quite thick deposits of free draining soils/gravels within the drawdown zone of the Dunkerrin public water supply – the well is about 330 metres from the site (it is east of the village centre). The site characterisation form submitted dates from the

previous application and is somewhat sparse in relation to the required information. Following the submission of additional information including the proposed use of a proprietary wastewater system (a sequential batch reactor), the Environment Section did not object (although I note that there is no substantive difference between the final submitted proposal and that originally submitted, apart from providing the brand of the proposed proprietary wastewater treatment system).

Given the relatively poor site assessment submitted (for example, it does not provide a plan indicating the location of the trial holes and gives little indication of the nature of subsoils apart from their very low T-values), I would have some concerns about the proposal in this regard. Notwithstanding this, given the planning history of the site, the generally favourable subsoil conditions, and the overall size of the site I would consider that it is acceptable subject to the importation of appropriate materials for the tertiary polishing filter.

Appropriate Assessment and EIA

There are no Natura 2000 sites within 5 km of the site and no likely pathways for pollution. I therefore consider that it is reasonable to conclude on the basis of the information on the file, which I would consider adequate in order to issue a screening determination, that the proposed development, either in itself or in combination with other works in the area, would not be likely to have a significant effect on any European Site, and a Stage 2 AA is not therefore required.

As the proposed development does not fall within any category of development within the Regulations for EIA, and there are no specific environmental sensitivities involved, there is no requirement for EIA.

Other issues

The proposed access to the site is via the minor road to the east – as this is not a through-road I do not consider there is any issue with safety or congestion.

The site is in an area served by a public water supply so a private well is not required.

There are no recorded ancient monuments on or near the site – the archaeological zone around Dunkerrin is to the north of the site and does not include the appeal site.

The proposed development would be subject to a development contribution under the adopted Scheme.

10. Conclusions and Recommendations

I conclude that having regard to the planning history of the site and its close proximity to the village of Dunkerrin, I do not consider that there are clearly better sites available to the applicant not within a Special Control Zone, so I consider that the applicant qualifies as a 'local person' and there are exceptional circumstances to justify a dwelling in this area. I therefore conclude that the proposed development would be acceptable and in accordance with the proper planning and sustainable development of the area.

I recommend that subject to the conditions set out below, planning permission be granted for the reasons and considerations set out in the following schedule.

REASONS AND CONSIDERATIONS

Having regard to the close proximity of the site to the centre of Dunkerrin, the planning history of the site, in particular permission PL2/10/9 granted in 2010, and the personal circumstances of the applicant, with particular regard to the absence of a clearly identified alternative site outside the Special Control Zone, it is considered that the Board can grant permission under subsection 37(2)(b)(iv) of the 2000 Act, as amended, and that subject to the conditions set out below the proposed development would not materially contravene the settlement policy of the 2014-2020 Offaly County Development Plan and would otherwise 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 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. 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 seven 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.

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. The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

4. The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity.

5. 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.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

7. A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the planning authority. Details of the system to be used, and 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.

Treated effluent shall be discharged to a raised percolation area which shall be provided 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.

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 raised percolation area is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

8. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

9. 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.

Philip Davis,
Inspectorate.
25th January 2016