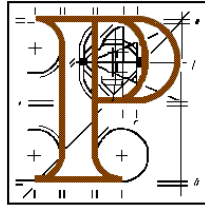


## An Bord Pleanála



### Inspector's Report

**PL01.245772**

**Development:** Dwelling, garage, septic tank and percolation area and all associated works.

**Location:** Carrickduff, Bunclody, Co. Carlow.

### **Planning Application**

Planning Authority: Carlow County Council

Planning Authority Reg. Ref. No: 15/223

Applicants: Nigel & Lynn Plunkett

Type of Application: Permission

Planning Authority Decision: Grant Permission

## **Planning Appeal**

**Appellant:** David Rothwell

**Type of Appeal:** Third Party

**Observers:** None

**Date of Site Inspection** 2<sup>nd</sup> of March 2016

**Inspector:** Siobhan Carroll

## **1.0 SITE LOCATION AND DESCRIPTION**

1.0.1 The appeal site is located in the townland of Carrickduff, Bunclody, Co. Carlow. It is situated circa 1.7km to the west of the town of Bunclody and 1.5km to the east of the Blackstairs Mountains. The surrounding landscape is relatively flat in nature and in agricultural use and forms part of the wider Slaney valley. A tributary of the Slaney the Clody River which rises in the Blackstairs Mountains is situated 0.8km to the east of the site.

1.0.2 The site has a stated area of 0.3 hectares and it constitutes part of a larger field in agricultural use. The roadside boundary is formed by a thick mature hedgerow. There is a ditch running along the southern side of the road along this section of Barker's road. The site has frontage of circa 70m and extends back for 75m to the south-east. There six dwellings with separate entrances opposite the site on the northern side of the road. These comprise large detached one and two storey dwellings.

## **1.1 THE PROPOSED DEVELOPMENT**

Permission is sought to construct a dwelling, garage, septic tank and percolation area. Features of the scheme include;

- Site area 0.349 hectares,
- Proposed dwelling has a floor area of 206.5sq m
- Dwelling ridge height of 7.45m
- Proposed garage has a floor area of 33.75sq m
- Wastewater treatment system and polishing filter
- Private well

## **1.2 THE PLANNING AUTHORITY'S DECISION**

### **Internal Reports:**

Transportation Section: No objections subject to conditions.

Area Engineer: No objections

Environment Section: No objections subject to conditions.

### **Submissions**

The Planning Authority received one submissions in relation to the application. The main issues raised are similar to those set out in the appeal.

### **Decision**

Following the submission of further information the Planning Authority decided to grant permission subject to 16 no. conditions.

### **Prescribed bodies**

Department of Arts, Heritage and the Gaeltacht development applications unit – It is not clear if the Planning Authority carried out a screening for Appropriate Assessment of this development. Such screening should be carried out and its outcome recorded.

## **1.3 PLANNING HISTORY**

Reg. Ref. 14/128 – Permission was refused to the applicants Nigel & Lynn Plunkett for a dwelling and septic tank effluent treatment system on the subject site. Permission was refused for one reason on the basis that the proposed development having a density equivalent to 3 houses per hectare which represented inefficient use of zoned residential lands would constitute ribbon development.

Reg. Ref. 10/284 – Permission was refused for 20 no. serviced sites on the entire field.

Reg. Ref. 06/878 – Permission was granted to the applicant Nigel Plunkett for a dwelling at Kilbrannish South Bunclody, Co. Carlow.

Reg. Ref. 04/300 – Permission was refused to the applicant Nigel Plunkett for a dwelling at Kilbrannish South Bunclody, Co. Carlow.

## **2.0 PLANNING POLICY**

### **2.1 Development Plan**

The Carlow County Development Plan 2015 – 2021 is the statutory Development Plan for the area. The relevant sections of the Development plan as they apply to this development are as follows;

### **Section 2.5.4 refers to Settlement Policy**

The expired LAP's for Clonegal, Kildavin, Ballinabrannagh/Raheendoran, Grange/ Killerig, Palatine, Rathoe, Tinryland and Carrickduff are no longer the statutory plans for their areas but do contain a significant amount of information on natural and built heritage and other planning issues. The expired plans will be used as supplementary guidance documents for planning purposes. Housing development within the settlement boundary of these settlements will **not** be subject to the rural housing policy as outlined in section 2.7.

### **Section 2.7.1.1 refers to Housing in Rural Settlements**

### **Section 2.7.3 refers to Design Sighting Requirements**

### **Section 2.7.11 refers to Roadside Boundaries and Hedges**

## **2.2 National Policy**

### **EPA's Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses**

This policy document provides guidance on the assessment of on-site wastewater disposal systems for single house. The government considers that the implementation of the Code is a key element to ensure that the planning system is positioned to address the issue of protecting water quality in assessing development proposals for new housing in rural areas and meeting its obligations under Council Directive (75/442/EEC).

## **3.0 APPEAL**

A third party appeal was submitted by bps Planning Consultants on behalf of Mr David Rothwell on the 17<sup>th</sup> of November 2015. The content of the appeal submission can be summarised as follows;

- The appellant Mr Rothwell is a local farmer his land holding is in close proximity to the subject site. The proposed location of a single rural dwelling to an operating farm raises residential amenity concerns.
- It is stated in the appeal that the farm activities can take place 24 hours a day at certain times of the year which would not be compatible to residential development. Slurry is spread on the farm holding and this would generate odour which would impact upon the residential amenity of neighbouring property.

- The proposed development would result in the loss of hedgerow and trees between the appeal site and the appellant's lands.
- The proposed development would contribute to ribbon development. The proposed development is not justified as the applicant has recently sold a farm in the vicinity. The proposed development cannot be considered infill development as it is now unzoned lands.
- Permission was refused under Reg. Ref. 14/128 for a dwelling on the site. Permission was also refused under Reg. Ref. 10/284 for the development of 20 no. service sites. The site now forms part of lands which have been re-zoned back to agricultural. It is stated in the appeal that the proposed development has to be assessed as a rural dwelling under rural housing policy.
- An appeal case in the townland of Clonmullen, Bunclody, Co. Carlow is cited. Under Reg. Ref. 08/0556 and PL01.231888 permission was refused for a fully serviced dwelling.
- If permission were granted it would set a poor precedent. It is noted that there are five other sites in the vicinity which are for sale.
- The applicant Mr Plunkett sold his farmhouse and farm at Kilbranish south Co. Carlow. That property is approximately 3 miles from the site. It is also stated that the applicant purchased a farm in Co. Laois.
- Under Reg. Ref. 06/878 permission was granted to Mr Plunkett for a dwelling at Kilbranish south Co. Carlow.
- It is contended that the applicant does not have a rural generated housing need as his family home and farm have been sold.
- It is contended that the proposed development would be visually obtrusive and would adversely impact on the visual amenity of the area.
- Concern is raised regarding the proposed on-site effluent treatment system. It is stated that the site is poorly drained and it is located in close proximity of the Slaney River SAC.
- It is requested that permission be refused for the reasons set out in the appeal.

### 3.1 First party response

**A response to the third party appeal has been submitted to the Board by Peter Thomson Planning Solutions on behalf of the applicants Lynn & Nigel Plunkett on the 11<sup>th</sup> of December 2015. The main issues raised concern the following;**

- In 2013 the applicants Lynn & Nigel Plunkett sold their family farm because it was operating at a loss and it was no longer financially viable for them. The sale of the property included the farm house which was granted permission under Reg. Ref. 06/878.
- In 2014 the applicants sought permission under Reg. Ref. 14/128 for a dwelling on the subject site. Permission was refused for one reason on the basis that the lands were zoned for low density housing and the density proposed represented under development of the zoned lands.
- The applicants and their agent met with the Senior Planner in Carlow Co. Council and were advised that the Planning Authority considered that the applicants had a housing need and that the site would be acceptable. The draft Carlow County Development Plan reduced significantly the amount of zoned land around Carrickduff. It was therefore advised in the pre-application meeting that it was inevitable that the site would be de-zoned and that any future application would be considered a rural house.
- The current application is made under the provisions of the Carlow County Development Plan 2015 – 2021.
- Regarding the issues raised in the appeal it is stated that the applicants are from a rural background and were previously involved with silage production and slurry spreading and they fully accept the issues which will arise from living adjacent to a working farm. The noise and odours generated are considered to be a minor inconvenience.
- The applicants do not own the site but are contracted to buy it subject to planning permission.
- The potential loss of hedgerow will be kept to a minimum with 25m to be removed on one side of the entrance and 8.6m on the other.
- It is contended that the proposed development would not constitute ribbon development as there are no other dwellings at this location along the southern side of the road.
- Under Reg. Ref. 10/284 permission was refused for 20 no. serviced sites on the same field as the current application. It is noted that the land was then

zoned for low density residential development under the provisions of the Carrickduff Local Area Plan 2009-2015. It is considered that decision is not directly relevant to the current proposal as it was assessed in terms of compliance with the provisions of the now lapsed LAP.

- Permission was refused under Reg. Ref. 14/128 for a dwelling on the subject site. That application was also made when the Carrickduff LAP was in force. The reason for refusal stated that a single house represented an inefficient use of low density housing zoned lands. It is contended that the matters of zoning and leapfrogging of other zoned lands now do not apply.
- The appellant cited Reg. Ref. 08/556 & PL01.231888 where permission was refused for a dwelling at Clonmullen, Bunclody, Co. Carlow. This is not considered a comparable case as the applicant's circumstances are entirely different.
- The matter of the sale of other sites within the landholding is noted, however it is stated that this should not have any bearing on the consideration of this appeal.
- The applicants Nigel & Lynn Plunkett are from Carrickduff and both attended the Carrickduff National School. They previously demonstrated a local housing need however due to circumstances outside their control they had to sell their farm and home. The appeal site is circa 4km from the property they are currently renting and also 4km from the farm they previously lived at. Mr Plunkett is employed as a fencing contractor in the area since the sale of his farm and Mrs Plunkett is employed in agri food production in Shillelagh, Co. Wicklow. It is therefore considered that the applicants qualify to build in the rural area.
- The applicants have indicated that they have no objection to attachment of an occupancy condition should the Board decide to grant permission.
- In relation to the landholding in Co. Laois which the appellant has referred to it is stated that following the sale of their farm at Kilbranish south Co. Carlow they had some money left from the proceeds which they used to purchase the appeal site. It is further stated that they have been able to generate new income since the sale of their farm which they used to purchase the farm holding in Co. Laois. This farm holding is rented out and provides an income to the applicants.
- It is considered that the proposed development is in accordance with the provisions of the Sustainable Rural Housing Guidelines.
- Regarding the potential impacts from the proposed waste water treatment system it is stated that it is in accordance with EPA Guidelines and it was



designed and approved by a qualified site assessor. The Planning Authority carried out AA screening and it was determined that the proposal would not impact on any European sites.

- The applicants request that the Board uphold the decision of the Planning Authority to grant permission.

### 3.2 Planning Authority response submission

- None received

## 4.0 ASSESSMENT

Having regard to the above, and having inspected the site and reviewed all documents on file, the issue to be considered in the assessment of this case is as follows:

- Development Plan Policy
- Design and Visual amenity
- Site Access
- Effluent treatment
- Other issues

### 4.1 Development Plan Policy

4.1.1 The appeal site at Carrickduff, Bunclody, Co. Carlow is situated 1.7km to the west of the town of Bunclody on the Barker's road. Under the provisions of the now lapsed Carrickduff Local Area Plan 2009-2015 the site was zoned for low density residential development. The Carlow County Development Plan 2015-2021 was adopted in August 2015 and is the relevant Plan to assess the current proposal.

4.1.2 Section 2.5.4 of the County Development Plan refers to Settlement Policy and it is of particular relevance to the assessment of this appeal. It states;

*“The expired LAP’s for Clonegal, Kildavin, Ballinabrannagh/Raheendoran, Grange/ Killerig, Palatine, Rathoe, Tinryland and Carrickduff are no longer the statutory plans for their areas but do contain a significant amount of information on natural and built heritage and other planning issues. The expired plans will be used as supplementary guidance documents for planning purposes. Housing development within the settlement boundary of these settlements will **not** be subject to the rural housing policy as outlined in section 2.7.”*

4.1.3 Section 2.7 of the Development Plan refers to Rural Settlement Strategy and sets out the Council's policy in relation to rural housing including the policy to facilitate the development of one off rural housing throughout the county by persons demonstrating local rural generated housing needs. While the provisions of the lapsed Carrickduff Local Area Plan 2009-2015 do not apply and the lands are now de-zoned the appeal site is located within the defined settlement boundary of Carrickduff as indicated on the Local Area Plan map. Section 2.5.4 of the County Development Plan confirms the lands located within the settlement boundary of Carrickduff constitute a rural settlement and therefore are not subject to the requirement for applicants to demonstrate a local rural generated housing need. Accordingly, I consider that the principle of a dwelling on the site is acceptable subject to compliance with all other relevant planning considerations.

4.1.4 In the grant of permission issued by the Planning Authority a Section 47 occupancy condition was attached. Having regard to the location of the site within the settlement boundary of Carrickduff and also the provisions of Section 2.5.4 of the Carlow County Development Plan 2015-2021 I therefore do not consider that it is appropriate to attach a Section 47 occupancy condition.

## **4.2 Design and Visual Amenity**

4.2.1 The proposed dwelling has a floor area of 206.5sq m. The house design is dormer with a ridge height of 7.45m. It is proposed to locate the dwelling a minimum distance of 30m from the public road to the north. A 33.75sq m garage is proposed to the south-west of the dwelling. The proposed finished floor level of the dwelling is indicated on the site plan as 105.8 and this is circa 2.5m below the level of the public road.

4.2.2 The proposed development would involve the removal of a section of hedgerow running for approximately 40m along the roadside boundary. It is proposed to plant a new hedgerow to the east and west of the site boundary to replace the sections which would be removed. It is proposed to retain the existing mature hedgerow along the western site boundary and a new beach hedge is proposed along the eastern boundary of the site. Having regard to the height and design of the proposed dwelling and the existing and proposed screen planting, I consider that the proposed dwelling can be successfully integrated within the landscape setting. Accordingly, I would consider that this development can be positively absorbed without any negative impacts on the visual setting and the rural amenities of the surrounding area.

## **4.3 Site Access**

4.3.1 It is proposed to develop a new site entrance onto the local road. The proposed location of the vehicular entrance is along a relatively straight

section of the roadway where visibility is good. The construction of the entrance would involve the removal of a section of existing roadside boundary of approximately 40m. It is indicated on the site layout plan that sightlines of 90m can be provided to the east and west at the proposed entrance. Having inspected the site and viewed the location of the proposed entrance I am satisfied that an adequate sightline distance is available in both directions. Accordingly, I consider the proposed location of the entrance acceptable.

#### **4.4 Effluent treatment**

- 4.4.1 It is proposed to install a septic tank wastewater treatment system and polishing filter. It is proposed to locate the treatment plant circa 16m to the south-east of the dwelling and the percolation area is located on the layout plan 18m to the south-east of the dwelling. It is proposed to locate a well 45m to the north-east of the percolation area. Table 6.1 of the EPA Manual – Treatment Systems for Single Houses sets out the minimum separation distances, the minimum distance from a watercourse or stream to a percolation area is stated as 10m and the minimum distance from a road to the a percolation area is stated as 4m. There are no watercourses or streams within 250m of the site. The closest is the Clody River located 800m from the site. The groundwater protection response for the area is R1 which means the site is suitable for an on-site system subject to normal good practice.
- 4.4.2 The site suitability assessment indicates that a T value of 27.56 was recorded on site. Table 6.3 of the EPA Manual – Treatment Systems for Single Houses sets out the interpretation of percolation test results. A T value of greater than or equal to 3 and less than or equal to 50, means that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater. It is proposed to discharge the treated effluent to ground water. No water table or rock was encountered up to a depth of 2.2m below ground level during the site testing.
- 4.4.3 It is proposed to construct a raised polishing filter from imported permeable soil. The proposed soil polishing filter has an area of 120sq m and thickness of 900mm.
- 4.4.4 Having regard to the information submitted including the site characterisation report and the proposal to install a septic tank treatment system with soil polishing filter, I consider that site is suitable for the proposed on site effluent treatment system subject to the system being constructed and maintained in accordance with the details submitted.

#### **4.5 Other issues**

##### Appropriate Assessment

- 4.5.1 The appeal site is approximately 0.8km from the Slaney River Valley SAC (Site Code: 000781) and 4km from the Blackstairs Mountains SAC (Site code:

000770). The conservation and qualifying interests and species and features of interest of the Slaney River Valley SAC include freshwater pearl mussel, sea lamprey, brook lamprey, river lamprey, allis shad, salmon, estuaries, mudflats and sandflats not covered by seawater at low tide and otter. The Blackstairs Mountains SAC features extensive areas of dry-heath which is a habitat listed under Annex I of the E.U. Habitats Directive.

- 4.5.2 The Planning Authority carried out a screening for Appropriate Assessment. In the screening report it was stated that there were no likely direct, indirect or secondary impacts from the proposed development. It was concluded in the screening report that the Planning Authority was of the opinion that having regard to the location and separation distance from the subject site to the closest designated site that there is no potential for significant effects to Natura 2000 sites.
- 4.5.3 Having regard to the nature and scale of the development and to the absence of direct connection between the subject site and the European Sites and to their conservation objectives I am satisfied that 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.

#### Archaeology

- 4.5.4 There is a National Monument (CW021-004) which is classified as an enclosure located 90m to the south-east of the site. It comprises a very distinctive curve in the field boundary which is possibly a circular monument or a landscape feature connected with Carrickduff Castle. Carrickduff Castle a National Monument (CW021-002) is situated 580m to the north of the appeal site on the opposite side of the road. Having regard to the proximity of the site to the recorded monument to the south-east I consider that it is appropriate should the Board decide to grant permission to attach a condition requiring an archaeological appraisal of the site to provide for the preservation, recording and protection of archaeological materials or features which may exist within the site.

## **5.0 Recommendation**

- 5.0.1 I have read the submissions on file, visited the site, and had due regard to the provisions of the Development Plan and all other matters arising. In the light of this and the assessment above, I recommend that permission be granted for this development for the reasons and considerations set out below.

## REASONS AND CONSIDERATIONS

Having regard to the pattern of development in the area, and the compliance with the provisions of the Carlow County Development Plan 2015 – 2021, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, 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 as amended by the further plans and particulars submitted on the 9th day of October, 2015, 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 out in accordance with the agreed particulars.

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

2.

- (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 10<sup>th</sup> day of August, 2015, and in accordance with the requirements of the document “Wastewater Treatment Manual: Treatment Systems for Single Houses”, Environmental Protection Agency (current edition). 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.

3. Details of the materials, colours and textures of all the external finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

4. The vehicular entrance shall be located on site as indicated on the site layout plan submitted to Carlow County Council on the 9<sup>th</sup> of October 2015. The gates shall open inwards only.

**Reason:** In the interest of traffic safety.

5. No surface water shall be discharged from the site onto the public road. Surface water shall be discharged to soakways on site.

**Reason:** In the interest of traffic safety.

6. 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.

7. 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. This scheme shall include the establishment of a hedgerow along all side and rear boundaries of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 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.

8. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

(i) the nature and location of archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

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 the 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.

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**Siobhan Carroll,**  
**Inspectorate**  
**16<sup>th</sup> of March 2016**