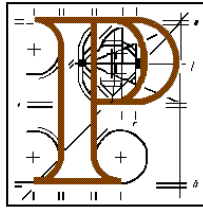


An Bord Pleanála



Inspector's Report

Development: Permission for a two storey dwelling, domestic garage, a proprietary waste water treatment system and percolation area and all associated and necessary site works.

Site Address: Johnstown South, Maganey, Co. Kildare

Planning Application

Planning Authority: Kildare County Council

Planning Authority Reg. Ref.: 15/703

Applicant: Ann McDonald

Type of Application: Permission

Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant: Ann McDonald

Type of Appeal: First Party v Refusal

Observers: None

Date of Site Inspection: 6th April 2016

Inspector: **Joanna Kelly**

Appendices:

Appendix 1 Site Location Map

Appendix 2 Photographs and Site key Plan

1.0 INTRODUCTION

This report pertains to an appeal by the first party against the decision of Kildare County Council to refuse permission for a dwelling.

2.0 SITE DESCRIPTION

The appeal site, with a stated site area of 0.45 hectares, is located in a un-serviced rural area. The appeal site is currently an agricultural field, which is relatively flat and located at a lower level than the public road. There is an existing agricultural gate serving the field within which the site is located. There is an existing hedge to the site frontage. The local road was being re-surfaced at time of inspection.

Trial holes were evident to the front of the site at time of inspection.

The immediate area is rural with dispersed one-off housing. Maganey, a small settlement is located approx. 3 kilometres from the appeal site. There is a school, church and housing within this settlement. The Lerr River, a tributary of the River Barrow, is located approx. 500m south of the appeal site.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The applicant is seeking permission for a two-storey dwelling with a proposed floor area of 270sq.m. The overall height is approx. 8.3m. The proposed garage has a floor area of approx. 36sq.m.

4.0 TECHNICAL REPORTS

4.1 Planning report

The first planning report sought further information seeking details so as to demonstrate compliance with policy RH21 of the development plan (assessing applications for one-off housing in areas bordering neighbouring counties) and house design. The report notes that the family home is located 6km from the subject site and that there may be a suitable site within the main landholding at Killabban.

The subsequent planning report sets out that RH21 policy facilitates people who live at a distance of up to 5km and can demonstrate that no suitable family owned site is available in the adjoining county. The planner concluded that the applicant does not comply with the requirement of this rural housing policy. The planner also notes that the dwelling due to its location on a site with very little existing landscaping, the design, height and overall

proportions of the dwelling would result in it having a negative visual impact on the area. The report recommended a refusal for two reasons based on local need and house design.

Environment Section

No objection subject to conditions

EHO

No objections

Roads Department

No objection subject to conditions

Water Services

Conditions recommended. Report notes Irish Water report but applicant is proposing a well.

Prescribed Bodies

Irish Water

No objection subject to conditions

5.0 PLANNING AUTHORITYS DECISION

The Planning Authority refused permission for the following reasons:

1. "It is the policy of the County Development Plan 2011-2017, namely **policies RH4 and RH21**, to focus the provision of one-off rural housing in the rural countryside to the category of 'local need', subject to compliance with normal planning criteria including siting and design considerations. Based on the information submitted with the application, it is considered that the applicant who is a native and resident of County Laois (approx. 5.9km from the site) and where there are family owned lands available in that county for development **would materially contravene policies RH4 and RH21** of the Kildare County Development Plan 2011-2017 (which seeks to focus such developments to certain categories of applicants) and would also be contrary to the proper planning and sustainable development of the area.
2. The proposed dwelling, by reason of its overall design, siting and height, would **contravene Policy RH5** of the County Development

Plan 2011-2017 where it is Council policy to ensure that the location and design of a new dwelling should take account of and integrate appropriately with its physical surroundings. The proposed house design **exhibits a complexity of form** which does not conform to the rural design and development guidelines as outlined under Chapter 16 of the County Development Plan 2011-2017. Accordingly, the proposed dwelling house would **contravene these guidelines** and would therefore be contrary to the proper planning and sustainable development of the area.

6.0 APPEAL GROUNDS

The first party appeal grounds are lengthy and are summarised as follows:

- National planning policy recognises the long tradition of people living in rural areas within Ireland. They do not envisage that permission should be denied for the daughter of a longstanding local farmer who seeks to erect a home on part of a generational holding merely because of a geo-political divide.
- The development plan expressly seeks to facilitate individuals who wish to live in rural areas by reason of their employment. Of particular importance in the current case is section 4.12.5 of the development plan entitled 'Areas Bordering Neighbouring Counties' and Policy RH 21 which seeks to facilitate applicants who can demonstrate that no suitable family owned site is available.
- There are certain items not in dispute such as the fact that the applicant has lived all of her life in this area; has strong family links to the area; the proximity of the county boundary and the fact that Mr. John McDonald owns the land on both sides of the county boundary.
- It is submitted that the first reason for refusal would not have been issued if the appellant's father did not originally inherit a large farm in Co. Laois, but had instead only worked the land from which the appeal site is drawn.
- With regard to the relevance of policy RH21 there are no technical, aesthetic, visual, functional, ecological and environmental objections to the principle of erecting a dwelling on this site. It is set out that the applicant whose family home is within 8km of the site albeit within a different county would be acceptable in terms of distance if it were in the same jurisdiction. This raises the question whether policy RH21 should be strictly applied.

- Planning law establishes that ‘to have regard to’ does not necessitate strict adherence to the provisions and consider that policy RH 21 is an unnecessary consideration in this instance and does not warrant a refusal.
- The single clause in the policy RH21 which the parties disagree on relates to the possibility of an alternative site elsewhere on the farm. The Board may wish to conclude that there is substantial compliance with the development plan’s provisions.
- Zone 2 eligibility criteria envisages an 8km catchment area around a site and policy RH21 does not contain any further separation standard, in terms of the distance between a development site, on one hand and an applicant’s family home. The sole measurement therein concerns the proximity of an application site to the county boundary. It is requested that the Board consider the objectives underlying this provision and set out that policy RH21 formally entitles candidates from other counties to qualify for a rural dwelling in Co. Kildare.
- The basis on which the applicant rejected the possibility of a site in Laois was based on the applicant’s intimate knowledge of the area. The possibility of building a dwelling on an alternative site should only form the basis for a refusal of permission where the construction of a dwelling on a chosen tract would create planning difficulties and it is clear from the report of the planning officer that there are no objections to the principle of development. Reference is made to a case PL.27.234751 concerning a proposal at Ballintekin Stud, Old Long Hill in Co Wicklow. (I enclose a copy of the Order and Inspector’s report for ease of reference)
- Regarding the availability of land it is submitted that the further information response makes clear that the applicant does not own any land personally and the appeal site is being gifted by her father. She is not in a position to dictate which part of the landholding to construct a dwelling on.
- Policy RH21 does not simply suggest that the Council will accommodate candidates from adjacent counties provided that the overall family farm contains no alternative sites, but rather that no other tract is ‘available’ elsewhere on such land. It is set out that for practical and personal reasons the house should be constructed on the subject site.
- Reference is made to how the Board has had several opportunities to consider the manner in which geo-political boundaries should be treated in the context of the rural housing test. Reference is made to a number of appeals in this regard.

- With regard to the material contravention the first reason for refusal suggests that the proposal would materially contravene policies RH4 and RH21 of the Kildare County development plan and it is submitted that the Board is not constrained by section 37 (2) of the Planning and Development Act. As provided for in the Development Management Guidelines, it should be shown that specific policies/objectives of the plan would be breached in a significant way.
- With regard to the architectural design of the house, the Board are invited to accept that the floor-space of the dwelling at 270sq.m. is not especially large and to accept that many modern houses with greater floor area have been recently granted in rural areas.
- The wider vicinity accommodates a number of dwellings which are broadly similar in character to the size of the proposed development and the proposed building would not be particularly out of place in its surroundings.
- It is submitted that the proposal does not breach, in terms of its overall bulk, any part of the design guidance. The planning report does not actually explain why the site cannot accommodate a dwelling of the form proposed. The applicant's sister's site is 230m from the site and is of similar mass.
- The further information request suggests that a two storey house cannot be built on this land on the basis that it would contravene an objective 'to preserve and protect sensitive landscapes'. The site is located within the Southern Lowlands and within an area which is designated as being of low sensitivity.
- The council relies on policy RH5 in opposing the mass of the house but when this text is examined, the appellant cannot identify any requirement which is being offended. This policy merely lists the items to be considered in proposals of this nature and many of these are either irrelevant in this case or where such criteria apply have been deemed satisfactory.
- The grounds of appeal highlight that the difficulty associated with the adoption of any guideline instrument is that its text can be used in an overly strict manner. Recommendations of this type can militate against a form of development which already prevails in a particular area, can stifle architectural expression or otherwise overlook the fact that a particular proposal, whilst departing from any principles therein may be individually meritorious.
- The difficulty which arises in terms of the design detail is that the Council did not undertake any such analysis and fails to show how the proposed dwelling contravenes Council policy. It is submitted that the detailed design

of the house would be invisible to all but the keenest of observers. Although the rear part of the house would contain a staggered roofline this would not be apparent from the public arena and indeed, the view might be taken that such projections are of a type which might otherwise be constructed by householders as exempted development without recourse to the Council.

- The original and amended versions of the house are acceptable on the site given the set-back, planting and land levels. It is the appellant's preference to construct the original plans submitted to the Council and request the Board to consider imposing a condition to this effect.
- The appellant is also prepared to implement any revisions which may be required and would accept a condition to the effect that the new design should be agreed with the council prior to commencement of development.

7.0 RESPONSES

7.1 Planning Authority

The main points are summarised as follows:

- The matters raised in the appeal were assessed in the course of the planning application through the request for further information.
- The applicant did not demonstrate to the satisfaction of the planning authority that no suitable family owned site is available in the adjoining County. The proposal, accordingly, would contravene materially policy RH21 of the development plan.
- The proposed development by reason of its design, siting and height, would contravene policy RH5 of the development plan which seeks to ensure that the location and design of new dwellings should take account of and integrate appropriately with its physical surroundings.
- There is no new information in the appeal to warrant a change in the decision.

8.0 PLANNING HISTORY

There is no noted history with the appeal site.

File ref. No. 04/1588 Permission granted to Emer McDonald for a two storey dwelling house, garage, septic tank, percolation area and splayed entrance on a site approx. 230m north of the subject site.

9.0 PLANNING POLICY

9.1 Sustainable Rural Housing Guidelines for Planning Authorities

Section 3.2.1 deals with Rural Area Types and suggested policies. The appeal site is located in an area identified as “stronger rural area”. Of relevance to this appeal, is that each development plan should start by putting forward a development vision for rural areas that, *inter alia*, promote the development and consolidation of key settlements in rural areas.

Section 3.3.3 of these Guidelines specifically deals with siting and design.

9.2 Kildare County Development Plan 2011-2017

The site lies within the functional area of Kildare County Council and as such the Kildare County Development Plan, 2011 – 2017 is the statutory plan for this area. Maganey is identified as a rural settlement in the settlement hierarchy for the County.

Chapter 4 of Volume I of the development plan relates to housing. Sections 4.11, 4.12 and 4.13 refer to rural housing provision, rural housing policies and rural housing objectives, respectively.

Chapter 16 of Volume I of the development plan is entitled “Rural Design Guidelines”. It includes several sets of key principles including site selection, site layout, and design principles. The guidance sets out that “development in the countryside has tended to focus on the use of road frontage sites, often carved out of larger fields. Here buildings dominate the view and inappropriate suburban gardens, roadside boundary walls and gates are introduced into the landscape. Such development changes the character of the countryside and when repeated leads to ribbon development and a loss of rural character....”.

10.0 ASSESSMENT

Having examined the file, relevant history files, considered local and national policies, inspected the site and immediate environs, assessed the proposal and all of the submissions on file, I consider the key issues to be:

- Compliance with rural housing policies
- Proposed House Design
- Appropriate Assessment

10.1.0 Compliance with rural housing policies

The appeal site is located in an area identified as “stronger rural area” in the Sustainable Rural Housing Guidelines for Planning Authorities, 2005 and in Rural Housing Policy Zone 2 as identified in the Kildare County Development Plan. A copy of the policy is enclosed as an Appendix for the Board for ease of reference. The information on file sets out that the applicant resides in a dwelling with her father in a rural area of Killabban, just north-west of Maganey. It is set out that she works from home as an IT analyst and has never owned a house in Kildare or Laois. I note that the details in respect of utility bills pertain to a business as opposed to personal bills. In any event, given the information on file there is no dispute that the applicant is originally from a rural area and as such has spent a substantial period of her life living in a rural area. The policy specifically refers to persons who have grown up or who have spent substantial periods of their lives living in rural areas in Kildare as members of the rural community and who seek to build on their family landholding and who currently live in the area. Where no land is available in family ownership, a site near the family residence (8km) may be considered. I therefore am satisfied that the applicant has complied with RH 4 policy of the development plan and therefore material contravention of the development plan is not an issue.

Policy RH21 which was cited in the reason for refusal refers to the assessment of one-off housing in areas bordering neighbouring counties. This policy specifically seeks to accommodate people who can demonstrate that no suitable family owned site is available in the adjoining county and that all other aspects of rural housing policy including local need, siting and design are complied with. The applicant shall also fully demonstrate that they are building their first rural dwelling and that it will be for their permanent place of residence. The applicant currently lives in a rural area in Laois close to the county boundary. As she is considered to have a rural housing need under RH4 I do not consider that it is necessary to demonstrate compliance with this particular policy i.e. RH21.

In conclusion, I consider that notwithstanding the proposal to construct a one-off house in a different jurisdiction to where the applicant indicates she currently resides that she is considered to have lived for a substantial period of her life in a rural area and as such has demonstrated compliance with rural housing policy.

10.2.0 Proposed siting and House Design

National and local policies seek to ensure appropriate siting and design of proposed rural dwellings. In this instance I consider that the chosen site will result in a fragmented residual farm stead with one-off housing located

randomly on large sites resulting in the unsustainable use of agricultural land. The location of dwellings, need careful consideration in terms of their impact on farming practices. In this case, the applicant's sister has been permitted a dwelling and there is also a family house on the landholding indicated. No analysis has been submitted as to why a dwelling could not be considered in close proximity to the family home using existing lane etc. thus minimising the loss of agricultural land. The statement that the applicant's brother will not allow his sister to build a house in front of his is not a planning reason for accepting that a site located some 3 kilometres from Maganey, a rural settlement which is in very close proximity to where the applicant currently lives is consequently suitable for constructing a dwelling. The proposal will result in suburban development in a rural area where there are no services. I consider that the use of road frontage sites, carved out of larger fields is directly contrary to the development plan design guidance in Chapter 16 and in this instance the repeated nature of such applications will erode the rural landscape at this location resulting in suburban development.

Policy RH 5, which states that

“the location and design of a new dwelling shall take account of and integrate appropriately with its physical surroundings and the natural and cultural heritage of the area. Development shall have regard to Chapter 16, Rural Design Guidelines”.

Chapter 16, specifically section 16.4 addresses “appropriate house design” and set out that it is the aim of this chapter to promote innovation through design that is both contemporary and timeless, it is important that architecture respects and acknowledges the characteristics that contribute to the rural character of Kildare.

I would concur with the planning authority that the proposed scale and bulk of the dwelling is inappropriate given the context in which it is to be located. The design guidelines set out key principles for overall design of which is to develop a house that is simple in form and to develop a house of appropriate scale relative to the site. The overall length of the dwelling is more than 18.5m in length with a depth of approx. 16.5m. Whilst I have no objection to the construction of a modest scale house; such should be achieved by breaking down the mass through the articulation of different elements. High quality and innovative architectural design with appropriate massing and scale is the premise of the rural design guidelines for one-off housing. The side and rear elevations are overly fussy due to the footprint of the dwelling and windows opes of various types and sizes which results in the loss of any readily identifiable architectural form/style.

The proposal would introduce a very large suburban style dwelling with little regard for the landscape it is to be located, setting a poor precedent for any other proposed one-off housing in the future. I note the applicant's appeal response outlining permitted dwellings in the vicinity. In response, I consider that the applicant's sister's house, whilst of similar scale, is less complicated in form particularly the side and rear elevations, due to the more compact footprint of the design proposed. The proposed dwelling, due to the low lying nature of the site and immediate lands, will be visible from the public road to the south and as such the visual impact arising from the proposal is such that would be injurious to the rural area and would set a poor precedent for other inappropriately designed dwellings of excessive scale which cannot be absorbed into the existing landscape. I note the proposals to provide additional landscaping however regard should be given to the existing natural landscape and the use of existing trees to screen development. Accordingly, the ability of landscape to absorb development should be reflected in the scale of the proposed dwelling, which is not the case in this instance.

10.3.0 Appropriate Assessment

The appeal site is approximately 4.2km from the Slaney River Barrow and River Nore SAC (Site Code: 002162). The qualifying interests include Desmoulin's whorl snail, freshwater pearl mussel, white-clayed crayfish, sea lamprey and otter. The Lerr River, a tributary of the River Barrow is located approx. 400m south of the appeal site. The Planning Authority does not appear to have carried out a screening for Appropriate Assessment as there is no evidence of such on file. In any event, having regard to the nature and scale of the development and the relative distance of the site from the SAC site notwithstanding the direct hydrology link via the River Lerr, I am satisfied that the proposed development would not be likely to have any significant effect either individually or in combination with other plans or projects on the European site.

11.0 CONCLUSION

The applicant currently resides in a dwelling in a rural area in close proximity to Maganey, identified as a rural settlement in the Kildare County Development Plan. She is proposing to construct a dwelling on a site approx. 3 kms east of Maganey, on an open site which will lead to unsustainable demands for services in a rural area. The proposal will exacerbate one-off housing in or near identified settlements where housing should be directed in the first instance. The proposed house type is suburban and of a scale that is excessive in mass and bulk for the site in which it is to be located.

12.0 RECOMMENDATION

Having regard to the foregoing, I recommend that permission be refused for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

1. Taken in conjunction with existing and permitted development on the applicant's family landholding and in the area, the proposed development would contribute to the dispersed location of rural housing on the landholding using road frontage and carving sites out of larger fields, which is contrary to the provisions of the rural design guidance in the Kildare County Development Plan. The proposed dwelling, by reason of siting would militate against the preservation of the rural environment, would reduce the sustainable use of the landholding at this location for agricultural purposes, and would lead to demands for the provision of further public services and community facilities, and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is considered that, by reason of its mass and bulk, the proposed two-storey house would be visually obtrusive in this open rural area, would be injurious to the visual amenity of this rural area and as such set a poor precedent for other inappropriately designed dwellings. The proposed house would, therefore, be contrary to the proper planning and sustainable development of the area.

Joanna Kelly
Inspectorate
12th April 2016