



An Bord Pleanála

Inspector's Report

PL 02.246052

DEVELOPMENT: Detached single storey house and all associated site works.

LOCATION: Annagh McCanns, Knockbridge, Co. Louth

PLANNING APPLICATION

Planning Authority: Louth County Council.

Planning Authority Reg. No: 15/602

Applicant: Bernard Murphy

Application Type: Permission

Planning Authority Decision: Refuse

APPEAL

Appellant: Bernard Murphy

Type of Appeal: First Party

Observers: None

DATE OF SITE INSPECTION: 5 May 2016

INSPECTOR: Anne Marie O'Connor

1.0 SITE AND DEVELOPMENT DETAILS

Site Location

- 1.1 The appeal site is located in a rural area of Co. Louth, some 4km northwest of the settlement of Knockbridge, and 9km west of Dundalk. There are five existing dwellings in the immediate vicinity of the site, three along the road frontage and two additional dwellings in a backland location accessed via laneways from the public road. There are five existing residential entrances within 80m along the public road. The proposed dwelling would be accessed by one of the existing laneways off the public road which currently serves a single dwelling.
- 1.2 The area is characterised by a rolling landscape with geological features and lakes. The appeal site has a stated area of c.0.28 ha and is located at the top of a hill, some 7m above the public road. The land falls away to the southeast behind the highest point within the site. The access laneway is steeply sloped due to the topography. The site is rectangular in shape and is fenced off and grassed. Existing bungalows and associated driveways are located to the front and side of the site. To the rear lies agricultural land, with a number of outcrops and geological formations within the adjacent field.
- 1.3 The site (beyond the brow of the hill) is screened by the topography and mature planting along the roadside.
- 1.4 Cortial Lough lies on the opposite side of the public road some 500m to the northeast. It is not the subject of any natural heritage designation.

Description of Proposed Development

- 1.1 Planning permission is sought for the construction of a detached single storey house (plus attic). The proposed dwelling has a ridge height of c.6.5 metres (49.5mOD). It has 3 bedrooms and a floorarea of 185m².
- 1.2 A proprietary wastewater treatment system and percolation area are also proposed. Water supply will be provided from the mains water at the public road.

2.0 PLANNING AUTHORITY DECISION

The planning authority issued a notification of decision to **refuse** permission for a single reason:

The proposed development is located within Zone 5 of the Louth County Development Plan 2015-2021. It would appear from the documentation submitted on the file that the applicant does not come within the scope of the qualifying criteria as set out in Section 2.19.1 of the County Development Plan and as such the proposed development is contrary to Policy RD29 and Policy SS18 of the Louth

County Development Plan 2015-2021 and is contrary to the proper planning and sustainable development of the area.

3.0 PLANNING APPLICATION

3.1 The application was submitted to the planning authority on 10 September 2015. Further information was sought in relation to sightlines and wastewater treatment.

3.2 The report of the **area planner** can be summarised as follows:

- The applicant is currently living at his family home which is within the 4km radius of the application site and has resided there for over 10 years. As such he complies with the rural housing policy in the current County Development Plan 2009-2015.
- He will not comply with the rural housing policy in the new CDP which comes into effect on 26 October as he is from a Level 3 settlement.
- Given the backland location, there is no concern regarding ribbon development.
- The design of the dwelling is considered acceptable.
- Screening for AA has been carried out. It is concluded that it is unlikely that there will be any significant impacts associated with this proposal.
- **Refusal** recommended for two reasons.

3.4 Technical Reports

Infrastructure FI requested. No subsequent objection subject to conditions.

Environment FI requested. No subsequent objection subject to conditions.

3.5 Prescribed Bodies

None

3.6 Third Party Submissions

None

4.0 PLANNING HISTORY

Appeal Site

08/232 Outline Permission for a dwellinghouse, garage, 2-storey dwelling and garage **granted** to Declan Breathnach.

Sites within Landholding

81/646 Planning permission for a dwelling granted to Declan Breathnach.

83/153 Planning permission for a dwelling granted to Declan Breathnach

- 86/345** Planning permission for a dwelling granted to Declan Breathnach
- 91/298** Farm entrance granted to Declan Breathnach
- 08/96** Outline permission for a dwelling granted to Declan Breathnach
- 10/627** Permission consequent granted to Brian and Catherine Donnelly (outline 08/96)
- 13/192** Planning permission for a dwelling granted to Declan Breathnach
- 11/93** Outline permission for a dwelling granted to Declan Breathnach
- 11/94** Outline permission for a dwelling granted to Declan Breathnach
- 15/486** Planning permission for a dwelling granted to Declan Breathnach (same site as Outline 11/94)
- 15/514** Planning for a dwelling sought by Declan Breathnach (same site as Outline 11/93). Currently under consideration, awaiting response to FI request.

Except where indicated, all permissions relate to separate sites within the landholding.

5.0 PLANNING POLICY

National Guidelines

- 5.1 Both the National Spatial Strategy and the **Sustainable Rural Housing Guidelines 2005** distinguish between rural generated housing and urban generated housing and seek to ensure that the needs of rural communities are identified in the development plan process. The guidelines make clear that in all cases, consideration of individual sites will be subject to satisfying normal planning considerations relating to siting and design, including vehicular access, drainage, integration with the physical surroundings and compliance with the objectives of the development plan in general.
- 5.2 The **EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses**, 2009 applies.

Louth County Development Plan

- 5.3 The current Development Plan is the *Louth County Development Plan 2015-2021*.
- 5.4 The application site is located within Development Control Zone 5, the objective for which is *'to protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community'*. The following rural settlement policies are of relevance:
 - SS 18** To permit rural generated housing in order to support and sustain existing rural communities and to restrict urban generated housing in order to protect the visual amenities and

resources of the countryside, subject to the local needs qualifying criteria as set out in Section 2.19.1 below.

- SS 23** To attach an occupancy condition of 7 years in respect of all planning permissions for
- RD 29** To apply a presumption in favour of granting planning permissions to bone-fide applicants for rural generated housing where the qualifying criteria set down in Chapter 2 are met and where standards in relation to inter alia siting, design, drainage and traffic safety set down in the Louth County Development Plan 2015-2021 are achieved.
- RD 30** To apply a presumption against urban generated housing in the rural areas of the county or where standards in relation to inter alia siting design, drainage and traffic safety set down in the Louth County Development Plan 2015-2021 are not achieved.

6.0 GROUNDS OF APPEAL

6.1 First Party Appeal

The grounds of appeal submitted on behalf Bernard Murphy can be summarised as follows:

- Pre-planning meeting were held with the area planner via telephone and email in relation the location and height of the proposed house and the positioning of the onsite treatment system.
- The 2009 CDP was current at the time of the lodgement of the application. The application was accepted and validated under this plan.
- Further Information was sought on 22 October 2015 and it was not possible to respond before the new plan came into effect on 26 October. There was no mention in the FI request of the consequences the new CDP might have on the outcome of the application. No notification was provided by Louth County Council that the implementation of the new development plan would affect current applications.
- The applicant and his family are currently living with the applicant's father in Knockbridge. He requires a house close enough to provide care for his father who is in poor health. Evidence in relation to these matters is submitted.
- The applicant has contacted the owner of lands zoned Residential within the Knockbridge boundary and was informed that the owner had applied for planning permission but would not be developing the land in the near future nor would he sell a single site along the public road.

6.2 Planning Authority Response to Grounds of Appeal

The planning authority response sets out the rural housing policy in the current Louth County Development Plan 2015. It is stated that although the timescale of the adoption of the plan vis a vis this application is unfortunate, there is no provision set out in the legislation to enable applications like this one to be considered under the previous development plan policies. The adoption of the development plan is a function of the elected member and the area planner could not have been assured that the new CDP would have been adopted the week following the FI request. The entire development plan review process was available to the public. The applicant and agent could have made themselves aware of the change to rural housing.

6.3 Further Responses

The applicant has responded to the submission of the planning authority as follows:

- the Development Plan had been adopted on 28 September, prior to the request for further information. All relevant parties would have been aware at this point that the new development plan was to be introduced. At no stage was the applicant's agent advised of how the new plan would affect the planning application.
- The change in policy is contained in a single line and easily overlooked.

7.0 ASSESSMENT

7.1 I have examined the file and the planning history, considered the prevailing local and national policies, inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. I consider that the key issues in this case relate to the following:

1. Rural Housing Policy
2. Density and Location
3. Wastewater Treatment
4. Other matters

Rural Housing Policy

- 7.2 The planning authority issued a notification of decision to **refuse** permission for a single reason relating to the determination that the applicant does not come within the scope of the qualifying criteria for local need set out in the Louth County Development Plan 2015 (CDP). The grounds of appeal argue that the applicant would have qualified under the criteria set out in the 2009 CDP which was in place when the application was lodged on 10 September 2015. I note that current Development Plan was adopted on 28th September and came into effect on 26 October 2015. The notification of the decision of the planning authority is dated 17 December 2015. Under the 2009 Plan the qualifying criteria for rural housing included a person who had lived for 10 years within the local area, provided they did not already own a house within the rural area of the county for at least 5 years prior to making an application.
- 7.3 The grounds of appeal express dissatisfaction that the planning authority failed to inform the applicant of the effect the change in policy would have on the application, and indeed issued a request for information which did not mention the new policy after the adoption of the plan, when this would have been known to planning authority staff. It is argued that a transition period should exist whereby the new plan would only apply to applications submitted after the plan came into effect.
- 7.4 The site is located within Zone 5 for the purposes of rural housing policy under the 2015 Development Plan. Policies SS18 and RD29 outline the presumption in favour of rural generated housing within Zone 5 provided the qualifying criteria are met and standards relating to siting, design, drainage and traffic are achieved. The criteria are set out in Chapter 2 of the CDP. As the applicant is not the son/daughter of the landowner, involved in agriculture or other rural based enterprise, or adjacent to the dwelling of an elderly person/ person with a disability, the remaining criteria under which the applicant could qualify is that he must have lived for a minimum of 10 years in the local area, have a housing need and have not owned a house within the rural area for the previous 5 years. Section 2.19.2 states that the definition of the rural area excludes those lands which lie within Level 1, 2, 3 and 4 Settlements.
- 7.5 It is clear from the evidence submitted that the applicant is from the neighbouring village of Knockbridge, some 4 km to the south. He currently lives with his father in the family home within the development boundary of the settlement. The applicant wishes to live close to his father, who is in poor health, to assist with his care. Knockbridge is a designated Level 3 'Small Town' settlement and does not, therefore, fall within the definition of a 'rural area' for the purposes of Policy RD29 or SS18.
- 7.6 I appreciate that the applicant feels that he has been unfairly treated given the timing of the change in policy during the course of his application. The planning authority did, however, have real concerns regarding the sightlines and wastewater treatment (the site suitability test for which had been prepared prior to the adoption of the 2009 EPA Code of Practice) and was not in a position to make a decision on the application prior to the coming into

effect of the 2015 Plan without further information on these matters. The new CDP had, nevertheless, been adopted prior to the issuing of the FI request, and it is most unfortunate that the applicant's attention was not drawn to the change in policy, particularly given the implications for his application.

- 7.7 The restriction in the qualifying criteria for rural housing should, however, be put in the context of the overall housing strategy for the county. The site, along with all of rural Co Louth, is located in an area designated as an 'Area Under Strong Urban Influence' in the Rural Housing Guidelines. This is evidenced by the extent of rural housing in the general area of the site which is conveniently located for both Dundalk (c.8km) and the M1 (c.9km). The Core Strategy set out in the CDP establishes a 4-tier settlement hierarchy and seeks to concentrate housing development in these existing towns and villages, particularly in the larger towns of Dundalk and Drogheda. There is a recognition that *"the level of rural housing that continues to be permitted within the County, in addition to its impact on the countryside, has a potentially detrimental effect on the viability of existing settlements"* (CDP, Section 2.14). More restrictive local needs qualifying criteria have been established to facilitate the careful management of rural one-off housing. I consider this to be a reasonable approach to rural housing which accords with the principles of proper planning and sustainable development, and which has been gone through the Development Plan Review process and been adopted by the elected members.
- 7.8 Given that the applicant's family home is excluded from the definition of the rural area, the applicant does not comply with the qualifying criteria and hence the rural housing policy in the current development plan. There is no provision for transitional requirements that can be applied to applications already submitted prior to the adoption of the plan.
- 7.9 Notwithstanding compliance with the qualifying criteria, policy RD29 also requires that standards in relation to siting, design, drainage and traffic safety must also be achieved. I will now continue to consider the proposal in the context of such planning issues.

Density and Location of Development

- 7.10 I note at the outset that outline planning permission for a dwelling on the site was granted to the land owner, Declan Breathnach) in 2008 (08/232) and was subject to an occupancy condition (C.3) which required that the proposed dwelling be first occupied by a person who meets the qualifying criteria for control zone 6 in the 2003 Development Plan. This policy facilitated any current resident of County Louth including all urban areas. No application for permission consequent was made and the outline permission has now expired. It is notable, however, that qualifying criteria although less restrictive were attached to that grant of outline permission.
- 7.11 The site is not currently owned by the applicant, but is part of a landholding in the ownership of Declan Breathnach. It is located in a backland location in an area which has a high density of rural housing on the landholding. Planning

permission was originally granted to Declan Breathnach for the three dwellings along the roadside under 81/646, 83/153, and 86/345. Mr Breathnach subsequently received planning permission for a farm entrance under 91/298. This entrance was used in the granting of outline permission for two houses in backland locations, 08/232 (appeal site) and 08/96 (adjoining site to the south). Occupancy conditions were attached to both. Permission consequent was granted to Brian and Catherine Donnelly on the adjoining site under 10/627. Planning permission was granted to Mr Breathnach for a dwelling on an adjacent site to the north (13/192) subject to a condition restricting occupancy to the applicant unless otherwise agreed. The landholding also includes land on the opposite side of the public road. Outline permission was granted to Mr Breathnach for two dwellings under 11/93 and 11/94, both were subject to an occupancy condition. Full permission was recently granted on one of these sites subject to a condition restricting occupancy to Mr Breathnach's son (15/486). An application for planning permission on the second site was made by Mr Breathnach under 15/514 and is currently under consideration by the planning authority.

- 7.12 In summary, a total of five houses have been built on the landholding, with extant permission for one more. The appeal site would, therefore, constitute the seventh dwelling on the landholding. This number of dwellings within such a small area is only possible given the backland siting of three of the dwellings. It is also worth noting that this level of development has resulted in a proliferation of entrances onto the public road; five within a c.80m stretch of road, not including the permitted entrance to the sites on the opposite side of the road.
- 7.13 The site is located in a rural area and given the backland location of the proposed development and the level of existing and permitted development in the immediate vicinity, I consider that the proposal would result in an excessive density of development in an unserved rural area which not be in keeping with the rural character of the area.

Wastewater Treatment

- 7.14 The GSI Groundwater maps show that the site is located within an area of Poor Aquifer (PL) with a vulnerability classification of 'Extreme', representing a GWPR response of R2¹ under the EPA Code of Practice. According to the response matrix, single house systems are acceptable in such areas subject to normal good practice. Where domestic supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required are met and that the likelihood of microbial pollution is minimised.
- 7.15 The trail hole/ test holes were carried out under the previous application for outline permission on the site. Although this was prior to the 2009 EPA Code of Practice, supplementary information in relation to separation distances, ground water flow etc which are required under the current guidelines was submitted in response to the request for further information by the planning authority. The site characterisation recorded a T-test value of 1.5, indicating

that the retention time on the subsoil is too fast to provide satisfactory treatment. The P-value of 4.7 is also indicative of poor retention time in the topsoil/subsoil. The GSI give the bedrock as Silurian metasediments and volcanics, which would accord with the broken shale from 1.4m to 0.8m bgl and the characterisation of the bedrock as highly fractured in the Site Assessment. It can be concluded, therefore, that any discharges to ground would drain rapidly through both the soil layers and bedrock to reach groundwater with little opportunity for treatment in the percolation process.

- 7.16 The application proposes to treat effluent using a secondary treatment system prior to pumping the effluent to a percolation area. Given the poor on-site soil characteristics it is proposed to excavate the existing soil and backfill with imported soil with improved percolation characteristics, details of which were submitted to the planning authority in response to the request for further information.
- 7.17 The site is surrounded on three sides by five dwellings in close proximity, all of which have on-site treatment systems. No cumulative assessment of the existing discharges is provided. Three of the dwellings also have domestic wells which indicates that the aquifer although classified as Poor, is providing water at a local zone. The groundwater flow is indicated on the submitted plans as following the contours of the ground in the direction of a stream to the south, which flows into Cortial Lough some 500m to the north east.
- 7.18 While I note that the separation distances to existing wells, percolation areas and site boundaries comply with the EPA Code of Practice, and the proposed mitigation in the form of the importation of soil with improved percolation characteristics (T value of 20), I have residual concerns regarding the fractured characteristics of the bedrock and consequent vulnerability of the aquifer particularly given the concentration of treatment systems in the area. I am not satisfied that the proposed development would not result in an over concentration of treatment systems in the area representing a risk to ground water pollution and human health.

Other Matters

- 7.19 In relation the impact of the proposed development on **visual amenity** and the rural character of the area, I note that there are no designated Scenic Views or Viewing Points in the vicinity of the site. The proposed dwelling would be relatively secluded in the landscape as seen from the public road due to its siting on the far side of the brow of the hill and the existing tree belt along the public road. The scale, form and design of the dwelling would not appear incongruous in the context of other development in the vicinity and the visual impact would be mitigated by the topography, the set back from the road and the mature tree belt.
- 7.20 The proposed dwelling would use the existing entrance and driveway which currently serves the adjacent dwelling to the south. The road is relatively straight in the vicinity of the site and the sightlines appear to be adequate. I have no objection to the proposed development in terms of **road safety**.

7.21 The site is located c.6km from Dundalk Bay SAC/SPA. Having regard to the nature and scale of the proposed development and the distance to the nearest European sites, I am of the view that no **appropriate assessment** issues arise, and that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 REASONS AND CONSIDERATIONS

The proposed development is located in a rural area within an Area Under Strong Urban Influence as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005. It is an objective of the planning authority, as expressed in the current development plan, to channel housing into the identified settlements in accordance with the Core Strategy, and to require that qualifying criteria are met for rural housing in accordance with Policy RD29 and Policy SS18 of the Louth County Development Plan 2015. This objective is considered reasonable. The applicant does not come within the scope of the qualifying criteria for rural housing as set out in Section 2.19.1 of the County Development Plan and as such the proposed development is contrary to the objectives of the Louth County Development Plan 2015-2021. Furthermore, taken in conjunction with existing and permitted development in the area, it is considered that the proposed development would give rise to an excessive density of development in a rural area, all served by individual wastewater treatment systems. This would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed, and would be prejudicial to public health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Anne Marie O'Connor

Inspectorate

20/05/2016