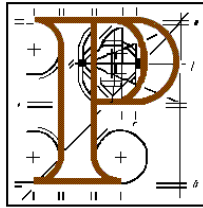


An Bord Pleanála



Inspector's Report

Development: Permission for the construction of a detached two storey house, single storey domestic garage, single storey stable block, secondary effluent treatment system and all associated site works.

Site Address: Oldtown, Athgarvan, Co. Kildare

Planning Application

Planning Authority: Kildare County Council

Planning Authority Reg. Ref.: 15/526

Applicant: Johanna Doyle

Type of Application: Permission

Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant: Johanna Doyle

Type of Appeal: First Party v Refusal

Observers: None

Date of Site Inspection: 11th May 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 dwelling.

2.0 SITE DESCRIPTION

The appeal site, with a stated site area of 0.45 hectares, is located in an un-serviced rural area in the townland of Oldtown near Athgarvan. The appeal site is located close to a local road junction and the M9 is located approx. 300m east of the site.

The site currently has a large hedgerow which bounds the public road. There is an existing entrance which serves the field however it is located off a current lane which appears to be in private ownership serving the applicant's parents' house as indicated on the site layout plan (but which is contained within the appeal site). I also noted an additional site notice at time of inspection on a site immediately adjacent to the current appeal site.

The area is clearly under pressure for one-off housing as is evident by the concentration of housing in the area.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The applicant is seeking permission for a two-storey dwelling. Revised house plans were submitted to the Planning Authority on foot of a further information request. The overall height of the dwelling was revised from 9.3m to 8.8m approx. The front projection along with the canopy porch was omitted and the overall floor area of the dwelling was increased.

The double garage has a floor area of 48sq.m. and is 5.8m in height.

4.0 TECHNICAL REPORTS

4.1 Planning report

The first planning report recommended that further information be sought in relation to full land registry details of the entire landholding; design of the dwellings to comply with the principles of the Rural Design Guidelines; correct site location map; existing hedgerow; revision to location of dwelling and revisions to height of stables and garage.

The subsequent planner's report notes that the site to the north-west was sold to a non-related third party. With regard to the design the planner noted the response of the applicant to other dwellings of greater ridge height, use

of brick etc. however the current policies and guidance as set out in the development plan should be adhered to. With regard to the set back of the dwelling the response indicated that the set back of 28.1m from the public road is in excess of the minimum standard. The Planner recommended clarification of further information.

Following receipt of this CFI, the planner considered that there was a history of speculative sale of sites and recommended a refusal.

Environment Section

No objection subject to conditions

EHO

No objection subject to condition

CFO

No objection

Roads Department

No objection subject to conditions

Water Services

No objection subject to conditions

Prescribed Bodies

Irish Water

No objection

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, under policy **RH7 to prohibit residential development on a landholding, where there is a history of development through the speculative sale of sites, notwithstanding the applicant's compliance with the local need criteria. There is a history of speculative sales off this landholding** where two sites have been sold to non-family members. The proposed development would therefore **contravene the provisions of the County Development Plan 2011-2017, specifically policy RH7** and would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development is located in a rural area that is under **strong urban influence with a significant level of haphazard one-off housing developments served by individual on-site waste water treatment systems**. It is considered that the proposed development, taken in conjunction with existing and permitted development, would **exacerbate the pattern of one off rural housing, would be visually obtrusive, would further erode rural character and visual amenities of the area** 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:

- It is submitted that the interpretation of the rural housing planning policy, namely RH7 of the Kildare county development plan has been interpreted in a literal manner and that national policies have not been duly acknowledged.
- It is set out that two houses have been granted to non-family members on the landholding, and one to a family member which has not been enacted and has expired.
- The local needs of the applicant were never questioned by the planning authority and it is submitted that the applicant fully complies with the local need criteria.
- The submission sets out a response to each of the rural housing policies (and in the interests of brevity and to avoid duplication of points already iterated, I henceforth refer to the more central points as they relate to this appeal and assessment).
- The primary test for attaining planning permission for a one off rural house is the local need test, which the applicant has passed.
- It is clear that the Planning Authority does not have an issue with the siting and design of the adjacent house granted under File Ref. 14/216 and therefore when the similarities of location, siting and design of the proposed house and the adjacent house are considered, the current interpretation of the Planning Authority has been incorrectly applied to the proposed development.
- It is proposed to utilise the existing entrance notwithstanding the road adjacent to the development is not a regional road.

- With regard to RH7 (speculative sales of sites) which is the basis for refusal, it is set out that the policy is vague and does not specify or determine what is “speculative development”. The applicant believes that it is fair and reasonable to submit that the spirit of this policy objective is to stop rural landowners from selling off a number of sites from an overall landholding.
- The landowner did sell two sites over a period of 34 years which would be extremely common for small landowners in the Greater Dublin Area. It is submitted that to rely on a subjective interpretation of policy RH7, to refuse permission, considering the complete local need compliance of the applicant, along with historic assessment in support of a rural housing on the landholding, is not balanced and reasonable and the Planning Authority has failed in its duty to afford a fair assessment towards the applicant.
- RH11 is the only policy that the Planning Authority can reference in relation to excessive density of the area. It is set out that the density of the area from a sample of 1 square kilometres that there exists 29 houses at present which equates to approx. 1 house per 8.5 acres which is not excessive.
- It is concluded that it has been shown by way of maps, photographs and commentary in the submission that the proposed development is for an intrinsically rural person who wishes to construct a house that is compliant with design policies of Kildare County Council in an area that is under development pressure from urban generated development but does not exhibit signs of over-development considering the low density within a selected 1 square kilometre of the area.
- It is submitted that an opportunity was available to the planning authority to involve policy RH 7 on a previous planning application 14/216 which it failed to do so as a result, the current interpretation of RH7 is inconsistent with the planning authorities previous interpretation and consists of subjective interpretation which is unbalanced and unreasonable in this instance.
- It is requested that the Board grant permission for the proposed 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.

Permitted dwelling approx. 200m north of site

File Ref. No. 06/2136 Permission granted to Siobhan Byrne for a two storey dwelling with detached plant room, detached garage and oil store, garden store and all associated site works.

File ref. No. 08/194 (PL.09.228984) Permission granted (following first party appeal) to Siobhan Byrne to retain and complete the following (1) two storey dwelling house with accommodation in roof space at a different location to that approved under Ref. No. 06/2136. (2) 2 no. double car garages etc.

Adjoining Site immediately north of appeal site

File ref. No. 14/216 Permission granted to Fidelma Burke and Terence Woolhead for a two storey detached dwelling, single storey domestic garage, recessed entrance, effluent treatment plant and all associated site works.

Site immediately south of appeal site

File ref. No. 03/991 Permission granted to Peter Doyle for development consisting of a two storey dwelling, treatment unit and all associated site works.

9.0 PLANNING POLICY

- 10.1 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 “under strong urban influence”.

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

10.2 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.

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. The appeal site is located in Rural Housing Policy Zone 1 where there is evidence of significant one off dwellings in the rural environs of main towns and villages.

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.

11.0 **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
- Development of landholding
- Proposed House Design
- Appropriate Assessment

11.1.0 Compliance with rural housing policies

The appeal site is located in an area identified as “under strong urban influence” as per the Sustainable Rural Housing Guidelines. The development plan provides that applicants for one-off housing in these areas are required to meet the Rural Housing Policy in Zone 1. In this regard the applicant is claiming a local need on the basis that she meets category 3 criteria i.e. person who has grown up or has spent substantial periods of their lives living in the area, who have moved away and who now wish to return to reside near or to care for immediate family members seeking to build on the family landholding or on a site within 5km of the original family home.

The applicant has indicated that the family home is located immediately north-west of the appeal site. Documentation has been submitted on the file to substantiate that she was born and raised in her parents’ house adjacent

the site. I note that she attended secondary school in Naas as a boarder and appears to have lived in Dublin since then save for a short period when she moved back to Oldtown in 2011. The Sustainable Rural Housing Guidelines provide guidance on how to define persons with rural generated housing needs. The applicant appears to be making a case for a rural dwelling on the basis of having resided in a rural area for 12 years as a child. I am unconvinced that a “rural generated” housing need has been clearly established. The applicant cannot be classed as someone who has spent a substantial period of her life in a rural area. Therefore, I consider that a “rural generated” housing need for the applicant has not been demonstrated.

11.2.0 Development on landholding

The second reason for refusal refers to the policy RH7 which seeks “*to prohibit residential development on a landholding, where there is a history of development through the speculative sale of sites*”. Pursuant to a request for further information by the Planner it is evident that two sites have been sold from this landholding; both sites are immediately abutting each other to the north of the appeal site. Another dwelling was granted on the landholding but this permission has now lapsed on the site immediately to the south of the appeal site. This application was in the name of Peter Doyle, a brother of the applicant. The overall landholding has effectively been sub-divided and this is the final portion of the landholding for which planning permission is now sought. I concur with the Planning Authority that there is a history of development through speculative sale of sites. The applicant has questioned what the number of houses is to constitute “speculative”. Having regard to fact that two sites were sold off to third parties and given the limited nature of the landholding I consider that it cannot be reasonably argued that Policy RH7 does not apply in this instance.

Regardless of the speculative nature of selling sites, I consider that the residential need arising from such a small landholding has been met. The landholding cannot be described as being agricultural. The proposed dwelling would exacerbate the concentration of one-off dwellings in an area identified as being “under stronger urban influence”, approx. 1.5km from Athgarvan, identified as a small town in the settlement hierarchy. The rural housing strategy quite clearly seeks to “*formulate policies which guide residential development to the most appropriate locations in rural areas...to apply appropriate policy criteria to regulate the provision of rural housing in accordance with the relevant national and regional guidelines..*” I consider that the proposal would exacerbate the concentration of one-off housing in an un-serviced area.

11.3.0 Proposed siting and House Design

The proposed house is considered substantial in scale with a floor area of approx. 285sq.m. The design of the dwelling, whilst not dissimilar to permitted dwellings in the immediate area is suburban in character. The rural design strategy seeks to encourage imaginative and innovative design as well as more traditional type solutions. The key principles include the avoidance of site which leads to ribbon development; sites that are carved out of larger sites; design buildings that are simple in form; avoidance of deep 'boxy' buildings, *et al.* Notwithstanding the presence of dwellings of similar style and scale in the immediate area, the proposed dwelling should be re-designed so as to conform with the Kildare rural design strategy.

11.4.0 Appropriate Assessment

The appeal site is approximately 5.51km and 6.48km south-east of Pollardstown Fen SAC (Site Code: 000396) and Mouds Bog respectively. Poulaphouca reservoir SPA is also located 12.3km south-east 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 and SPA sites and the lack of any direct pathway to the aforementioned Natura 2000 sites, 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.

12.0 CONCLUSION

The applicant has not demonstrated a rural housing need as per the Sustainable Rural Housing Guidelines or in accordance with the rural housing policy of the Development Plan. 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 notwithstanding the presence of other such similar type houses in the area.

13.0 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. Having regard to the location of the site 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 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Kildare Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Taken in conjunction with existing and permitted development in the area and on the applicant's family landholding, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities. It is an objective of the planning authority, as expressed in the current Development Plan for the area, to channel housing into "rural settlements" and to prohibit residential development on a landholding where there is a history of development through speculative sale of sites as per Policy RH7. This objective is considered reasonable. It is considered that the proposed development would constitute urban generated housing, would contravene the objective of the planning authority and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development, would, therefore be contrary to the proper planning and sustainable development of the area.

Joanna Kelly
Inspectorate
26th May 2016