

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL17.246203

Development: Permission sought for construction of 2-storey dwelling with domestic garage, stables, entrance onto existing lane and connections to public watermains and wastewater, with all associated works.

Address: Julianstown West, Julianstown, Co. Meath

Planning Application

Planning Authority: Meath County Council
Planning Authority Reg. Ref.: LB151294
Applicant: Gerry McCoy
Planning Authority Decision: REFUSE permission for one reason.

Planning Appeal

Appellant(s): Gerry McCoy
Type of Appeal: First party appeal against decision
Observers: None
Date of Site Inspection: 30/06/16

Inspector: John Desmond

1.0 SITE LOCATION AND DESCRIPTION

The application site is located in southeast County Meath, c.3km south of the zoned area of Drogheda, c.1.8km west of the zoned area of the seaside village of Laytown (and c.3.2km from the coast) and c.300m north of the zoned area of Julianstown.

The immediate area is rural in character, but with significant one off rural housing situated along R132 to the west. The site is accessed via an access road off an earlier cul-de-sac spur off the R132, which possibly formed part of the R132 prior to realignment. Eight existing dwellings have access onto the cul-de-sac, but some also have direct access onto the R132. The access road joins the R132 within the 50kph speed limit zone associated with Julianstown.

The land in this area is generally flat, set out in moderately sized agricultural fields either for grain or grazing. The application site is situated in the northeast corner of a field, including an uncultivated corner to the north and also a section of the existing cu-de-sac. It is irregular in shape and has a stated area of 0.35ha. The site is flat and level. There is no indication of poor drainage.

A single dwelling has been constructed within the field in recent years and the site of same abuts the southwestern boundary of the application site. Like many of the dwellings in this area, it is of dormer bungalow design.

The site boundaries comprise traditional field boundary hedgerow and trees to the north and west, with a neat suburban style hedge along the boundary with the existing dwelling.

The nearest Natura 2000 Sites include the River Nanny Shore and Estuary SPA site no.004198, c.1.29km to the east-southeast and the Boyne Estuary SPA site no.004080, c.3.8km to the northeast.

2.0 PROPOSED DEVELOPMENT

The proposed development comprises:

- Two-storey dwelling house, domestic garage, stables and entrance to existing lane.
- Connections to public watermain and wastewater plus all associated works.

3.0 RELEVANT RECENT PLANNING HISTORY.

On site –

Reg.ref.SA/900615: Permission **REFUSED** by Meath County Council (14/09/15) to Gerry McEvoy for the construction of a two storey type dwelling with domestic garage, stables, bell mouth type entrance onto an existing laneway and connections to public water main & wastewater together with all associated site works. Two reasons for refusal relating to i) contravention of rural housing policy, and ii) the use of pumped rising main to connect to gravity sewer would be contrary to Greater Dublin Regional Code of Practice for Drainage Works.

Within vicinity –

Reg.ref.SA40281: Permission **GRANTED** by Meath County Council (31/08/04) retention of the revised location of septic tank, percolation area and rear site boundary. Application relates to neighbouring site to west.

4.0 PLANNING AUTHORITY DECISION

Decision to **REFUSE** permission for one reason relating to rural housing policy.

4.1 Planning and technical reports

Planning Officer– The report of 28/01/16 is consistent with the decision of the Planning Authority to refuse permission. The Planning Officer considered stage 2 Appropriate Assessment not to be required, and considered the proposals to be acceptable in having regard to proposed design / layout, access, water services, geology and agricultural, but was of the opinion that the applicant had not demonstrated compliance with the rural housing policy of Meath County Development Plan 2013-2019 and recommended refusal accordingly.

Irish Water – The report of 18/12/15 raises no objection subject to four conditions. Condition three is of note as it prohibits the proposal to connect the proposed foul waste rising main to the foul sewer and requires a revised design incorporating a ‘stand-off manhole’ on the private lane with gravity sewer connection to the mainline sewer in the road, the full details of which shall be agreed with MCC Water Services Section on behalf of Irish Water prior to the making of an application for connection.

GSI – The report of 15/12/16 highlights that the proposed development lies within the boundaries of the Laytown to Gormanston County Geological Site (CGS ref.GR 31650 269300), but that it will have minimal impact on the overall integrity of the feature and does not disturb any existing exposure of the unit. No objection raised and no conditions recommended.

Roads & Traffic Division – The report of 03/12/16 raises no objection.

4.2 Observations

None.

5.0 GROUNDS OF APPEAL

Mr Gerry McCoy c/o Hanley Taite Design Partnership (24/02/16) –

The main grounds of appeal may be summarised as follows:

Addressing reason no.1 - 'Local housing need'

- Policy section 10.4 MCDP 2013-2019 refers
- Applicant and family have resided on the landholding at Four Acres, Smithstown, Julianstown for greater than 5 years.
- Demonstrated their strong local links in the application with documentation and sworn affidavit.
- His children participate in education and recreational activities locally.
- Communication from Mr Richard Fullam of Smithstown confirming the applicant as a valued neighbour.
- The applicant and his wife are involved in local community organisations.
- Period of residency - The applicant indicated in error in November 2014 that he had resided at Four Acres for three years. Documentation and sworn affidavit has demonstrated that he has resided there since 2009, as was acknowledged in the Planning Officer's report, but it is not clear if MCC has accepted the intrinsic links.
- Financial situation - Letter from Sean McKenny & Co. Certified Accountants and Auditor indicates that the applicant lost his previous house due to serious financial difficulty and at a significant financial loss. The failure of the Council to give the applicant the benefit of the

policy provisions regarding financial distress is unfair and arbitrary. A registered auditor is deemed in all other aspects of society to be independent in their assessment and are professionally trained to arbitrate on such financial matters and Meath were not entitled to arbitrarily ignore Mr McKenny's report.

- Precedent – The applicant highlighted the following cases where 'unavoidable financial circumstances' were relevant – TA12/0263, PL17.241445, and SA/801385, PL17.203239 – but the Planning Officer makes no reference to same. A solicitor's letter formed the evidential basis for 'unavoidable financial circumstances' in one case.
- The Council has acted ultra vires in this matter having failed to follow its own procedures to determine financial distress as laid down in Section 10 of the CDP.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response (21/03/16)

The Planning Authority is not satisfied, based on the information contained within the application, that documentary evidence has been submitted to demonstrate that the properties in question have been sold and were sold due to unavoidable financial circumstances.

6.2 Observations on grounds of appeal

None received to date.

7.0 POLICY CONTEXT

Meath County Development Plan 2013-2019

Section 102 Rural Settlement Strategy

RUR DEV SP 1

RUR DEV SP 2

RD POL 1

RD POL 2

RD POL 3

Section 10.4 - Persons who are an Intrinsic Part of the Rural Community

8.0 ASSESSMENT

The main issues arising may be dealt with under the following headings:

1. Compliance with rural housing policy
2. Other issues

3. Appropriate Assessment

8.1.0 Compliance with rural housing policy

8.1.1 It is the policy of Meath County Council (RD POL 1) within Rural Areas under Strong Urban Influence (Map 10.1 of CDP refers) *'To ensure that individual house developments in rural areas satisfy the housing requirements of persons who are an intrinsic part of the rural community in which they are proposed, subject to compliance with normal planning criteria.'* Persons who are an Intrinsic Part of the Rural Community are defined under section 10.4 of the plan. Apart from those persons involved in agriculture or related rural employment, other who may be considered include ,

'Persons who have spent substantial periods of their lives, living in rural areas as members of the established rural community for a period in excess of five years and who do not possess a dwelling or who have not possessed a dwelling in the past in which they have resided or who possess a dwelling in which they do not currently reside;'

It further states:

'Where an applicant for a one off house in the countryside can demonstrate, by the submission of documentary evidence, that their original dwelling was sold due to unavoidable financial circumstances, such applications will be considered on their individual merits, where the applicant satisfies local housing need criteria. This consideration does not override the other normal assessment criteria as set out.'

8.1.2 The applicant submits that they have submitted sufficient documentation with the application to demonstrate they are *'intrinsically linked'* to the area, having lived in the neighbouring property for in excess of 5 years and having strong community, educational and recreational links to the area concerned. The applicant also submits that they have demonstrated that they comply with policy under section 10 of the CDP regarding financial distress and that the Planning Authority acted ultra vires on this matter in failing to follow its own procedures. They further submit that the documentary evidence submitted (a letter from a certified accountant and auditor) should be accepted as equivalent to that of a solicitor's letter as documentary evidence, such a letter being accepted by the County Council and the Board in the case of Reg.ref.TA12/0262 / PL17.241445.

8.1.3 The Planning Authority has responded that it is not satisfied, based on the information contained within the application, that documentary evidence has

been submitted to demonstrate that the properties in question have been sold and were sold due to unavoidable financial circumstances. It is evident from the Planner's Report that she had regard to the documentation submitted by the applicant concerning 'financial distress' but considered it insufficient in the absence of documentation from financial institutions.

- 8.1.4 I note the letter on file from Sean McKenny & Co. Certified Accountants and Auditors setting out the financial situation leading to the sale of his house in September 2002 at a loss of €19,000. The letter also understands that Mr McCoy, on his marriage in late 2006, moved into a house owned by his wife, that he subsequently accumulated further debts from his time studying and was unable to obtain work due to the recession in 2008; that due to continuing financial distress and negative equity Mrs McCoy was forced to put her property up for sale and they moved to rent free accommodation provided by Mr McCoy's brother.
- 8.1.5 Whilst Mr McKenny would appear to have dealings with the applicant, Mr McCoy concerning his financial situation in the past, the letter provides only hearsay information for the sale of Mrs McCoy's home. As pointed out by the Planning Officer, no documentary evidence has been submitted in support, as is required under section 10.2 of the CDP. As the CDP does not specify the nature of documentation required in this regard there must necessarily be flexibility in assessing same, however it is not unreasonable of the Planning Authority to require unambiguous documentation from the relevant financial institution.
- 8.1.6 The letter from Sean McKenny & Co. is not signed, there is nothing to support the credentials of Mr McKenny or his company and the applicant's sworn affidavit does not refer to the letter or the issue of 'financial distress' as relates to the Council's rural housing policy. The letter does not therefore constitute unambiguous evidence.
- 8.1.7 I am satisfied that the applicant has not demonstrated compliance with the Council's rural housing strategy and policy to the standard required in the Meath County Development Plan, 2013-2017, within Rural Areas under Strong Urban Influence, concerning prior home ownership and financial distress and is contrary to Council policy RD POL 1 and to Government policy on rural housing as set out in the Sustainable Rural Housing Guidelines (2005).

8.2.0 Other issues

- 8.2.1 It is proposed to connect to the public watermains supply and to the Smithstown Group Sewerage Scheme. This is no objection from Irish Water.

8.2.2 The proposed access is onto a private lane which indirectly accesses onto the R132 within the 50kph speed limit via an existing junction with a local road. The SEE Road Design has no objection on roads grounds.

8.2.3 The Planning Officer had no concerns regarding proposed design and layout. I consider this reasonable.

8.3.0 Appropriate Assessment

8.3.1 Having regard to relatively small scale of the proposed physical development, comprising a dwellinghouse, stables and associated works, to the proposal to connect to the existing group water scheme and watermains supply, and to the distance of the proposal site to the nearest relevant Natura 2000 sites, the River Nanny Shore and Estuary SPA site no.004198, c.1.29km to the east-southeast and the Boyne Estuary SPA site no.004080, c.3.8km to the northeast, 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.

9.0 CONCLUSIONS AND RECOMMENDATION

9.1 It is considered that the proposed development should be **REFUSED** for the reasons and considerations hereunder.

REASONS AND CONSIDERATIONS

Having regard to the location of the site within Rural Areas under Strong Urban Influence identified on Map 10.1 of the Meath County Development Plan 2013-2019 where housing is restricted to the housing requirements of persons who are an intrinsic part of the rural community under policy RD POL 1 of the Development Plan, which is considered reasonable and consistent with the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities (2005). It is considered that the applicant does not come within the scope of persons who are an intrinsic part of the community by reason having previously owned house or houses and not having demonstrated by the submission of appropriate and unambiguous documentary evidence, that same were sold due to unavoidable financial circumstances. The proposed development, in the absence of demonstrable rural housing need, would therefore 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.

John Desmond
Senior Planning Inspector
13/07/16