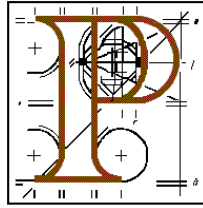


An Bord Pleanála



Inspector's Report

PL 06F 246299

Development

Erect house, new site entrance, WWTS and all associated site works.

Walshsetown, Lusk, County Dublin

Planning Application

Planning Authority: Fingal County Council

Planning Authority Reg. Ref.: F15A/0585

Applicant: Sinead Murphy

Type of Application: Planning permission.

Planning Authority Decision: Refuse permission

Planning Appeal

Appellant(s): Sinead Murphy

Type of Appeal: First v refusal

Observers: None

Date of Site Inspection: 17th June 2016

Inspector: Karla Mc Bride.

1.0 INTRODUCTION

1.1 Site and location

The appeal site is located within an attractive rural area to the W of Lusk (and the M1) in N County Dublin. The site is centrally located within an agricultural field that slopes down from NE to SW towards a stream and small wooded area. The site boundaries are defined by mature hedgerows and trees to the NE and SW whilst the boundaries to the NW and SE are undefined. Access to the site is located off the local road to the NE and a line of ESB poles traverse the site from NE to SW. There are several farms and detached houses in the wider area including the applicant's family home and grandparent's house to the E. Photographs and maps describe the site and location in detail.

1.2 Proposed Development

Permission is being sought to erect a house on a c.0.4ha site:

- The c.352sq.m house would be part single and part 2-storey.
- It would be c.14.5m wide, c.20m deep and c.6.5m to 9.2m high.
- The vehicular entrance would be set back off the local road.
- The WWTS would be located to the front of the house.
- All associated site works.

Accompanying documents:

- Land Registry documents
- Rural housing policy supporting documentation
- Soil Suitability report

1.3 Planning Authority's Decision

The PA decided to refuse planning permission for 1 reason related to non-compliance with the rural housing objective for High Amenity Areas and material contravention of Objective RH07.

This decision reflects the report of the County Planning Officer.

Transportation Dept requested FI in relation to sightlines and visibility.

Water Services & Irish Water had no objections subject to conditions.

Public submissions: Two support letters from local representatives.

1.4 Planning history: No relevant planning history for the site.

2.0 SUSTAINABLE RURAL HOUSING GUIDELINES FOR PAs, 2005

These Guidelines state that planning authorities should:

- Ensure the needs of rural communities are identified in the development plan process, and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated.
- Manage pressure for overspill development from urban areas in the rural areas closest to the main cities and towns.
- Recognise that exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation – may require a person to live in a particular environment or close to family support.
- The Guidelines highlight four Rural Area Types which are Areas under Strong Urban Influence, Stronger Rural Areas, Structurally Weak Areas, and Areas with Clustered Settlement Patterns.

The rural area of Fingal is classified as ‘an Area under strong Urban Influence’ and the Development Plan objectives seek “to facilitate the housing requirements of the rural community...while...directing urban-generated development to areas zoned for new housing development in cities, towns and villages”.

3.0 DEVELOPMENT PLAN

Zoning objective:

The site is located within an area zoned with the objective “HA” in the Fingal County Development Plan 2011-2017. This zoning objective seeks to “Protect and enhance high amenity areas” and the Vision seeks to “Protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored.” Residential use is permitted in principle subject to Note 4 which requires “compliance with rural settlement strategy.”

Rural Housing Settlement Strategy:

The Settlement Strategy for housing in the open countryside serves to meet settlement needs which are the result of a genuine rural-generated housing need.

- Rural-generated housing needs are considered to be the housing needs of people who have social ties, or occupations which are functionally related to the rural areas of the County
- Only members of families actively involved in farming within the rural area will be considered for a rural house in areas of the County which have a zoning objective HA.
- In areas within the HA zoning objective, only one incremental house will be permitted but, where exceptional health circumstances are demonstrated, an additional house will be considered.

Rural Housing policies and objectives

Objective RH07: seeks to permit houses in areas with a zoning objective HA, only to those who have a defined essential housing need based on their involvement in farming or exceptional health circumstances.

Objective RH08 requires that any house which is granted planning permission in the areas with the zoning objective, RU, HA, or GB will be subject to a requirement of occupancy of seven years.

Objective RH09 seeks to permit one additional dwelling per farm family within areas with the zoning objective GB or HA, where the applicant demonstrates close family ties with the rural area, and, by their direct participation in running the family farm.

Objective RH10 requires applicants to demonstrate that any proposed dwelling is for use as the applicant's primary residence and the proposed dwelling will be located on a farm where the applicant's family currently reside.

Appendix 5: provides interim siting & design guidance for rural housing.

Heritage:

No designated sites (SPA/SAC/NHAs), historic sites or protected structures in the vicinity.

4.0 APPEAL

4.1 First Party appeal

- The Development Plan states that permission will be considered for one incremental house in areas in HA zone areas on a family farm for close family members who are demonstrated to be actively and directly engaged in running the family farm.
- The Plan goes on to recognise that farming is no longer a full time occupation for many farmers and it gives consideration to farmers whose income is supplemented by off-farm work.
- The applicant has submitted letters from her parent's doctor outlining their health issues.
- On receipt of permission, the applicant will seek a transfer from her Dublin 1 Garda Division to a nearby Division which will allow her to care for her sick parents and look after the family farm.
- The applicant's grandfather (Thomas Murphy) is 92 years old and he will pass the farm to the applicant's father (Michael Murphy) who will not be able to manage the 25 acre farm because of ill health.
- The applicant lives with her parents who she helps to look after.
- The proposed house has been designed so as to accommodate the applicant's parents in the future should the need arise, and the applicant has a genuine need to live in the area on the basis of her parent's poor health.
- Conflicting objectives in the Development Plan allow the Board to consider this case, the settlement needs of people with genuine rural housing should be met especially with respect to social ties, no other family member has received permission since 1999 as per Table RH03, and the Council did not give due consideration to the applicant's exceptional health circumstances.
- Although the lands are not currently farmed by the family, the applicant intends to take up part time farming if permission is granted.
- The applicant grew up in the area and lived there for c.28 years (supporting documentation from schools etc. attached on file).

4.2 Planning Authority response

The planning authority stated that the applicant has still not demonstrated compliance with the Council's rural housing policy for High Amenity Areas in accordance with Objective RH07.

4.3 Prescribed Bodies

The appeal was not circulated to any Prescribed Bodies.

5.0 REVIEW OF ISSUES AND ASSESSMENT

The main issues arising in this case are:

1. Material contravention
2. Principle of development
3. Visual and residential amenity
4. Vehicular access
5. Environmental services
6. Other issues

5.1 Material contravention

The planning authority decided to refuse planning permission for the proposed house for 1 reason related to non-compliance with the rural housing objective for High Amenity Areas and material contravention of Objective RH07. This objective seeks to permit houses in areas with a zoning objective HA, only to those who have a defined essential housing need based on their involvement in farming or exceptional health circumstances.

Section 37 (2) (a) and (2) (b) of the Planning and Development Act, 2000 (as amended) set out the circumstances under which the Board can give overturn the decision of a planning authority when material contravention forms part of the reason for refusal.

The proposed development is not of national or regional importance, the Development Plan incorporates all relevant national planning policy and regional guidance, the policies and objectives are clearly stated in the Plan, and the pattern of planning permissions since the last Development Plan was adopted reflect current planning policy for the area. I am satisfied that the current case does not represent an exemption under Section 37 (2) (b).

In the event that the Board do not concur, the merits of the proposed development will be assessed in the following sections.

5.2 Principle of development

The proposed house would be located within a rural area covered by the “HA” zoning objective which seeks to “Protect and enhance high amenity areas.” The Council’s vision for High Amenity Areas seeks to protect them from inappropriate development, and although residential use is permitted in principle, this is subject to strict compliance with the Council’s rural settlement strategy and rural housing policy objectives.

The Strategy seeks to accommodate the rural-generated housing needs of people who have social ties, or occupations which are functionally related to rural areas. However only members of families actively involved in farming within the rural area will be considered for a rural house in High Amenity Areas and only one incremental house will be permitted except where “exceptional health circumstances” are demonstrated and an additional house will be considered.

According to Objective RH07, houses will only be permitted in High Amenity Areas for people who have a defined essential housing need based on their involvement in farming or exceptional health circumstances. Objective RH09 will permit one additional dwelling per farm family where the applicant demonstrates close family ties with the rural area, and, by their direct participation in running the family farm. Objective RH10 requires applicants to demonstrate that any proposed dwelling is for use as the applicant’s primary residence and the proposed dwelling will be located on a farm where the applicant’s family currently reside. Table RH03 requires that no other permissions should have been granted to family members for a house on the farmland since 1999.

The applicant submits that she qualifies for a house in this High Amenity Area on the basis that she is a member of an established farming family, she has long standing social ties to the area, there are exceptional circumstances related to her parents health, and that no other family member has received planning permission for a house on the landholding in recent years.

The proposed house would be located on lands which form part of the c.25 acre farm that is owned by the applicant’s elderly grandfather, who lives in a house to the E of the proposed house. Ms. Murphy states that the farm will be inherited by her father who lives with his wife (the applicant’s mother) in a house to the NE of the proposed house, and that both parents have poor health. The lands are not currently farmed by the applicant’s family although this might not always be the case.

Ms. Murphy, who is a full time Garda employee based in Dublin 1, states that in the event of planning permission being granted, she will seek a transfer to a nearby Division so that she can take care of her parents and work as a part time farmer.

The applicant has submitted documentary evidence to support her application for a house in this rural area. I am satisfied that Ms. Murphy's family own the farm on which the proposed house would be located and that her immediate family still live on the lands. I am also satisfied that that she has lived a large portion of her life in the area and attended local schools, and that she currently lives in the family home with her parents. Ms. Murphy has also submitted medical evidence in relation to her parent's health, and she has provided written confirmation that the farm will be inherited by her father.

Notwithstanding all of the above, I am not satisfied that Ms. Murphy complies with the terms and conditions of the Council's rural settlement strategy, and rural housing policy objectives for High Amenity Areas.

Firstly, Ms. Murphy has a full time job in Dublin, she does not work on the family farm and there is no guarantee that she would be able to secure a transfer to a nearby Garda Division in the foreseeable future which would enable her to become a part time farmer.

Secondly, Ms. Murphy's immediate family already own and occupy two houses on the landholding, although I accept that neither has been permitted since 1999.

Thirdly, the exceptional health circumstances referred to in the 2006 Rural Housing Guidelines relate to an applicant who needs to live in a rural area for exceptional health reasons. The Guidelines state that such reasons "may require a person to live in a particular environment or close to family support" and this exception relates to the health of the applicant and not members of their family. This guidance is reflected in the Council's strategy and policy objectives for rural housing. Ms. Murphy's parents, who have poor health, already live in this rural area and the applicant does not have any exceptional health circumstances that could warrant an exception.

Finally, it should be noted that other options exist for Ms. Murphy. The applicant may wish to explore the possibility of extending one of the two existing family homes on the farmland to provide additional living accommodation, such as a family or granny flat.

5.2 Visual and residential amenity

The proposed part single and part 2-storey house would be set into the slope with the single storey section to the front/NE facing the local road and the 2-storey section to the rear/SW overlooking the stream and small wooded area.

The proposed split level house would have a suburban style design and layout although no details of the external finished have been provided. The house would be set back a significant distance from the road side boundary in the approximate centre of a large, open and exposed agricultural field. The front and rear garden boundaries would be defined by hedges and landscaping.

Having regard to the sloping nature of the site and the presence of substantial mature hedgerows and trees along this boundary, it is unlikely that the proposed house would be highly visible from the public road to the NE. However, the proposed vehicular entrance off this road would require the removal of a substantial amount of hedgerow to provide adequate sightlines and visibility (refer to section 5.3 below) and this could open up the proposed house to public view. This increased level of exposure, in combination with the suburban style design and the location of the house within an agricultural field, has the potential to affect the visual amenities of the High Amenity Area.

The proposed house would provide for an acceptable level of residential amenity with respect to floor area, room size, orientation, daylight, sunlight, storage and private amenity space.

The proposed house would not overlook or overshadow any houses in the area having regard to the substantial separation distance with neighbouring properties.

5.3 Vehicular access and car parking

The proposed vehicular entrance would be located along a section of road that is covered by the 80km per hour speed limit and the site entrance would be located on the outside of a sharp horizontal bend in the road. Although a 145m sightline is usually required from a 2.4m set back within this speed zone, the Council's Road's Engineer was satisfied that a 90m sightline would be sufficient at this location, having regard to the particular characteristics of this section of road which would cause car speeds to reduce 50-60km per hour.

However, the Roads Engineer requested that the applicant confirm that adequate sightlines and visibility can be provided at the entrance, by way of FI. The planning authority did not request this information as it decided to refuse planning permission, and the applicant has not provided the information as part of the appeal submission.

The local road to the NE of the site is narrow, winding and lined with mature hedgerows' and trees, and there are existing vehicular entrances to the neighbouring farm on the opposite side of the road. Notwithstanding the 80km per hour speed limit, I am satisfied that cars travelling along this section of the road would be unlikely to exceed 50-60km per hour, and that a 90m set back would be acceptable. However, the proposed vehicular entrance would be located along a bend in the road where the sightlines do not appear to be adequate and in close proximity to other entrances. In the absence of detailed information in relation to the adequacy of the sightlines and visibility, the proposed arrangements could give rise to a traffic hazard and endanger the safety of other road users.

Adequate off street car parking would be provided.

5.4 *Environmental services*

A series of site suitability test were undertaken in September 2015. The site slopes down towards a stream and there are no wells in the vicinity. According to the site suitability report the surrounding area is known to have good percolation, are no drainage ditches located with 250m of the site and there was no surface water ponding on site. However, based on my site inspection, there is a ditch along the road side boundary c. 60m to the NE, although it was noted to be upslope of the proposed works. Several trial holes and foundation trenches have been excavated on the site, and I noted that ponding has occurred in some these locations, and that some of the water was stagnant.

The test results indicate that the depth to ground water was 1.10m with an average T value of 59. The report identified the need to protect ground water, it concluded that the site was not suitable for a septic tank or a secondary treatment system and it recommended the use of tertiary treatment comprising a packaged waste water treatment system and polishing filter. This is considered to be an acceptable arrangement subject to compliance with EPA standards and any requirements of Irish Water and the County Council.

The water supply to the proposed house would be via a new connection to the public mains which is considered acceptable subject to compliance any requirements of Irish Water and the County Council.

5.5 Other issues

Appropriate assessment: The proposed development would not have a direct link to any European Sites.

Built heritage: The proposed development would not have an adverse impact on any features of interest heritage.

Financial contribution: Standard conditions should be applied in accordance with the Council's Section 48 Scheme.

Public utilities: The ESB poles that traverse the site would have to be relocated at the developer's expense.

6.0 RECOMMENDATION

Arising from my assessment of the appeal case I recommend that planning permission should be refused for the proposed development for the reasons and considerations set down below.

REASONS AND CONSIDERATIONS

1. The proposed development would be located within an attractive rural area which is zoned "HA" for High Amenity in the Fingal Development Plan 2011-2017. This zoning objective seeks to "protect and enhance high amenity areas" and Objective RH07 seeks to "permit houses in areas with a zoning objective HA, only to those who have a defined essential housing need based on their involvement in farming or exceptional health circumstances." Notwithstanding the plans and particulars that were submitted this application, the Board is not satisfied on the basis of the information provided that the applicant has demonstrated satisfactory compliance with Objective RH07. The proposed development would materially contravene Objective RH07 of the Fingal Development Plan 2011-2001, and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed vehicular entrance would be located along a bend in the local road which is narrow and defined by mature hedgerows and trees which could restrict visibility. The applicant has not demonstrated that adequate sightlines and visibility could be achieved at the proposed vehicular entrance in both directions along this local road. In the absence of such details, the proposed development could give to a traffic hazard and endanger the safety of other road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Karla Mc Bride
Senior Inspector
22nd June 2016