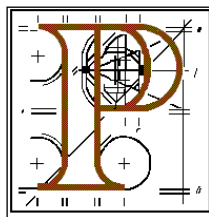


An Bord Pleanála Ref.: PL25M. 246642

An Bord Pleanála



Inspector's Report

Development: Permission for house, garage, mini treatment system and polishing filter. Permission for demolition of existing garage and relocation of an entrance onto the public road at Rathganny, Multyfarnham, Co. Westmeath.

Planning Application

Planning Authority: Westmeath County Council
Planning Authority Reg. Ref.: 16/6077
Applicant: David Kelly
Type of Application: Permission
Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): Sean Feeney
Type of Appeal: 3rd Party
Observers: None
Date of Site Inspection: 25th August 2016
Inspector: Fiona Fair
Appendices: Photographs
Site location Map
Extracts from the County Development Plan 2014 – 2020

1.0 SITE DESCRIPTION (see photographs)

The appeal site (0.263 ha) site is located approx. 12.5 Km north of Mullingar town and approx. 1 Km to the west of Multyfarnham village in County Westmeath. It lies to the south east side of local primary road L1820. The site forms the front and side garden of an existing detached bungalow, which is situated to the south west of the appeal site. The site is situated in a row of four dwellings. I agree with the opinion of the planning authority that the dwellings to the south west appear to be land commission houses. The dwelling to the north east is a storey and a half type farm house sited close and perpendicular to the road.

The site is elevated (102.62 – 103.54 AOD) from the roadway (99.60 - 100.00 AOD) with an open bank to the roadside and part timber post fence, part block wall along the roadside boundary. The appeal site has a separate gravelled entrance with piers off the local county road to that serving the applicant's parent's bungalow. The north eastern boundary with the neighbouring property comprises a well maintained mature leylandii hedge of approx. 2.2m in height. A single storey garage / shed located on the appeal site is proposed to be demolished as part of the subject application. Neighbouring sheds are located to the south western boundary and to the rear of the applicant's parent's bungalow.

2.0 PROPOSAL:

Planning permission is sought to construct:

- A part single storey part two storey type dwelling (266.8 sq.m)
- Garage (33.8 sq.m),
- Mini treatment system & associated polishing filter,
- Demolish existing garage (45 sq. m)
- Relocate existing family entrance onto public road. This new entrance will serve both existing & proposed dwellings.
- Remove a separate existing gateway onto public road

- Associated site works

The house is crucifix in form with a ridge height of some 6.9m. It comprises a two storey dwelling with single storey projections and glazed link. The garage is proposed to the rear (south) of the dwelling in line with neighbouring sheds to the south west.

The application was accompanied with:

- Site Characterisation Assessment
- Locals Needs Questionnaire
- Letter of consent from Landowners
- Local Needs Letter from applicant

3.0 PLANNING AUTHORITY'S DECISION

Permission was granted subject to 13 conditions including landscaping, provision of sightlines, use of a proprietary sewage treatment system and soil polishing filter and 7 year occupancy condition.

Condition 2 states: *'First floor windows on north eastern elevation shall be obscure glazed and fixed shut up to 1.5m internal height in the interests of privacy.'*

4.0 TECHNICAL REPORTS

4.1 Planners Report:

The report reflects the decision to grant planning permission.

4.2 Area Engineer's Report:

No Objection subject to condition.

4.3 Irish Water

No objection

4.4 Inspectors Note.

The File was referred (by the planning authority) to An Taisce, The Heritage Council and the Development Applications Unit of the Department of Housing, Planning, Community and Local Government. No Responses were received.

4.5 Objections/Submissions

An objection was submitted to the planning authority. The concerns highlighted are similar to those raised in the 3rd party appeal submitted to the Board and summarised in detail below.

5.0 APPEAL GROUNDS

A third party appeal has been lodged by Seán Feeney. The grounds of appeal are summarised as follows:

- The house design is not in keeping with local vernacular style and adjoining dwellings
- Overlooking to appellants neighbouring property from proposed ground and first floor north eastern facing windows.
- The sight distance to the south west from the proposed access is substandard, less than minimum requirement of 90m
- Increase in the proliferation of septic tanks in one area thereby increasing the risk of environmental damage
- Site is unsuitable for development of any kind
- Appeal accompanied with notification of decision to grant planning permission Reg. ref. 16-6077

6.0 RESPONSES

6.1 No response to the appeal was received from the Planning Authority.

6.2 A response was received from John Madden and Associates on behalf of the First party David Kelly and the grounds of the response are summarised as follows:

- The house design proposed complies with the local style for housing in the area and the guidelines for housing as specified in the Westmeath County Council Rural Design Guidelines. Traditional scale and form with the chimney located on the ridge line, with natural materials characteristic of the area.
- The bungalow and two storey design complements the adjoining houses to the south west and to the north east.
- The height of the two storey element is broadly in line with the adjoining neighbouring dwelling to the north east. A shallower pitch is used (35 degrees) and narrow end gables.
- No overlooking will result from ground floor windows. Condition 2 of the notification of decision to grant planning permission overcomes the issue of overlooking.
- Applicant has no objection to An Bord Pleanala omitting the bedroom window on the north eastern elevation at first floor and installing a velux window in the en-suite.
- The sightlines proposed comply with statutory minimum requirements. Road Design section of Westmeath County Council have no objection.
- The sewerage treatment plant proposed complies with the County Development plan and EPA Guidelines.
- Response accompanied with photographs

6.3 A response was received from Sean Feeney and the grounds of the response are summarised as follows:

- The size, design and extent of the proposal would give rise to overdevelopment of a confined site and is at variance with the design of houses in the area.
- A difference in ridge height of 0.75m between the proposed dwelling and the appellants neighbouring dwelling is significant.
- High level kitchen window on the north eastern elevation is of concern with respect to overlooking

- The party hedge could be removed or die leaving the appellants dwelling completely exposed to the full side elevation of the proposed dwelling
- Surprised that Westmeath County Council asked that windows at first floor be obscure glazed, only.
- The photographs submitted by the first party are very selective and make the appeal site look larger than it actually is.
- Regardless of the site characterisation assessment report results, given the proliferation of septic tanks in very confined area the proposal could lead to a health risk in the event of percolation areas failing or lacking proper maintenance.
- Response accompanied with the third party letter of objection submitted to the planning authority dated 14.04.16

7.0 PLANNING HISTORY

7.1 Reg. Ref.94/229 Outline Permission **refused** to Sean Kelly for the construction of house with septic tank. Reasons for refusal related to septic tanks (2) and inadequate sightlines (1).

7.2 Reg. Ref. 15/6212: Application by David Kelly for a house and treatment system of similar description to that currently proposed was **withdrawn**.

8.0 DEVELOPMENT PLAN

The relevant statutory Development Plan is the *Westmeath County Development Plan (CDP) 2014 – 2020*. Relevant sections of the CDP Plan (excerpts attached as appendix to this report) include:

11.3 Rural Settlement

11.6 & 11.7 Strong rural areas under significant urban influence policy

11.11 Environmental capacity

11.12 Rural housing policies & objectives

11.13 Siting and design of rural housing

14.4 New residential development in a rural area

The appeal site is located within an area defined as being a ‘*Strong Rural Area under Significant Urban influence*, as per Map 11.1 of the CDP, ‘Rural Typologies in County Westmeath’ – indicating each area type. Strong Rural Area under significant urban influence comprise most of the County:

P-LHN1 ‘To permit residential development in areas outside of the development boundaries of the settlement hierarchy subject to the following circumstances.....:

(5) Persons who have personal, family or economic ties within the area, including returning emigrants.

***P-SRA1** To accommodate demand from individuals for permanent residential development in strong rural areas who have strong links to the area and who are an intrinsic part of the rural community, subject to good planning practice, environmental carrying capacity and landscape protection considerations.*

***P-LHN2** To manage the development of one off rural housing in conjunction with the Rural Typology Map and Local Need criteria. Applicants must submit documentary evidence of compliance with the rural housing policy and comply with local need criteria.*

***P-GRH2** To promote the clustering of houses particularly on the same landholding or for the same family and promote shared accesses to minimise hedgerow removal.*

Westmeath Rural Housing Design Guidelines, April 2005.

9.0 NATIONAL PLANNING POLICY

Sustainable Rural Housing Guidelines 2005 the site is within an area designated as an Area under Strong Urban Influence. Within such areas

urban generated housing should be directed to new housing development in settlements whilst facilitating housing for people who are intrinsically linked to a rurally based community.

10.0 ASSESSMENT

I consider the main planning issues to be:

10.1 Compliance with planning policy

10.2 Ribbon development

10.3 Impact upon amenity of adjoining residential property

10.4 Foul drainage

10.5 Sightlines

10.6 Appropriate Assessment (AA)

10.1 Compliance with planning policy

The local needs form and supplementary documentation submitted in support of the application indicates that the applicant (Davis Kelly) is a native of the Rathganny rural area, he is proposing to return to the area where he grew up and attended school to build on a site adjacent to and in the ownership of his parents. The applicant's parents' home is located immediately adjacent to the appeal site and is outlined in blue on the submitted plans and drawings. A letter of consent to making the application, to construct a dwelling, on the parents land has been submitted by the applicant's mother, Mary Kelly. Based on the information submitted, I concur with the opinion of the planning authority that the applicant has demonstrated a genuine local need in compliance with the policies P-SRA1, P-LHN2 and P-GRH2 and specifically section 11.8 (5) of the County Development Plan, see section 8.0 'Development Plan' of this report above, for stated policies.

While I agree that the current County Development Plan and the Rural Housing Guidelines allow for a positive presumption for the applicants case type I am of the opinion that other considerations such as design and siting

considerations, ribbon development and roads / access issues must be considered.

10.2 Ribbon Development

To the north east and to the south west on the same side of this road lie three dwelling houses within a 250m frontage. The proposed development would be the 5th house in a row within 250m road frontage.

Regard is had to Appendix 4: Ribbon Development of the ‘Sustainable Rural Housing Planning Guidelines’ and section 11.14 ‘Development within the Hinterland of Larger Towns’ set out in the Westmeath County Development Plan.

Appendix 4 of the Sustainable Rural Housing Guidelines sets out the following: *‘areas characterised by ribbon development will in most cases be located on the edges of cities and towns and will exhibit characteristics such as a high density of almost continuous road frontage type development, for example where 5 or more houses exist on any one side of a given 250 metres of road frontage’.*

The aim of policy is clearly to avoid the creation of ribbon development for a variety of reasons relating to road safety, future demands for the provision of public infrastructure as well as visual impacts. In assessing individual housing proposals in rural areas it is recommended that a view needs to be formed as to whether that proposal would contribute to or exacerbate ribbon development. The Guidelines go on to state:

‘Whether a given proposal will exacerbate such ribbon development or could be considered will depend on:

- *The type of rural area and circumstances of the applicant;*
- *The degree to which the proposal might be considered infill development,*

- *The degree to which existing ribbon development would be extended or whether distinct areas of ribbon development would coalesce as a result of the development’.*

From my site visit it is clear that the proposed development, being an infill plot, if permitted would not extend ribbon development, it is located clustered between two existing dwellings.

Having cognisance to information contained on the file with respect to applicants links to the appeal site, family landownership and compliance with local need policy contained in the Westmeath County Development Plan, it is my opinion, the applicant complies with Development Plan rural housing policy being a person who has personal, family ties with the area, including a returning emigrant (section 11.14) and policy P-GRH2, which seeks *‘To promote the clustering of houses particularly on the same landholding or for the same family and promote shared accesses to minimise hedgerow removal.’*

Overall, having regard to the applicants circumstances, the Sustainable Rural Housing Guidelines and the Westmeath County Development Plan, it is considered that the proposed development would be considered infill development, would not seriously injure the amenities of the area and would, therefore, accord with the proper planning and sustainable development of the area.

10.3 Impact upon amenity of adjoining residential property

Concern has been raised with respect to impact upon amenity of the area and impact upon existing residential amenity. In particular, third party concern has been raised respect to scale of the dwelling, design and overlooking of property to the north east of the subject appeal site.

The appeal site is not located within a high amenity area, an SAC or SPA. It is situated within Landscape Character Area 4, Central Hills and Lakes’, as per

Map 06, Westmeath Landscape Character Assessment, of the WCDP 2014 – 2020.

The proposed dwelling is part two storey part single storey in nature, with the two storey element 6.9m in height to ridge. The design is traditional in form with a contemporary element. I am of the opinion it has been specifically designed to have regard to the sites constraints and to adjoining existing development. The height proposed has cognisance to the existing single storey bungalow to the south west and to the storey and a half farm house to the north east. I am of the opinion that the design of the dwelling has regard to the 'Westmeath Rural Design Guidelines'. I do not consider that the design of the dwelling, regard being had to its form, scale and mass, would be out of character with its setting, cognisance being had to ground level and finished floor level of the site, the proposed dwelling and adjoining dwellings.

While a ground floor high level window (kitchen) is proposed on the north eastern elevation, given the ground floor nature of the window and on-site landscaping, I do not foresee overlooking resulting. The appellant raises concern with respect to the two first floor windows on the north eastern elevation. One bedroom window and one en-suite window. I note and consider acceptable the condition of the notification of decision to grant permission Reg. Ref.16/6077 which states: *'First floor windows on north eastern elevation shall be obscure glazed and fixed shut up to 1.5m internal height in the interests of privacy.'* This condition overcomes the concerns raised and I note the bedroom window in question is not the only window serving this bedroom therefore accommodation standards for future occupants is not compromised.

Given that the proposed dwelling is set back some 14m from the public road, is in excess of 3m from the north eastern boundary with the appellants property, that a substantial mature hedge, 1.2m in height, is in-situ along the north eastern boundary, I am of the opinion that the design of the dwelling is acceptable, it would not overlook or impact upon the residential amenity currently enjoyed by the appellant's property. Cognisance is had that the

proposed development comprises an infill dwelling for a family member of the host dwelling staggered between two existing dwellings, subject to condition no first floor windows will overlook the appellants property and that the appellants dwelling has no windows at first floor opposing the side elevation of the proposed dwelling.

Overall it is my opinion that the proposed development would not be out of character with the area and would not be unduly obtrusive in its setting. If permission is forthcoming from the Board I recommend that the mature hedging to the north eastern boundary should be conditioned to be retained, in the interest of residential and visual amenity.

10.4 Foul Drainage

The appeal site is not located within a designated flood area as per the latest CFRAMs assessment.

I note the Site Suitability Assessment submitted, a T Value of 7 was recorded and a P value of >100, so it is recommended that a mechanical aeration sewerage treatment system is used followed by soil polishing, due to the impermeable nature of the top layer of soil.

Despite the concerns from the Third Party with respect to over concentration of septic tanks at this location, no evidence has been put forward to suggest that this additional dwelling would result in a risk to public health.

The Council's Area Engineer did not raise objection and recommended conditions for the proposed foul drainage system. I note the requirement that the wastewater treatment plant conform to the most recent EPA guidelines.

Taking the foregoing into account I therefore do not consider sufficient grounds exist to refuse planning permission on grounds the development would be prejudicial to public health.

10.5 Sightlines

The third party has raised concerns with respect to sightlines at the proposed entrance. It is submitted that the minimum sightline requirement of 90m is not achieved in a north easterly direction.

The applicant proposes to relocate the existing family entrance onto the public road (L-1820), the new entrance would serve both the existing and proposed dwellings. It is also proposed to remove the separate existing entrance (to the north eastern boundary) onto the public road.

I note the area engineer has no objection to the access proposed subject to condition.

From the plans and drawings submitted and from my site visit I am of the opinion that the required 2.4m x 90m sightlines can be achieved and maintained at the relocated shared entrance. The situation on the ground would be improved by the alterations proposed and the proposal is in line with guidance and policy which promotes shared accesses for houses on the same landholding.

Taking the foregoing into account I therefore do not consider sufficient grounds exist to refuse planning permission on grounds the development would be give rise to a traffic hazard.

10.6 Appropriate Assessment (AA)

The planning authority has not raised concern with respect to impact upon the integrity of any nearby Natura 2000 sites having regard to their conservation objectives.

The appeal site is not located within or adjoining any SAC or SPA, Lough Owel SPA is located to the south west and Lough Derravaragh SPA is located to the north east.

Given the foregoing it is considered that the proposed development would not give rise to any significant adverse direct, indirect or secondary impacts on the integrity of any nearby Natura 2000 sites having regard to separation distances involved, development proposed and conservation objectives of adjoining Natura 2000 sites.

11.0 RECOMMENDATION

I recommend that planning permission be granted subject to conditions as set out below.

12.0 REASONS AND CONSIDERATIONS

Having regard to the development plan, it is considered that the applicant complies with rural housing policy, being a person who has personal, family ties within the area, including returning emigrants. It is considered that the proposed development would not give rise to traffic hazard, nor give rise to serious injury to residential or visual amenities, and would be acceptable in terms of public health. Therefore, subject to compliance with the conditions as contained hereunder, the proposed development is in accordance with the proper planning and sustainable development of the area.

13.0 CONDITIONS:

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. The applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

(c) This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

4. The two number first floor windows (en-suite and bedroom) on the north eastern elevation shall be glazed with obscure glass.

Reason: In the interest of residential amenity.

5. The garage shall be used solely for purposes incidental to the enjoyment of the dwellings house.

Reason: In the interests of orderly development.

6. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 18th March 2016, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. \leq 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional

indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health

7. The existing hedge along the north eastern site boundary shall be retained, and in the first planting season following occupation of the house, the site shall be planted in accordance with the landscaping scheme shown on Drg no. 2016-02, as submitted to the planning authority on the 18 day of March 2016.

Reason: In the interest of visual amenity.

8. (a) The external finishes of the proposed development shall be nap plastered, dry dash or natural stone, unless otherwise agreed in writing with the planning authority.

(b) The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity.

9. The roof shall be of a blue/black, black, dark brown or dark grey colour.

Reason: In the interest of visual amenity.

10. All service cables associated with the proposed development (such as electrical, television and telephone) shall be run underground within the site.

Reason: In the interest of the visual amenities of the area.

11. (a) The entrance to the proposed house shall be set back not less than four metres and not more than six metres from the edge of the public road.

Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees and shall not exceed one metre in height.

(b) During construction the developer shall provide adequate off carriageway parking facilities, for all traffic associated with the proposed development, incl. delivery and service vehicles / trucks. There shall be no parking along the public road.

Reason: In the interest of traffic safety.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Fiona Fair

Planning Inspector

30/08/2016