



An
Bord
Pleanála

Inspector's Report PL92.247086.

Development	House, garage and all associated site works.
Location	Gurteendangan, Castleiney, Templemore, County Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	16600503.
Applicant(s)	David and Elaine Moore.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellant(s)	Gerry Purcell.
Observer(s)	None.
Date of Site Inspection	8 th February 2017.
Inspector	Philip Davis.

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1.0 Introduction

- 1.1. This appeal is by an adjoining resident against the decision of the planning authority to grant permission for a dwelling in a rural area of County Tipperary, east of the town of Templemore. The grounds of appeal relate primarily to policy and location. The Board previously refused permission for a dwelling on this site for policy reasons.

2.0 Site Location and Description

Gurteendangan townland is located approximately 2.5 km east-south-east of the small town of Templemore in north Tipperary. The area is characterised by flat farmland divided by mid-sized fields, mostly in pasture. The hamlet of Castleiney is about 0.5 km to the south-east. The R502 road linking Templemore to Kilkenny runs north of the area, with a small network of third class roads serving the townlands and villages to the south. The area is settled with a scattering of dwellings and occasional farms on the roads between Templemore and Castleiney.

The appeal site, with a site area stated to be 0.31 hectares, is a rectangular flat section of a field in pasture use on the southern side of the minor road. South of the site are open fields. To the west is a bungalow, with a further bungalow beyond this. East of the site is a field with behind this, a farm complex. Opposite the site, to the north, is the third class road, with open fields beyond it.

3.0 Proposed Development

- 3.1. The proposed dwelling is a dwelling with entrance, garage, and septic tank.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to 12 standard conditions, including an occupancy condition.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The planning report notes previous Board decision to refuse permission on the site. Policy in the North Tipperary County Development Plan 2010 is outlined, in particular policy SS4 'Housing in the Rural Countryside'. No analysis is included, but a recommendation is made to grant permission.

4.2.2. Other Technical Reports

An AA screening on the file concludes that there is no potential for significant effect therefore AA is not required.

The applicant submitted a site characterisation form, which indicated the site is over a regionally important aquifer of high vulnerability. Water was encountered at 2.4 metres in the trial hole. The percolation tests indicated relatively poor permeability, but is considered acceptable for a septic tank (proprietary system proposed).

4.3. Prescribed Bodies

No responses on file.

4.4. Third Party Observations

The appellant submitted an objection to the proposed development.

5.0 Planning History

In 2006 the Board, on appeal, overturned the decision of the planning authority to grant permission for a dwelling on the site (**PL22.220523**). The single reason for refusal was as follows:

The proposed development is located in an area, which is identified as being a stronger rural area in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005 where it is policy to encourage development in smaller towns and villages. It is considered that the applicants do not come within the scope of the rural housing need criteria set out in the Guidelines. The proposed development, by itself and by the precedent it would set for other similar development, would lead to demands for the uneconomic extension of public services and community 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.

6.0 Policy Context

6.1. Development Plan

The proposed development is in open countryside, outside the zoned lands of Templemore and the village of Castleiney. It is within an area indicated as a 'strong rural area'. Settlement policy is set out in Section 3.4 of the Development Plan. The key policy in the North Tipperary County Development Plan 2010, as varied, is on rural housing, Policy SS4. Relevant extracts are attached in the appendix to this report.

6.2. Natural Heritage Designations

There are two Natura 2000 sites within 15 km of the site. The Kilduff/Devilsbit SAC is some 8 km to the west. The River Suir is 1.25 km to the west, but the Lower Suir SAC starts about 12 km downriver, south of Thurles.

7.0 The Appeal

7.1. Grounds of Appeal

- It is noted that the Board previously refused permission on the site for policy reasons – it is submitted that there are also other planning reasons for a refusal.
- It is argued that the proposed access is dangerous as it is close to a blind bend.
- It is noted that a significant length of hedgerow would have to be removed.
- It is stated that as the house is behind the building line the necessary screening landscaping will create amenity problems (the appellant is the adjoining houseowner).
- It is noted that the site is very close to farm buildings.

- It is submitted that a dormer style dwelling is inappropriate for the area.
- It is submitted there would be an overconcentration of septic tanks in the area.
- It is argued that the application was incomplete and should not have been accepted.

7.2. Applicant Response

- It is noted that the alternative site noted by the appellant is very similar, just west of the two adjoining dwellings, and would be little different in terms of impact.
- It is emphasised that the applicant qualifies under policy SS4 of the Development Plan.
- It is stated that the sight lines are in accordance with County Council requirements.
- It is stated that the design is in accordance with Appendix 5 (Design Guidelines).
- It is noted that there are already two dwellings within 100 metres of the farm buildings adjoining and so those buildings are already de-exempted under the 2001 regulations.
- It is noted that the site is considered appropriate following the site characterisation guidelines set out by the EPA.
- It is noted that Board will be considering the application *de novo* so any issues with the original application area not relevant.

7.3. Planning Authority Response

- It is submitted that all issues raised were fully considered and that the proposed development is in accordance with the Development Plan.

7.4. Further Responses

The appellant responded stating that the applicant has not provided a good justification for using other sites within the landholding. It is further claimed that there are regular speeding issues on this road. Objections about design and pollution are restated.

8.0 Assessment

8.1. Principle of development

The appeal site is in a rural area, which is indicated in both the Sustainable Rural Housing Guidelines 2005 and in the North Tipperary Development Plan 2010 (as amended) as a 'strong rural area'. The site is within a few hundred metres of zoned land within the village of Castleiney, and 1 km of residential zoned land in Templemore. The Development Plan does not give any indications as to reconcile stated policies to strengthen towns and villages by facilitating development to these zoned lands except insofar as it sets out categories of exemptions within Policy SS4. The previous refusal for the site was for a different applicant and under a previous development plan, but was after the Sustainable Rural Housing Guideline were adopted. The planning authority imply that they are satisfied that the applicant qualifies under Policy SS4, although they don't address the issue in any detail in the planning report.

I do not consider that there is anything on file that contradicts the conclusion of the planning authority that the applicant qualifies for a house under SS4. I would have reservations as to whether the policy as written and applied follows the spirit of the 2005 Guidelines in that the site is directly between two nearby areas with zoned and (presumably) serviced lands for housing and as such there cannot be said to be a shortage of available land or sites for local housing needs. While the broad area, which is primarily rural and not within the commuting zone of a larger urban settlement, satisfies the definition of a 'strong' rural area, it also shows strong signs of pressure, presumably an overspill from Templemore – there are numerous small strings of houses haphazardly built along the minor road network, leading to what I would consider to be higher than normal traffic levels for such a minor road, at least as I observed during my site visit.

Notwithstanding my concerns, I consider that under the somewhat loose provisions of SS4, the applicant qualifies under the current Development Plan (I note that the circumstances are different from the previous Board refusal on the site). I would therefore consider that the proposed development is not in conflict with development plan rural settlement policy.

8.2. Pattern of development

The site is located on a twisting third class road some 850 metres by road from the hamlet of Castleiney. Castleiney has a single shop and church and a small cluster of houses – a small area of land within the village is zoned for housing. There are patches of development all along the road before it joins the main regional road into Templemore. The site is located between a pair of dormer dwellings to the west, with some farm buildings on the opposite (eastern) side. Just beyond the two bungalows is a long driveway to another dwelling. There are no dwellings opposite the site. There are therefore three existing dwellings along this stretch of road – the development plan defines ribbon development as five or more along a 250 metre stretch. While hardly ideal, the proposed development is therefore within the bounds of acceptability as set out by the development plan.

8.3. Design

Appendix 5 of the Development Plan includes a design guide for rural housing. The proposed development, two storey with some semi-dormer windows generally follows these guidelines.

8.4. Amenity

The proposed dwelling is set back somewhat from the notional building line set by the adjoining two dwellings. The site to the east appears once to have been an enclosure associated with what may have been a dwelling to the rear – this is now a complex of farm buildings. The proposed dwelling, as with the other dwellings, is within 100 metres of this farm complex. While it is certainly questionable to locate a dwelling so close to an active farm complex, the precedent has been set by the other two dwellings. In other respects, I do not consider that the proposed dwelling would interfere with the amenities of the adjoining dwellings by way of overlooking or overshadowing or other amenity impacts.

8.5. Traffic

The road is a typical narrow country road, although I observed higher traffic levels than would normally be expected on such a road, presumably because of the number of dwellings in the area. It is within the normal speed limit area, although a number of sharp turns ensures a safe driving speed would be significantly less. The road is relatively straight. Table 10.1 of the Development Plan sets out required sight lines – for a narrow country road it is set as 70 metres, although I would consider this to be a very generous sight line for an area with the potential for such high speeds. Drawing no. 16.01.03 in the submission documents indicates that this sight line can be achieved.

8.6. Public health

The site is to be served with a proprietary wastewater treatment system. The site characterisation assessment on file appears quite comprehensive, although it states that there is just one well close to the site – older OS plans show two wells – one immediately across the road, less than 10 metres from the site, the other seemingly associated with the house complex to the south-west and further away. The EPA guidelines for such areas indicate that 25 metre separation should be sufficient from wells. I further note that there is a watercourse to the north-east of the site. This runs into a culvert almost immediately opposite the site – it seems to divert along the line of the road. The separation distances from the percolation area appear to be within EPA guideline limits.

The site assessment indicates groundwater down to around 2.4 metres below the surface level. The site is mostly till material, with relatively high T-values. It falls within the general parameters permitted under EPA Guidelines.

I would concur with the concerns of the appellant about a proliferation of such systems in a small area, but there are no quantitative guidelines available to address this issue. I would also be concerned about the cumulative impact with the adjoining farmyard. But having regard to the overall context I would accept that it would fall within the acceptable parameters set by the EPA.

8.7. Archaeology

There are two recorded ancient monuments within 140-180 metres from the site, both ringforts – one to the north-east, the other to the east. Both are intact and

clearly visible on aerial photography. I would also note that older mid-19th Century maps indicate a small structure on the north-eastern side of the site, and what appear to be small dwellings on the road opposite. There are no indications that these have archaeological value or are part of a linked archaeological complex. There are no indications on file that the site has been assessed for its archaeological value by the planning authority. While there is the possibility of archaeological remains on or near the site I do not consider that there is sufficient evidence to justify an archaeological monitoring condition.

8.8. Appropriate Assessment

The closest Natura 2000 site is the Kilduff/Devilsbit SAC (000934), some 9 km west-north-west. This SAC is designated for its heaths and grasslands, and so there is no possibility of impacts from development at this distance. The site is just over 1 km from the upper reaches of the River Suir. The Lower River Suir SAC commences about 12km to the south, near Thurles. Having regard to the small scale of the proposed works and the separation distance, there seems no reason to consider that there are any pathways for contamination from the site to any designated site. It is therefore reasonable to conclude on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European site no. 000934 or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and a submission of an NIS), is not therefore required.

9.0 Recommendation

9.1. I recommend that subject to the conditions set out below, that permission for the proposed dwelling be granted for the following reasons and considerations.

10.0 Reasons and Considerations

Having regard to planning history of the site and the provisions of Policy SS4 of the North Tipperary Development Plan 2010 (as amended) it is considered that the applicant qualifies for a housing exemption and the dwelling would not seriously

injure the amenities of the area or cause a traffic hazard or cause pollution. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 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. 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. Prior to commencement of development, 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.

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 in the interest of the proper planning and sustainable development of the area.

- 3 The proposed front boundary wall shall consist of natural local stone, the exact height and location of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. The entrance gates 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.

Reason: In the interest of traffic safety.

- 5 (a) The carriageway of the public road shall not be raised, lowered or otherwise altered at its junction with the access driveway to the proposed dwelling.
(b) The gradient of the access driveway shall not exceed 3% for the first seven metres adjacent to the carriageway of the public road.

Reason: In the interest of traffic safety

6. The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

7. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

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

Reason: In the interest of visual amenity.

9. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

10. The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

11. Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: In the interest of traffic safety.

12. (a) A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the planning authority. Details of the system to be used, and arrangements in relation to the ongoing maintenance of the system, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Treated effluent shall be discharged to a raised percolation area which shall be provided in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.

(c) 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 raised percolation area is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

13. The site shall be landscaped, using only indigenous deciduous trees and hedging species, [in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) the establishment of a hedgerow along all side and rear boundaries of the site, and

(b) planting of trees at 2 metre intervals along the southern, eastern and northern boundaries of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

14. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Philip Davis
Planning Inspector

15th February 2017