



An
Bord
Pleanála

Inspector's Report

PL09.247308

Development	House, Garage/ Store, Wastewater Treatment system, at Boycetown, Kilcock, Co. Kildare
Planning Authority	Kildare Co. Co.
Planning Authority Reg. Ref.	16/293
Applicant(s)	Erika Bennett
Type of Application	Permission
Planning Authority Decision	Refuse
Appellant(s)	
Observer(s)	None
Date of Site Inspection	16 /12/2016
Inspector	Caryn Coogan

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The site, 0.39Ha, is located to the west of Kilkcock, Co. Kildare, along a narrow county road north of the M4, and R148, Kilkcock-Enfield Road. The site is in the middle of a row of dwellings, with dwellings on the opposite side of the road also i.e. one off rural housing.
- 1.2 The site has a long narrow rectangular configuration. It is level, and had a certain amount of ponding on the day of my inspection, due to heavy tracks entering the site from the road. The site is bounded to the north and south by mature hedging, and it is not in use, it is overgrown.
- 1.3 The sightlines north and south at the proposed access are adequate.

2.0 PROPOSED DEVELOPMENT

- 2.1 Permission for a detached two storey dwelling, with a detached 2 car garage, new access gate and 1.8metres walls, a wastewater treatment system and percolation area, landscaping and site development works.

3.0 PLANNING AUTHORITY DECISION

3.1 DECISION

Kildare Co. Co. refused the proposed development for 2No. reasons:

1. Policy Rh4 seeks to manage the development of one off housing in conjunction with rural housing policy zone map and schedules of local need. The applicant does not comply with the local needs criteria, and the development is contrary to RH4.
2. Policy RH5 provides that developments must comply with normal siting and design considerations, including the capacity to absorb further development. Policy RH11 seeks to control the level of piecemeal development. The development would exacerbate existing haphazard and piecemeal development in the area.

3.2 TECHNICAL REPORTS

EHO: No objection

Water Services: No objection

Transportation: Additional information regarding sightlines

Planning Report:

On the 16th of May 2016 the planning authority looked for further information, relating to land ownership, evidence that the family resided at the former home for 12 years, including when it was acquired and

sold, evidence of the rented status of current residence, and justification for dwelling under RH4. The response showed:

- The original family home, Love Me Tender, was bought in 2004. The ridge height of the proposed dwelling was reduced, wastewater treatment plant details were submitted, and the water supply will be a private well.
- According to the planning authority's assessment of the case, the applicant was born and reared in Dublin up to 1997, and may have moved to primary school in Kilcock, as no letters from primary school. The applicant may have lived at Boycetown at some stage. There is no evidence to demonstrate she lived at Boycetown for 12 years.
- The revised house design remains suburban in nature
- Refusal recommended.

3.3 THIRD PARTY SUBMISSIONS

There were none received.

4.0 PLANNING HISTORY

North of Subject site:

06/2343 – Permission to Serena Campbell for two storey dwelling and domestic garage

South of Subject site – Applicant's former home 'Love Me Tender'

09/956 – Permission refused to Eddie Bennett for demolition of single storey detached garage 58sq.m. Single storey extension to the east, north and south to existing two storey dwelling adding a floor area of 401sq.m. Change of use of extended dwelling to nursing home with a total floor area of 710sq.m.

08/593 Permission granted to Eddie Bennett for walled boundary treatment

04/1004 – Permission granted to Liam and Margeurite McCabe for a two storey rear extension and single storey side extension.

5.0 POLICY CONTEXT

5.1 National Policy

Sustainable Rural Housing – Guidelines for Planning Authorities, issued by the DoEHLG in 2005 identify that Kildare falls within the areas under strong urban influence and also within the stronger rural areas. The

guidelines advise that only people who are part of the rural community are facilitated for one-off housing and that there is careful management of the rural environs of major urban areas to ensure their orderly development in the future.

The DoEHLG *Circular Letter SP5/08 (2007)* provides advice and guidance in relation to local need and occupancy conditions

5.2 Development Plan

Kildare County Development Plan 2011-2017

Chapter 4.11 Rural Housing Provision.

The development plan policies have been written and had regard to The National Spatial Strategy 2002-2020, Regional planning Guidelines 2010-2022, Sustainable Rural Housing Guidelines 2005, and Circular SP5/08.

4.11.5 Rural Policy Zones

Table 4.3 Schedules of Local Need

Rural Housing Policy Zone 1 Rural Housing Policy Zone 2

- Persons engaged full time in agriculture (including commercial bloodstock / horticulture), wishing to build on their own landholding and who can demonstrate that they have been engaged in farming at that location for a continuous period of over 7 years, prior to making the application.
- Persons who have grown up or spent substantial periods of their lives, (12 years), living in the area, as members of the rural community, seeking to build on family landholding or on a site within 5 km of the family home, and currently living in the area.
- Persons who have grown up or spent substantial periods of their lives (12 years) living in the area, who have moved away and who now wish to return to reside near to, or to care for, immediate family members, seeking to build on the family landholding or on a site within 5 km of the original family home. Immediate family members are defined as mother, father, son, daughter, brother, sister or guardian.
- Persons employed full time in farming (agriculture, bloodstock etc) in the locality, within 5 km of the site, where they need to reside close to their employment and have been engaged in such employment, at that location, for a continuous period of over 7 years, prior to making the application.
- Persons who can satisfy the Planning Authority of their commitment to operate a small scale, full time business from their proposed home in the rural area and that the business will contribute to and enhance the rural community and that the nature of such business/employment is more appropriate to a rural location.

4.12 Rural Housing Policies

In particular:

RH 4: To manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.1) and accompanying Schedules of Local Need (Table 4.3). Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application,

including a separate statement by the applicant on the need to reside in the area. Applicants must demonstrate, depending on the location of the site that they comply with one of the categories outlined in Table 4.3.

RH 5: To ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations including the following:

- The location and design of a new dwelling shall take account of and integrate appropriately with its physical surroundings and the natural and cultural heritage of the area. Development shall have regard to Chapter 16, Rural Design Guidelines.
- The protection of features that contribute to local attractiveness including; landscape features, historic and archaeological landscapes, water bodies, ridges, skylines, topographical features, geological features and important views and prospects.
- The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding.
- The ability to provide safe vehicular access to the site.
- The ability of a site in an unserviced area to accommodate an on-site waste water disposal system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for Single Houses (2009), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period;
- The ability of a site in an unserviced area to accommodate an appropriate on-site surface water management system in accordance with the policies of the Greater Dublin Strategic Drainage Study (2005), in particular those of Sustainable Urban Drainage Systems (SuDS); and
- The need to comply with the requirements of *The Planning System and Flood Risk Management Guidelines for Planning Authorities* published by

the Department of the Environment, Heritage and Local Government in November 2009

rural **RH11** To control the level of piecemeal and haphazard development of areas close to urban centres and settlements having regard to potential impacts on:

- The orderly and efficient development of newly developing areas on the edges of towns and villages;
- The future provision of infrastructure such as roads and electricity lines; and
- The potential to undermine the viability of urban public transport due to low density development.

6.0 THE APPEALS

6.1 The subject site was originally included as part of the former family home. Much of the planning history associated with the former home and the subject site was made by Eddie Bennett, the appellant's father.

Planning History

10/326 was an application for a single storey detached garage, and extensions to dwelling giving a total floor area of 286sq.m. for Eddie Bennett. Application withdrawn.

09/956 was a refusal for demolition of single storey detached garage 58sq.m. Single storey extension to rear, and east and south of dwelling to create a dwelling 401sq.m. Change of use of dwelling to a nursing home with a total floor area of 710sq.m.

08/593 permission granted for walled boundary treatment.

6.2 Principle of Development

The applicant has lived at Boycetown all of her life, she is currently residing at her mother's home in Kilcock. The site is not within a conservation area or a special amenity area. The site has the capacity to accommodate and absorb the development.

6.3 Local Need

The following is a support of the applicants local need:

- The site is part of the family's land holding called 'Love Me Tender'. The site was always earmarked as a site for Erika Bennett. Her father bought 'Love Me Tender' in 2004. The applicant grew up in the area.
- The applicant's family broke up due a divorce, but the property was still earmarked for Erika.

- The applicant currently resides at her mother's house in Kilcock, 3.7kilometres from the subject site. It is a local authority rented house.
- The applicant is a health care professional, and employed at a local nursing home – Boycetown Nursing Home, which is within walking distance of the subject site.
- The applicant has a bonafide case of rural generated housing need.

6.4 Design of Dwelling

It is a modest dwelling. And the dwelling will assimilate into the landscape, as the materials and design are in sympathy with the surrounding area. The proposal is infilling as opposed to ribbon development. The height of the dwelling has been reduced to 7.9metres, the two storey detail to the front has been excluded, and the layout has been simplified, with roadside boundary walls at 1.2metres.

6.6 RESPONSES

Planning Authority: the applicant does not comply with local need under the County Development Plan, the proposal is contrary to Policy RH4.

7.0 ASSESSMENT

7.1 I have read and examined the planning application file, the appeal documents and visited the site I intend examining this appeal under the following headings:

- Material Contravention
- Compliance with Development Plan policy

7.2 Section 37(2)(b) of the Planning and Development Act 2000 (as amended)

The second reason for refusal states that the proposed development would materially contravene policies RH5 and RH11of the Kildare County Development Plan 2011-2017. Section 37(2)(b) of the Planning and Development Act 2000 (as amended) provides that where a planning authority has decided to refuse permission on the grounds that a development materially contravenes the development plan, the Board may only grant permission where it considers that:

(i) the proposed development is of strategic or national importance, or

- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

Each of the above may be considered separately as follows.

- (i) *the proposed development is of strategic or national importance*
This is not considered to be the case with regard to the nature and scale of the development.
- (ii) *there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) *permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government,*

Chapter 4 of the Kildare County Development Plan 2011-2016 outlines rural housing policy, based on the strategic recommendations of the *Regional Planning Guidelines for the Greater Dublin Area 2010–2022*, the settlement strategy set out in Chapter 3 of the plan and guidance provided in the section 28 *Sustainable Rural Housing – Guidelines for Planning Authorities* issued by the DoEHLG in 2005 and DoEHLG Circular Letter SP5/08 (2007). The housing policies set out are considered to be consistent with those national and regional policy provisions and guidance. The policies of Chapter 4 are also consistent with those set out in the county settlement strategy provided in Chapter 3 of the plan and with the Core Strategy and objectives set out in Chapter 2 of the plan, particularly section 2.2 (overall objectives) and section 2.15.1 (settlement policies).

The relevant objectives, i.e. rural housing policies RH5 and RH11 and section 4.11.3 of the plan, are clearly set out and are consistent with the other policies and objectives of the development plan and with the regional and national policies and guidelines.

Therefore I conclude that section 37(2)(b)(ii) and (iii) do not apply.

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan

I do not see any evidence of permissions granted in the immediate vicinity that would set a precedent for the subject proposal such that section 37(2)(b)(iv) would apply.

I therefore conclude that section 37(2)(b) of the Act does not apply and that the Board is precluded from granting permission in this case.

7.3 Compliance with Development Plan Policy

The first reason for refusal states that the applicant fails to meet with the Local Needs Criteria outlines in Table 4.3 of Section 4.11.3 the Kildare County Development Plan 2011-2017. The following information on the appeal file is of note:

- Edward Bennett is the registered owner of the site, and he is the applicant's father. Mr. Bennett purchased a large property, Love Me Tender which included the dwelling and the subject site in 2004. Unfortunately, with the economic downturn, and a high mortgage, Mr. Bennett agreed with the Bank to pay a certain sum to retain the subject site in family ownership.
- The applicant lives with her mother in a rented house in Kilcock. She is employed at a local nursing home within walking distance of the subject site.
- Evidence with the planning application demonstrates Erika went to school in Kilcock from 2009-2014. She did her Leaving Cert in 2014.
- Her birth cert states she was born in Dublin in 1997.

The applicant is claiming compliance with the local needs criteria under this section:

Persons who have grown up or spent substantial periods of their lives, (12 years), living in the area, as members of the rural community, seeking to build on family landholding or on a site within 5 km of the family home, and currently living in the area.

However the evidence submitted does not demonstrate compliance with this criteria. The applicant lives in the town of Kilcock, 3.7km from the site. The evidence submitted relating to the twelve years is associated with the applicant's father only, and not Erika. From my reading of the submitted documentation, the applicant was born in Dublin. She appears to have gone to school in Kilcock from 2009 onwards. There is no evidence relating to the applicant before that date. Therefore, there is insufficient evidence to demonstrate the applicant's compliance with the specified

development plan criteria, therefore the Board should uphold Reason for refusal No. 1 also.

7.5 General Pattern of Development in the Area

The general pattern of development in close proximity of the site is linear development along the county road. The site is flanked by one off housing. The proposed development would represent further linear development along a short stretch of this rural road with one off housing also on the opposite side of the road. The general pattern is for one off houses on large curtilages. The proposed development follows a similar layout to the two dwellings north of the subject site, on long narrow sites.

7.6 Sewage Treatment

The proposed effluent treatment includes a proprietary wastewater treatment system and a sand polishing filter, and a private borehole is proposed as a water supply. The soil is heavy clay with poor percolative capacities in the general area. I could see from my inspection, significant levels of surface water within the deep machinery tracts throughout the subject site. The proposals are in line with the EPA Guidelines for Small Sewage Treatment Systems and the Environmental Health Officer recommended a grant of permission with conditions.

7.7 Other Matters

The proposed dwelling is a two storey dwelling with four bedrooms. It has a plain façade finish and design with minimal features. The general pattern of development in the area is detached two storey dwellings. The proposal is in keeping with the existing house design and proportions of the general area.

8.0 RECOMMENDATION

The planning authority's decision to refuse planning permission for the proposed development should be upheld by the Board.

REASONS AND CONSIDERATIONS

1. The subject site is location in an Area under Strong Urban Influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government (2005) and in Rural Housing Policy Zone 1, as set out in Map 4.1 of the Kildare County Development Plan 2011-2016, where housing is restricted to persons demonstrating local need in accordance with the provisions of rural housing policy RH4 of the 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 rural house at this location. The proposed development would contribute to the encroachment of random rural development in this area and the inefficient provision of public services and infrastructure, would materially contravene the provisions of the Guidelines and of the Development Plan, and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Policy RH5 of the Kildare County Development Plan 2011 – 2017 seeks to ensure that development complies with normal siting and design considerations, including the capacity of the area to absorb further development. Policy RH11 of the Kildare County Development Plan 2011 – 2017 seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. Having regard to the planning history of this site, and the pattern of random residential development in this area, the Board considers that the proposed development would contribute to an increasing pattern of suburbanisation in a rural area that is under significant development pressure, would exacerbate further piecemeal residential development in the area, and would, therefore, contravene the provisions of Policy RH5 of the Development Plan, and would be contrary to the proper planning and development of the area.

Caryn Coogan

Planning Inspector

10/01/2017

