



An
Bord
Pleanála

Inspector's Report

PL09.247725

Development	Erect Dwelling house, Upgrade Septic Tank, New Entrance, and retention of mobile home for three years at Riverside Stables, Pluckerstown, Kilmayne, Naas, Co. Kildare.
Planning Authority	Kildare Co. Co.
Planning Authority Reg. Ref.	16/1035
Applicant(s)	Patrick Ward
Type of Application	Permission
Planning Authority Decision	Refuse
Appellant(s)	Patrick Ward
Observer(s)	None
Date of Site Inspection	14/03/2017
Inspector	Caryn Coogan

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The site is located in a rural area of County Kildare north west of Naas, just 1.3km north of Feighcullen cross roads. There are a number of rural houses in the area, which is predominantly agricultural. The site is accessed at the end of a laneway which is in very poor structural condition. Sightlines off the laneway with the main public road are acceptable.
- 1.2 The subject site is 0.23 Ha, and is located at the end of the laneway, immediately contiguous to a large shed which accommodates horses. On the site there were a number of caravans currently lived in, a truck, and other items. The site is accessed over a temporary bridge crossing a watercourse. There are a number of sheds also on the site.
- 1.3 The laneway is in very poor structural condition. There is an existing dwelling located midway along the lane, which is unoccupied. It is a redbrick structure and would appear to be a fairly new dwelling, however the windows are all boarded up. I noted a serious level of ponding in the field immediately south of the subject site. In addition along there laneway there are two fields with hard surfacing and they are used to store small mounds of rubble. Overall the laneway is very unkempt with a multitude of unusual uses and on going issues.

2.0 PROPOSED DEVELOPMENT

- 2.1 The proposed development includes the following:
- Construction of a single storey dwelling
 - Upgrading of existing septic tank to a packaged wastewater treatment system
 - Upgrading of existing entrance
 - Associated works

3.0 PLANNING AUTHORITY DECISION

3.1 DECISION

Kildare Co. Co. refused the proposed development for 3No. 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 citing 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. Non-compliance with local need and unsuitability of site to accommodate wastewater treatment, it is considered that retention of the mobile home on site would be injurious to the visual amenities of the area.

3.2 TECHNICAL REPORTS

EHO: Refusal recommended due to the peat in the area which is not suitable for effluent treatment

Water Services: No objection

Transportation: No objection

Planning Report:

- The applicant has not completed a Rural Housing Application Form
- The applicant has not indicated which category of the Local Needs he complies with
- The applicant has failed to comply with RH4
- The applicant has failed to comply with policy RH5
- The site is currently been used for the storage of vehicles and vans and the shed structure is not included on the drawings
- The house design is modest
- A stand alone shower and toilet facility is not considered to be appropriate given the peaty nature of the soils.
- Refusal is recommended.

3.3 THIRD PARTY SUBMISSIONS

There were third party objections to the proposal stating, the applicants do not meet with the local needs criteria in the development plan. The unauthorised activity associated with the site has had a detrimental impact on the amenities of the area. The works already undertaken on the site could result in flooding of the wider area.

4.0 PLANNING HISTORY

Enforcement: Court Proceedings in relation to developments on the site

North of site: Permission refused to Alan Judge for retention of existing gravelled driveway

Southeast of site: Permission refused to Gary and Brenda Carey for bungalow, garage and wastewater treatment system.

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 James Kealy has taken this appeal on behalf of the applicant Patrick Ward.

- There is a huge variation between rural housing policies from development plan to development plan throughout Ireland. It demonstrates a very inconsistent approach.
- It is questionable whether Kildare County Development Plan accommodates travelling families in regard to the issue if a family does not stay in an area for a couple of years they may not be considered eligible for one off rural housing. This is contrary to some articles of the EC Treaty. Mr Ward and his family are travellers and have never stayed in one place for a long period of time. There is pressure on the family to settle down for health, safety and the education of their family, they want health services and education for their children and they require a permanent home in order to do this. The applicant bought the landholding a few years ago, and he wishes to stand on his own two feet and not be a burden to the state, and he is going to start up a local horticultural business in the area.
- A site suitability test was carried out on 2nd of September 2016 in order to evaluate the ability of the site to process waste water safely and to have no effects on the environment. A system was designed for the site to include a soil polishing filter. This would

imply the subsoil (peat) would be removed and replaced with imported soil with a compliant T-Value. A similar proposal was granted and constructed under 05/2757 just metres away from the subject site.

- The third reason for refusal has no merit because of the arguments presented with Reasons 1 and 2.

6.6 RESPONSES

Planning Authority:

- There are number of one off houses refused in the general vicinity of the subject site relating to the rural housing policy in the development plan. The applicant does not comply with Policy RH4 and RH5.
- Section 6.2.1 of the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving single houses states an on-site domestic wastewater treatment system should not be installed in a flood plain or in seasonally waterlogged, boggy or frequently wetted areas.
- Section 3.2 of the Site Characteristic Form dated 02/09/2016 states that peat is an unsuitable soil treatment and will need to import clay with a T-value between 5-30. The EPA Code of Practice states peat soils when saturated are unsuitable for the disposal of treated wastewater because they provide inadequate percolation and may result in ponding – particularly during wintertime. Since the EPA Code of Practice was published in 2010, it is the policy of the Environment Section not to allow the disposal of treated effluent in peat.
- The importation of permeable soil will have a 'bathtub effect'. This is a term used to describe the drainage issues relating to impeded drainage in the in-situ soil which causes water to backfill the area of imported soil thereby flooding the percolation area/ polishing filter.

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:

- Compliance with Development Plan policy
- Sewage Treatment

7.2 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 RH4 and RH5 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.

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:

- Mr. Ward owns the land and currently lives in a mobile home on the land
- The Rural Housing Policy does not cater for travelling families wishing to settle down. Mr Ward and his family have never stayed at one location for long periods of time.
- He wishes to construct a dwelling on his land so that his children can be educated and they will access to health services. The children are enrolled in the local school.

The applicant has not claimed compliance with any of the local needs criteria stated in the development plan. There is insufficient information supplied with the application and on appeal make an exception of Mr. Ward in this instance from other applicants that have been assessed against the local needs criteria and were refused planning permission on that basis throughout the county and in the general vicinity. He has not indicated his land holding, date of purchase, links to the area, details of employment links to the area, proof of a viable rural based business, etc. I do not believe it is reasonable of the applicant to be made an exception of under the rural housing need policies based on his travelling lifestyle. Each applicant for a rural house is assessed consistently against the criteria outlined in the development plan. It may be an inflexible approach, but it is a reasonable and fair planning approach to a complex issue, especially in a

county like Kildare where development pressure is significant because of the Dublin metropolitan commuter belt.

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.

There has been a high refusal rate for one off housing within the immediate vicinity of the subject site. There is an unoccupied dwelling located on the same lane providing access to the subject site that was not referred to in the planning documentation. The relationship of this dwelling to the applicant or the landholding, if any, should have been clarified. It appears to me the proposal represents an unnecessary and piecemeal form of development given that there is an unoccupied dwelling within 50metre from the subject site served by the same laneway.

7.4 Sewage Treatment

This is the most important issue of this appeal. Whilst development plan policy regarding social issues has become a significant planning issue with rural housing in recent times, I consider the physical and environment issues are extremely important. It is clear on approach to the subject site along the access lane that there are serious issues regarding drainage of the lands in this area. The level of ponding is substantial in the field immediately south of the subject site. There is a watercourse forming the eastern boundary of the site. The underlying soil is peat, which is non-conducive to effluent treatment and disposal. The Site Characteristic Form states the soil type is cut peat, whereby the underlying aquifer is highly vulnerable. Surface water is at risk in the area from pollution. The applicant proposes to import clay with a T-value between 5 and 30 and construct a raised percolation area with a polishing filter.

7.5 I have considered the EPA publication Code of Practice: Wastewater Treatment Systems for Single Houses, which states *'peat soils when saturated area unsuitable for disposal of treated wastewater because they provide inadequate percolation and may result in ponding – particularly during the wintertime'* In this instance, ponding is occurring at extreme levels and my inspection was not during winter months. The impermeability of the underlying soil is so apparent, that the importation of new soil onto the site to provide a percolation area, could rebound into the bath tub affect, whereby the surface water will backfill into the newly imported percolation area as it will have nowhere else to go, and it will ultimately flood the new percolation area.

7.6 I consider the planning authority correctly refused the proposal because it is unsuitable for sewage treatment and disposal, regardless of the elaborate system been proposed for sewage treatment. Having regard to the serious environmental constraints the subject site presents, I regard

this issue as the most salient of the appeal, and should therefore form the first reason for refusal.

7.7 Other Matters

The site layout plan includes details such as an 'existing shed' and 'existing shower and toilet facilities, and 'existing septic tank'. There is also a 'mobile home included on the drawings, which is not in the position on the drawings, and there appears to be a motorhome on the site. There is no planning references or history associated the items which would appear to be unauthorised structures to me.

The application lacks detail regarding compliance with the local housing policies, the extent of the landownership and relationship of the subject site to the adjoining lands which would appear to houses horses, include a vacant dwelling, and levels of land filling.

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. Having regard to the unsuitability of the ground conditions, the level of surface water ponding in the vicinity of the site, the underlying cut peat soil characteristics, the proximity of the adjoining watercourse along the eastern site boundary, and notwithstanding the proposed use of a proprietary treatment system and constructed polishing filter using imported soil, it is considered the soil cannot be drained satisfactorily, without a risk to surface water and ground water. The proposed development would therefore be prejudicial to public health.
2. 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.

3. 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

30/03/2017