



An  
Bord  
Pleanála

**Inspector's Report**

**PL09.247743**

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<b>Development</b>	House, Garage, Wastewater Treatment System and All associated works at Mayfield, Monasterevin, Co. Kildare.
<b>Planning Authority</b>	Kildare Co. Co.
<b>Planning Authority Reg. Ref.</b>	16/1031
<b>Applicant(s)</b>	Michael and Cathy Walsh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Appellant(s)</b>	Michael and Cathy Walsh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	14/March/2017
<b>Inspector</b>	Caryn Coogan

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 The site, 0.212ha, is located in a rural area 3.5km to the east of Monasterevin town in Co. Kildare. The site is part of a large rectangular field used for grazing ponies, opposite to an existing stud farm. There is a large road side drain inside of the boundary ditch, and the western site boundary is a mature hedge. The northern and eastern site boundaries are undefined. The terrain is flat, and there are rushes in the site indicating poor drainage capabilities.
- 1.2 The access road to the site and surrounding lands is a narrow boreen.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 A dwelling house, garage, wastewater treatment system and percolation area and all associated site works.

## **3.0 PLANNING AUTHORITY DECISION**

### **3.1 DECISION**

Kildare Co. Co. refused the proposed development for one reason :

Given the high water table level and poor percolating quality of the ground, and the consequent risk of pollution to groundwater and surface water, it is considered that the proposed development would be prejudicial to public health and would therefore be contrary to the proper planning and sustainable development of the area.

### **3.2 TECHNICAL REPORTS**

**Area Engineer:** No Objection

**Environment:** Refuse

**Transportation:** No Objection

**Water Services:** No objection

**Planning Report:**

- The applicant would appear to meet with one of the criteria of local need as they are returning home from England to the area they grew up in.
- The applicant has submitted a flood risk assessment, and a Natura Impact Statement. The nearest SAC is 4km to the west. Having regard to the high water table and open drainage channels

in the vicinity, there is a recommendation to use a sediment trap for all construction run off

- The proposed development is acceptable in terms of design and siting
- EHO recommends refusal.

### **3.3 THIRD PARTY SUBMISSIONS**

There appears to be no third party submissions.

## **4.0 PLANNING HISTORY**

### **4.1 12/811**

Permission refused to Michael and Cathy Walsh for a dwelling house on the subject site for three reasons:

1. Unsuitable for on-site waste water treatment due to underlying peat soils
2. The site adjoins a stream that flows into the River Barrow at Monasterevin. This section of the river is designated as a SAC and a Natura 2000 site. There was no NIA submitted.
3. The site may be the subject of flooding

### **4.2 11/653**

Michael Walsh Refused permission for a dwelling house for three reasons:

1. The two storey dwelling is inappropriate because of its two storey design, bulk and scale
2. The site may be subject to flooding
3. Given the high water table and poor percolative qualities the proposal would be prejudicial to public health.

### **4.3 10/880**

Michael Walsh Refused permission for a dwelling house for three reasons:

1. Given the high water table and poor percolative qualities the proposal would be prejudicial to public health.
2. The applicant does not comply with local needs policy
3. Inappropriate design

#### 4.4 **09/1266**

Michael Walsh Refused permission for a dwelling house for one reason:

Given the high water table and poor percolative qualities the proposal would be prejudicial to public health.

### 5.0 **POLICY CONTEXT**

#### 5.1 **National Policy**

*Sustainable Rural Housing – Guidelines for Planning Authorities 2005*, 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. This is included in the Appendix of this report and the relevant extract is as follows:

*Development plan policies based on section 3.2.3 (“Rural generated housing”) of the Sustainable Rural Housing Guidelines should continue to apply, in that persons who are an intrinsic part of the rural community, or persons working full-time in rural areas, should be favourably considered in relation to rural housing. Notwithstanding the above, a bone fide applicant who may not already live in the area, nor have family connections there or be engaged in a particular employment or business classified within the local needs criteria, should be given due consideration within the proper planning and sustainable development objectives for the area subject to the following considerations:*

*such applicants may reasonably be required to satisfy the planning authority of their commitment to operate a full-time business from their proposed home in a rural area, as part of their planning application, in order, for example, to discourage commuting to towns or cities; that they outline how their business will contribute to and enhance the rural community; and*

*that they satisfy the planning authority that the nature of their employment or business is compatible with those specified in the local needs criteria for rural areas so as to discourage applicants whose business is not location-dependent (e.g. telesales or telemarketing).*

#### 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 2

- 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.

## 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

## **6.0 THE APPEALS**

- 6.1 Cunnane Stratton Reynolds has taken this appeal on behalf of the applicants, Michael and Cathy Walsh.
- 6.2 The planning history of the site is relevant to the current proposal. Under 09/1266 the applicants were refused planning for a dwelling on the site for a public health reason, and yet the Environmental Health Officer reporting on the case stated they were unable to access site at the time.

Under reference 10/880, the proposal was refused for 3No. reasons, one of which was the unsuitability of the site for effluent treatment identical to the reason for refusal under 09/1266, and yet there was no reference to a successful site visit by the EHO.

Under reference 11/653 the development was refused for four reasons, and subsequently another planning application was submitted under 12/811 on the 10<sup>th</sup> of October 2012. The 2012 application had a new design team and a site assessment agent. New trial holes were dug and new T and P tests were carried out. The water table was found to be at 1.3metres below ground level. The application was also refused on public health grounds and the absence of a flood risk assessment and a NIS.

### **6.3 Current Application**

The current application includes a flood risk assessment, and a Natura Impact Statement. The percolation area was redesigned and the at the proposed location the water table was to be 1.6metres. The site was deemed suitable for a secondary treatment system and a package

wastewater treatment system. Again the proposal was refused without giving due consideration to the revised proposals.

#### **6.4 Unwarranted Refusal**

It is noted that sites within the general vicinity of the subject site have similar soil conditions to the subject site and were granted planning permission. It is un clear when the subject site was refused when similar sites were granted planning permission under 04/119, 04/2413, 02/1084 and 09/551.

The owners of the wastewater treatment system are obliged to properly maintain and operate the system.

#### **6.5 Application not Given Due Consideration**

The EHO Report on file would suggest the site was not visited by them during the assessment of the current application. It refers to a site visit in 2012. The current revised percolation area is 50metres away from the percolation area proposed in 2012. It would appear the trial holes were not inspected by the Council Officers, and the reports refer to previous site visits.

#### **6.6 Compliance with County Development Plan and Environmental Safeguards**

The applicants comply with section 5.3.1 Local Needs as Michael Walsh was born and raised in Mayfield before emigrating and wishes to return and reside beside his brother on a site which was part of their family landholding. He complies with Rural Housing Policy Zone 2 Item 3.

The proposal corresponds to the rural Design guidelines set out in Chapter 16 of the KCDP. It is a single storey building with a narrow depth and L-plan form.

The application contains a Flood Risk Assessment, Site Characteristic Assessment, and a Natura Impact Statement. These reports all indicate that the development can be carried out without undue risk or impact on the wider environment.

### **6.6 RESPONSES**

#### **Planning Authority:**

Previous recommendations for refusal from the Environmental Health Office was made due to public health grounds and consistently observing high water table levels during site visits. Not only has a high water table been observed by also mottling at 0.6 Below Ground Level, with the water table 0.9 Below Ground Level. Water levels in the ditch on the roadside boundary were observed at 1.3 Below Ground Level.

The receiving peat based soil is unsuitable for the adequate dispersal of effluent from an on-site waste water treatment system. The public health

concerns relate to ponding of effluent, the subsequent risk of pollution, and public health nuisance.

## 7.0 ASSESSMENT

7.1 Having read the planning application file, the appeal documents and visited the site I consider the crux of the appeal lies with sewage treatment and disposal as per the sole reason for refusal associated with the planning application. The applicants live in England, and Mr. Walsh is hoping to return to Ireland to live on a site within the original family landholding. He was born and reared in Mayfield, but emigrated a few years ago. Monasterevin is located within Rural Housing Policy 2 as per Chapter 4 of the Kildare county Development Plan. The planning authority has assessed the credentials of the applicant against the local needs criteria and it is considered the applicant complies with the following criteria:

### ***Table 4.3 Schedules of Local Need - Rural Housing Policy Zone 2***

*• 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.*

7.2 The general area is a flat rural topography served by a narrow country road, with very few houses, east of Monasterevin. There is a stud farm on the opposite side of the road to the subject site. The site forms a corner plot within a large field, that rises slightly south to north. There is a large open ditch along the southern, roadside boundary. The proposed dwelling is a single storey \_L-shaped design with a detached garage. There is a mature hedgerow along the western site boundary, and the remaining site boundaries to the east and north are open. I consider the overall design and layout to be acceptable, and the dwelling would not detract from the rural or visual qualities of the area.

7.3 There is an extensive planning history associated subject site and the applicants. In short:

#### **12/811**

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1. Unsuitable for on-site waste water treatment due to underlying peat soils
2. The site adjoins a stream that flows into the River Barrow at Monasterevin. This section of the river is designated as a SAC and a Natura 2000 site. There was no NIA submitted.



3. The site may be the subject of flooding

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**10/880**

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1. Given the high water table and poor percolative qualities the proposal would be prejudicial to public health.
2. The applicant does not comply with local needs policy
3. Inappropriate design

**09/1266**

Permission Refused to Michael Walsh for a dwelling house for one reason:

Given the high water table and poor percolative qualities the proposal would be prejudicial to public health.

The current application represents the fifth application on the same site by the same applicants since 2009. In all previous refusals the proposal was refused amongst other things, for public health reasons due to the unsuitability of the receiving environment for sewage treatment and disposal. The applicant had addressed previous reasons for refusal relating to local needs compliance, revised house design, a Flood Risk Assessment and a Natura Impact Statement.

7.4 The planning authority refused the current planning application for one reason, similar to the original application in 2009, because the site was not considered suitable for the provision of an onsite wastewater treatment system because of the high water table.

7.5 The applicant maintains on appeal, the planning authority did not give the new site suitability report and new location for the proposed percolation area due consideration in the assessment of the report. It is also claimed by the applicant having regard to the Site Characteristics Form and proposal for effluent treatment, the refusal by Kildare Co. Co. is unwarranted. It is claimed on appeal, the relevant officials from the

planning authority did not visit the site to examine the new location proposed and the current Trial/ Percolation holes on site.

- a. Environmental Health Officer's Report dated 9/11/2016, states the 'application is unacceptable. The previous site visits indicate that the high water table level would not accommodate the proposed waste treatment system and ponding of effluent may present a risk of pollution and a threat to health'.
- b. Environment Section carried out a site inspection on 22/11/2016 and prepared a detailed report, stating the water table was 1.5metres below ground level following dry weather. There was no evidence of peat in the trial holes but mottling was indicated at 1metre below ground level. In the Environment Section's Report dated 23/11/2016 a refusal is recommended due to the high water table.

7.6 The Site Suitability Assessment states the soil type is cut peat. I visited the site on the 14<sup>th</sup> of March 2017, following a dry spell of weather, and I did not encounter any ponding in the area. However, I inspected the trial and percolation holes which have remained open at the proposed location for the percolation area, and they were full of water. I did not see any evidence of peat from the mounds of soil adjacent to the holes or inside the holes. However mottling was evident inside the holes. The water table during my inspection was less than 0.5metres from ground level. I consider the planning authority's concerns to be warranted in this instance and consistent with previous reports on the planning histories relating to the subject site. I accept that since the original refusal in 2009, various revised proposals have been forwarded by the applicants in order to address reasons for refusal, including re-positioning the proposed percolation area, and submitted revised sewage treatment and disposal proposals. Unfortunately, the underlying poor percolative properties exist throughout the entire site and the overriding issue cannot be addressed by changing the location of the proposed percolation area within the site boundaries.

7.7 The cases cited on appeal in the locality as precedence for permission granted for sewage treatment plants on similar soils, predate the EPA'S CODE OF PRACTICE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS SERVING SINGLE HOUSES (2009).

7.8 Having regard to this publication it states '*Where sites are unsuitable for discharge of effluent to ground it is usually due to hydraulic reasons or high water tables. The failure could be as a result of impervious soil and/or subsoil and/or poorly permeable bedrock, which may result in ponding on-site. In these cases site improvement works are unlikely to render the site suitable for discharge to ground and the only possible discharge route is to surface water in accordance with a Water Pollution Act licence.*' The EPA Guidelines clearly state the site is not suitable effluent treatment and disposal. I believe 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 or end up in the nearby watercourse running along the southern boundary of the subject site.

- 7.8 The applicant states he owns the site from a family landholding, perhaps the applicant should consider an alternative site within the family landholding with more appropriate soil capable of effluent treatment and disposal.

## **8.0 RECOMMENDATION**

Overall, the development is unacceptable in principle on the subject site, and 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 apparent high water table and evidence of mottling within the trial holes, the underlying impermeable soil characteristics, the proximity of the adjoining watercourse along the southern 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.

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**Caryn Coogan**

**Planning Inspector**

**07/04/2017**