



An
Bord
Pleanála

Inspector's Report PL09.247887

Development	Retention of house, and permission for alterations and extension, septic tank and effluent treatment system.
Location	Belan, Moone, Athy, County Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	16/931
Applicant(s)	Nadine and William Clifford
Type of Application	Retention and Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party vs Refusal
Appellant(s)	Nadine and William Clifford
Observer(s)	None
Date of Site Inspection	6 th April 2017
Inspector	Susan McHugh

1.0 Site Location and Description

- 1.1. The townland of Belan is located 2.5km south-west of the historic villages of Timolin and Moone, in the southeast of County Kildare. The M9 motorway runs along the western side of the townland, with the former N9 (R448) about 2km to the east located on higher ground. The area is characterised by open landscape of high quality agricultural land in medium to large fields, bounded by ditches and hedgerows. The main road through Belan is a minor third class road running north to south.
- 1.2. The appeal site, with an area of 0.298 hectares, is a roughly L shaped plot of land, which forms part of the side garden of a larger house plot and field behind, on the western side of a county road. It is occupied by a modest single storey house at the rear (west) of the site which is orientated to face the adjoining dwelling to the south. The site shares a gravelled driveway and road access with the adjoining house. The site is bounded by fences, but is open to the south. A well and pump house serving the parents dwelling to the south is located along the boundary with the appeal site. Further south of this 2 storey house is a large garage structure, with a new detached house constructed beyond this.
- 1.3. To the north there is a small single storey dwelling with open fields beyond this. To the west of the appeal site are open fields in pasture, with the M9 motorway beyond. To the east of the site is a country road 4-5metres in width. There are a number of farms and dwellings opposite.

2.0 Proposed Development

- 2.1. Retention permission is sought for the existing single storey dwelling and permission for a single storey extension to the front. Permission is also sought for a new vehicular entrance, septic tank and associated site works. It was proposed to share the existing well water supply with the adjoining parents' house.

2.2. The extension will comprise of two bedrooms with alterations to include the conversion of an existing bedroom to a lobby. The overall area of the extension is 31sqm.

2.3. Documentation submitted with the application includes;

- Rural Housing application form and associated documents
- Site Characterisation Form and details of proposed waste water treatment system from O'Reilly Oakstown Environmental.
- Cover letter from Planning and Development Consultants Vincent JP Farry and Co. Ltd.

2.4. Further information submitted includes:

- Revised proposals to erect an independent well and pump to supply water.
- Landscaping plan prepared by Daley Landscape Design and Construction.
- Revised proposals to widen the existing vehicular entrance in lieu of creating new vehicular entrance.

3.0 **Planning Authority Decision**

3.1. **Decision**

The Planning Authority decided to refuse permission for the above described development for one reason:

'Having regard to the relatively restricted site size/boundary and the proximity and multiplicity of existing on-site waste water treatment systems in the immediate vicinity, with no alternative public water supply available in this rural area; the proposed development would be prejudicial to public health and therefore would be contrary to the proper planning and sustainable development of the area.'

3.2. **Planning Authority Reports**

3.2.1. The **Executives Planner's** report dated **21/01/16** notes the structure is/was permitted as a granny flat on a temporary five-year permission which expired in 2013. The extended site area is noted which includes a rear garden plot and

separate/independent site access to facilitate a self-contained residential plot/one-off dwelling. The increase in area of the existing unit by approx. 31sqm is to facilitate the addition of 2 no. bedrooms, allowing for a 3-bedroom unit of 100sqm. A discrepancy on the applicants' birth certificate is noted. The positioning of the proposed site entrance to the north-eastern corner of the site is not considered desirable from a planning perspective, having regard to the residential amenity of the adjoining low-rise cottage to the north east. The site would benefit from a landscape plan to screen the development from the adjoining properties to the north and south and the overall amenity value of the site as a stand-alone residential plot. The issues cited include those summarised in the technical reports below in addition to matters pertaining to the water source. The **2nd report** dated **05/01/17** following further information recommends a refusal having regard to the EHO report on the grounds that the proposed new well in a revised location is unacceptable based on the multiplicity of on-site waste water treatment systems and bored wells in the vicinity. The proposals in relation to landscaping and revised site access are considered acceptable. A refusal of permission for one reason is recommended.

3.2.2. **Other Technical Reports**

The **Roads Department** in a report dated **16/09/2016** recommends no objection subject to conditions.

The **Roads, Transportation and Public Safety Dept.** in a report dated **11/10/2016** recommends further information seeking a single access point onto the public road serving the proposed site and existing entrance to the south of the proposed site, with separate gates either side of the boundary line with a single splayed entrance. The **2nd report** dated **14/12/2016** following further information have no objection subject to conditions.

The **Environment Section** report dated **17/10/2016** recommends no objection subject to conditions. The planning inspection report indicates that the trial holes were open for inspection although the date of inspection is cited as April 2016 prior to the application being lodged.

The **EHO** report dated **12/10/2016** recommends a refusal on the basis that the trial holes were not open for inspection on site therefore the findings of the soil characterisation report could not be confirmed and the source of drinking water for the proposed extended property is unclear and it is unacceptable for two properties to share one well supply. The **2nd report** dated **14/12/2016** following further information recommends a refusal as the trial and test holes have not been made available for inspection, and notes that the proposal will result in a further on site waste water treatment system and drinking water supply in a confined area which already has a multiplicity of such systems.

Water Services report dated **19/10/2016** recommends no objections subject to conditions.

3.3. **Prescribed Bodies**

Irish Water – Report received **20/10/2016** no objections.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

4.1. The following recent planning history relates to the development site.

PA 08/624 This is the original permission (August 2008) for retention of the dwelling unit as constructed and to maintain it as a granny flat, in addition to the provision of an effluent treatment unit. Condition no. 1 states that it shall be authorised for five years only and only used by the named family member, and shall revert to private domestic use unless there is a further permission. Condition no. 2 states that it shall not be let, sold or otherwise conveyed.

PA 14/1005 PL09.244474 Permission recently (June 2016) **refused** for a similar development but on a smaller site area and shared water source. Permission was refused for 2 no. reasons relating to the restricted nature of the site, overdevelopment, and proximity of private wells and wastewater treatment systems.

The Board Direction also noted serious concerns in relation to the inadequate level of documentation on file to demonstrate that the applicants would come within the scope of the rural housing criteria for this area of County Kildare, including documentation in relation to residency over a 12-year period. However, it was considered that this would constitute a new issue in the context of the appeal, and having regard to the substantive reasons for refusal, the Board decided not to pursue this matter further.

PA 13/230 Permission **refused** (December 2013) for the use of the dwelling as a one-off rural house for 3 no. reasons related to local need, substandard development, overdevelopment of the existing site, and a shared well.

PA 10/781 Permission **refused** (September 2010) for the alteration and extension to side of the granny flat for 3 reasons. It was considered premature and would materially contravene the permission and related policy with regard to 'family flats', it would represent a substandard form of development, and would result in overdevelopment of the site.

4.2. *The adjoining site which includes the appeal site*

PA 98/1199 Permission **granted** (January 1999) for the adjoining family house. The site plan indicated a detached garage close to where the house, the subject of the current appeal now stands.

PA 02/2232 Permission (temporary) **granted** (July 2003) for retention of the conversion of a detached outbuilding (which occupies the appeal site) to self-contained family accommodation.

PA 06/1893 Permission **refused** (August 2007) for the retention of the family flat which was permitted on a temporary basis under 02/2232.

PA 07/1306 Permission **refused** (November 2007) (to the present applicant) for a house and treatment system on the appeal site.

4.3. Kildare County Development Plan 2017-2023

- 4.3.1. Map 4.4 of the plan identifies 2 no. rural housing zones based on landscape sensitivity and population density. The subject site is located in an area under pressure for development but with lower concentrations of population and lower levels of environmental sensitivity, identified as ‘*Rural Housing Policy Zone 2*’.
- 4.3.2. Policy for housing in rural areas is set out in Chapter 4 Section 4.12 and 4.13. Table 4.3 of the plan sets out local need criteria for each zone. According to rural housing policy RH2, applicants must demonstrate that they comply with one of the categories outlined in Table 4.3. The requirement for a demonstration of ‘need’ with regard to single houses is in line with the Sustainable Rural Housing Guidelines 2005.

- 4.3.3. Policy RH2 seeks to:

Manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

- 4.3.4. Policy RH9 seeks to:

Ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations (refer to Chapter 16 for further guidance) including the following:....

(vi) 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.

4.3.5. Policy RH 10 seeks:

To control the level of piecemeal and haphazard development of rural 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.*

4.4. **Natural Heritage Designations**

There are no designated areas in the vicinity. The River Barrow and River Nore SAC (Site Code 002162) is c. 8km west.

5.0 **The Appeal**

5.1. **Grounds of Appeal**

The main points may be summarised as follows:

- The appellants wish to continue living in their current home of over thirteen years.
- The property which comprises of a detached building in the side garden of the Clifford family home was twice approved for residential use in the past.
- The Planning Authority have previously approved and refused permission for the structure for use as a residence by the appellant.
- Changes to the development from that previously refused by the Board comprise of an increase in the size of the appeal site, and an increase in the area of the house. The tripling of the area of the site facilitates the provision of a sewage treatment system in a revised location and provides for a rear garden for the house.

- The total area of the site exceeds 0.2ha which is the minimal holding usually accepted for rural houses and the floor area of the house meets development plan standards.
- The concerns of the EHO and Planning Authority in relation to the proposed water supply was addressed in revised drawing NWCJ101, submitted to the planning authority which provided for an entirely new well, located to the front of the appeal site to exclusively serve the extended dwelling.
- Additional land is being acquired to address the issues raised previously in the refusal from the Board.
- The EHO did not question the suitability of the soil for the disposal of treated effluent, or the location of the treatment system relative to adjacent wells streams or other sensitive receptors, or that the proposal would not meet the EPA Code of Practice for Waste Water Treatment Systems. Also notes that the Environment Section in their report had no objection.
- The location of the proposed waste water treatment system would address the previous reason for refusal in relation to proximity to nearby wells and wastewater systems and would meet the requirements of the EPA Code of Practice for Waste Water Treatment Systems, which does not restrict the number of waste water treatment plants.
- References permission Reg. Ref. 06/981 where Kildare County Council granted permission for a new house on the opposite side of the Clifford family home, and the planning authority recommendation based on the EHO report which had no objection even though at the time the appeal site was being used for residential purposes by the appellant.
- References groundwater tests carried out by Dr. Robert Meehan which formed part of the planning application PA Ref.14/1005 (ABP Ref. 09.244474) which concludes that there would be no groundwater contamination from the proposed waste water treatment system.
- No objection raised by the planning authority to the appellants' eligibility for a dwelling in this rural area, to the position of the proposed extension, to the architecture of the building, or to the access, parking and manoeuvring

arrangements, that the development would adversely affect any feature of environmental, ecological or visual importance.

5.2. Applicant Response

None.

5.3. Planning Authority Response

The planning authority noted the first party correspondence dated 24/1/2017 and draws the Boards attention to the EHO's report dated 22/12/16 on file.

5.4. Observations

None.

6.0 Assessment

6.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. I consider the key issues in determining this appeal as follows:

- Principle of Development
- Residential Amenity
- Public Health
- Appropriate Assessment
- Other Issues

6.2. Principle of Development

6.2.1. The appeal site is located within an area designated as Rural Housing Policy Zone 2, as identified in Map 4.4 of the development plan. Table 4.3 of the plan identifies the categories of housing need criteria, which are deemed to meet eligibility for a one-off rural house in this zone. I will base my assessment of the applicants housing need on Zone 2 item (i)

'Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area. Where no land is available in the family ownership, a site within 8km of the original family home may be considered'.

6.2.2. The applicant submits that he complies with housing need item (i) above. The documentation on file provides the following information about his local housing need:

- Land registry details and folio for the subject site, dating to the applicant's father in 2004.
- Letter of consent from the adjoining landowner to the applicants outlining his agreement to sell the extended site area (to facilitate a new on site waste water treatment system for the unit) to the applicants (with accompanying land map outlining the plot to the rear of the unit).
- A copy of the applicant's birth certificate.
- Correspondence confirming the applicants educational background/attainment and local address in 2016.
- Utility bill dating to 2014.
- Correspondence confirming the applicant's wife and their children address in 2014 (on site).
- Marriage certificate dating from 2011 (also confirming the applicant's birth date to 1987).
- Driver's license for the applicant (Nadine) confirming local address since 2008.
- Local school attendance record for applicants two number children.

6.2.3. The existing structure is a modest detached building which is currently within the curtilage of the larger house which was constructed after permission was granted in 1998. The detached 'garage' indicated on the permitted plans appears to have been

constructed as a dwelling house. This was subsequently granted retention permission as a 'granny flat' (although it was occupied by children of the owners of the main house). Retention permission was granted for five years only which was based on the demonstrated need at the time. This permission has now expired. A previous application for subdivision of the lands and its use as a stand-alone house was refused, as was the more recent application for retention of and extension to the unit.

- 6.2.4. I have examined the documentation on file and carefully considered the application for retention with regard to both national policy as set out in the DoEHLG Sustainable Rural Housing Guidelines for Planning Authorities and the rural housing policies of the Kildare County Development Plan 2017-2023. I note the planning history of the parents dwelling which dates back to 1998, and the associated granny flat, where the applicants claim in their appeal they have resided locally for the previous 13 years. However, the applicant personally has not demonstrated that he has lived locally for 12 years. On balance, I conclude that the applicant does not have a genuine local rurally generated housing need. There is no indication that he complies with any of the criteria required to qualify for a one off house in the Rural Housing Policy Zone 2.
- 6.2.5. I refer to the previous Board decision on this site PL09.244474 where it was noted that the Board had serious concerns in relation to the inadequate level of documentation on file to demonstrate that the applicants would come within the scope of the rural housing criteria for this area of County Kildare. I also note reason No. 1 of the previous refusal on site under PA13/230 which the applicant had not adequately demonstrated compliance with the Local Need Criteria as outlined in Table 4.3 of the County Development Plan 2011-2017.
- 6.2.6. To conclude, it is considered that the applicant does not comply with the rural housing policies of the Kildare County Development Plan 2017-2023 as he does not have a local rural housing need in accordance with the criteria set out in Table 4.3 of the plan. In addition, the development would contravene rural housing policies RH9 and RH10. I recommend therefore that permission for retention be refused.

6.3. Residential Amenity

- 6.3.1. The appeal site is 0.298ha in area, and comprises partly of the side garden of the larger house and primarily of a rectangular area from the open farmland to the rear. The existing 'granny flat' comprises of an L shaped single storey 2-bedroom unit with a stated floor space of 69m². The proposed extension of 31m² would provide a total floor area of 100m² and the provision of an additional bedrooms. This represents an increase in floor area over that previously proposed which provided for a total floor area of 91.5m². The proposed extension is still considered relatively modest and harmonises with the design of the existing unit and is acceptable.
- 6.3.2. The existing unit is located at the back of the site and consequently has no rear garden. The garden is located to the front and the driveway is shared with the adjoining house. The proposal to increase the site area allows for the existing unit to benefit from a rear garden approx. 31 m in length. This represents a significant improvement on the current layout which provides for approx. one metre between the rear elevation and the fence between it and the open farmland beyond. There is currently a drop in site levels of approx. 2m to the rear but this could be addressed by way of landscaping similar to the dwelling located to the south of the parents' house.
- 6.3.3. The landscaping proposals submitted by way of further information will also enhance the site and provide screening to the cottage to the north. I am satisfied therefore that the increased area of the site and the proposed extension addresses the amenity issues for the occupants of the unit, and the site is no longer restricted in terms of amenity to the same extent.

6.4. Public Health

- 6.4.1. The septic tank for the existing house /granny flat is located on the southern side of the main house with a private well and pump house located to the rear / side of and between the two units. The proposed development would place the new waste water treatment system in the open field to the rear of the main / parents' house and a new well to the front garden of the existing house/granny flat.

- 6.4.2. The Site Characterisation Form on file indicates a groundwater protection response of R1, i.e. acceptable subject to normal good practice. The T test result is 70, which is not suitable for a septic tank system but may be suitable for a secondary treatment system with a polishing filter at the depth of the T-test hole. The soil type is clay, with the water table not encountered at a depth of 2.2m below ground level.
- 6.4.3. On inspection of the site the trial hole tests were not open for inspection as the field in which they were located had been freshly tilled. It is noted that the Site Characterisation Form on file indicates that that the trial holes were originally inspected on 11th April 2016, a year previously.
- 6.4.4. A packaged wastewater treatment system and polishing filter are proposed with a raised percolation bed which will be a pressurised system. Distances to site boundaries existing wells, etc., are in accordance with the recommendations provided in the EPA *Code of Practice Wastewater Treatment and Disposal Systems serving Single Houses* (EPA 2009). The wastewater treatment system and percolation area are downslope from the appeal site and the existing parents dwelling.
- 6.4.5. I note that the report on file dated 17/10/2016 of the Environment Section state no objection subject to conditions, and also note the date of inspection was April 2016, and that the trial holes were open for inspection. The report dated 12/10/2016, of the Kildare County Council Environmental Health Officer notes that the trial holes were not open for inspection and therefore the findings of the soil characterisation report could not be confirmed. They also noted that it is not acceptable for two properties to share one well supply. They note again in their report dated 14/12/2016 following receipt of further information that the trial and test holes were not available for inspection and permission was not recommended as the proposed drinking water supply (now proposed in the front garden of the appeal site) located in a confined area with a multiplicity of waste water treatment systems would be unacceptable.

- 6.4.6. I accept that the appellant has made a genuine attempt to address the previous reasons for refusal by tripling of the area of the site to facilitate the provision of a sewage treatment system in a revised location. The letter on file from the owner of the land to the rear of the site to be acquired from Hugh Nolan is noted. I also note the revised proposals to provide an independent well to serve the appeal site to the front of the dwelling.
- 6.4.7. There is no minimum site standard for rural houses set out in the Kildare County Development Plan although as referred to in the previous planning inspectors' report and in the appeal the usual 'rule of thumb' criteria would be a minimum of c. 02 hectares (half an acre) – based on the old SR:1991 septic tank standards. I note that the area is not on the public water scheme or a group scheme so requires a well. The separation distances from a wastewater treatment system to a well is a minimum of 30 metres.
- 6.4.8. I have read the accompanying report dated April 2014 by Dr. Robert Meehan which concludes, on the basis of a desktop study and sample analysis data gathered from the on-site well, that there would be no groundwater contamination from the proposed waste water treatment system which was proposed under the previous application in 2014. It also noted that the vulnerability of the underlying groundwater to contamination from surface activities as moderate. The report also recommends that the water supply on site is treated with a reactor which removes iron, manganese and sulphate, as well as a softener to reduce levels of lime, an ultra-Violet filter which removes bacteria and it is recommended that an arsenic reduction system be installed at the water supply on the site to ensure the long-term potability of the drinking water.
- 6.4.9. However, the fact remains that the proposed development would result in an additional waste water treatment system and private well in the immediate vicinity of three other dwellings, all of which are served by waste water treatment systems and private wells. The proposed waste water treatment system and percolation area would be located approximately 30m downhill from the existing waste water treatment system and percolation area serving the parents' house to the east, and

approx. 37m from the existing waste water treatment system and percolation area serving the existing dwelling to the south. The septic tank and percolation area serving the adjoining cottage to the north is located approximately 100m from the proposed waste water treatment system.

- 6.4.10. Notwithstanding the recommendations of the Environment Section, I would concur with the recommendations of the EHO and the decision of the planning authority. I consider that, given the location of the proposed waste water treatment system and new well, when taken in conjunction with the existing waste water treatment systems and wells serving adjoining residential properties in the immediate vicinity, the proposed development would give rise to a proliferation of treatment systems and wells in a restricted area which would be prejudicial to public health.

Having regard to the above I am not satisfied that the site is suitable for wastewater treatment.

6.5. Appropriate Assessment

There are no designated European sites in the vicinity. The nearest watercourse is located several hundred metres to the west. With regard to the nature and scale of the development, the intervening distances and to the lack of hydrological connections, it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or project on a European site.

6.6. Other Issues

- 6.6.1. The original proposal was to provide a separate vehicular entrance to the appeal site but this was modified by way of further information to allow for a shared vehicular entrance. This is considered acceptable.
- 6.6.2. There are no indications of any recorded monuments within or in the vicinity of the site or other sites of historic or scientific interest.

7.0 Recommendation

- 7.1. I recommend that planning permission be refused for the following reasons and considerations as set out below.

8.0 Reasons and Considerations

1. The subject site is located in the Rural Housing Policy Zone 2, as identified in the Kildare County Development Plan 2017-2023. Having regard to the location of the site 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 in April 2005, and in an area where housing is restricted to persons demonstrating local need in accordance with the current Kildare County Development 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 house at this location. The proposed development, in the absence of any identified locally based need for a house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment, and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the proximity of other private wells and waste water treatment systems, and notwithstanding the enlarged site area included in the application, the Board is not satisfied on the basis of the information submitted with the application and appeal, that the proposed development can be served satisfactorily with both a waste water treatment system and potable water from a well on the site. The proposed development would, therefore, be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

Susan McHugh
Planning Inspectorate

25th April 2017