



An
Bord
Pleanála

Inspector's Report ABP-300198-17

Development

A. The erection of a storey and a half type house. B. Garage/fuel store for domestic use. C. The installation of an Oakstown BAF wastewater treatment plant with soil polishing filter percolation area. D. Upgrading of existing vehicular entrance and all associated site work

Location

Kilmacredock Upper, Maynooth, Co. Kildare.

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

17/967

Applicant(s)

Roisin O'Flaherty

Type of Application

Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant(s)

Roisin O'Flaherty

Observer(s)

None

Date of Site Inspection

14th February 2018

Inspector

Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Kilmacredock Upper, Maynooth, Co Kildare. It is in a rural part of Maynooth, c.4km south-east of Maynooth town centre, c.2.5km north of Celbridge and c. 3.3km west of Leixlip. The site is c.700m north of the M4 and is located on a local road accessed from the Celbridge Interchange (R449). This local road provides access to Maynooth, Leixlip and Celbridge.
- 1.2. There are many one-off dwellings in the vicinity. The proposed site is on the south side of the local road near a bend and to the west of a lane serving c.5 one-off dwellings. The road is narrow with insufficient room for two cars to pass easily as well as having no footpath on either side.
- 1.3. The site itself is within a landholding stated as being owned by the O’Flaherty family. A number of dwellings are located within the landholding and noted as being owned by siblings of the applicant, as well as the family home. The site is located within the very north-east corner of the family landholding, is rectangular in shape and stated as being 0.177Ha. The site is located to the east of the family dwelling.
- 1.4. It is currently a generally flat tract of grassland with a mobile home located to the rear. There is an agricultural gate and wooden boundary fence to the front (north) of the site as well as to the east and west. There are scattered trees and hedgerows to the south and east.
- 1.5. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. The proposal is for a storey and a half dwelling and a garage. The dwelling proposed is a dormer dwelling with a stated area of 230sq.m and the garage is 45sq.m. The dwelling comprises open plan living/dining and kitchen area, as well as one bedroom at ground floor and 3 additional bedrooms at first floor. It is 7.32m in height. A projecting gable is proposed to the rear with a pitched roof to the front.
- 2.2. Materials proposed include a natural stone finish to the front walls with a nap plaster finish on the rear and side walls. Roof slates and triple glazing are proposed.

- 2.3. The dwelling building line is proposed in line with the existing family dwelling to the west. The garage is designed to accommodate 1 car and a storage area for fuel, and incorporates Solar PV panels on the roof. An Oakstown 6PE Wastewater treatment system is proposed to treat effluent.
- 2.4. A Planning Report, Site Characterisation Report and documentary evidence of the applicant's connections with the area accompany the standard drawings and application forms.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for one reason.

1. Policy RH9 of the Kildare County Development Plan 2017 – 2023 seeks to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other siting and design considerations, including the capacity of the area to absorb further development. The level of existing and permitted development in the area, the planning history of the original landholding, and the degree of ribbon development in the immediate area, and the proximity of zoned lands are considerations which lead the Planning Authority to conclude that the ability of the immediate area to absorb additional rural housing is limited. Policy RH10 seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. In conjunction with the level of existing development in the vicinity it is considered that the proposed development would exacerbate an excessive density of development in this rural area, would contribute to the increasing suburbanisation of the area, would contravene policies RH9 and RH10 of the Kildare County Development Plan 2017 – 2023 and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Considers applicant has demonstrated compliance with local need having been born in the area and spent in excess of 12 years residing in the area. Notes applicant is residing in the mobile home on the site.
- Notes dwelling maintains the general building line and provides for a traditional dormer style dwelling and considers design is acceptable.
- Refers to Policy RH9 and RH10. Considers proposal would exacerbate this already over-developed area leading to further haphazard and piecemeal development – notes there are c.34 dwellings within a 500m radius of the site.
- References Policy RH12 which seeks to discourage ribbon development.
- Notes Guidelines on Sustainable Rural Housing state that Planning Authorities will need to arrive at a balanced and reasonable view in the interpretation of the criteria for ribbon development taking account of local circumstances.
- Having regard to the development pressure in the area, planning history and cumulative impact, considers that the proposal is unsustainable and contrary to the guidelines.
- Refers to ABP file Ref. PL09.246935 where permission was refused for a dwelling c.400m from the subject site. Notes assessment considered the area to be under significant pressure, and when taken in conjunction with other development would consolidate and contribute to the build-up of ribbon development.
- Notes area has experienced significant over-development and has concerns regarding additional development in the area – considers capacity of area to accommodate further development is limited.
- Notes reference by applicant to ABP Ref. PL09.224721, KCC Reg. Ref. 07/1165, but considers context of this reference is not applicable to the subject site.
- Recommends permission is refused.

The decision is in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

- **Area Engineer:** No objection subject to conditions.
- **Environment:** No objection subject to conditions.
- **Transportation:** No objection subject to conditions.
- **Water Services:** No objection subject to conditions.
- **EHO:** No report on file.

3.3. Prescribed Bodies

- **Irish Water:** No objection subject to conditions.

3.4. Third Party Observations

None received.

4.0 Planning History

On the site:

- **Reg. Ref. 17/616:** Permission was refused in July 2017 for the development of a similar dwelling on the site. The reason for refusal was almost identical to the subject reason for refusal.

Within the family landholding:

- **Reg. Ref. 14/1100:** Outline permission was refused to the applicant and 3 other siblings for the development of 4 dwellings in February 2015 for 5 reasons, including contributing to overdevelopment of the area, excessive density of suburban type development, public services, backland development, water table on site, and non-compliance with local needs.
- **Reg. Ref. 12/871:** Permission was refused in January 2013 for a dwelling to Colm O'Flaherty. Permission was refused for 4 reasons including reference to development in backland areas, excessive density of development in the rural area, wastewater treatment concerns and sightlines.

- **Reg. Ref. 12/870:** Permission was refused in January 2013 for a 5m wide public road to Mary Hynes O’Flaherty. The reason for refusal referred to the absence of a permission for a development that would be serviced by the roadway.
- **Reg. Ref. 06/1939:** Permission granted to Fionnuala O’Flaherty in September 2007 for a 5 bedroomed dwelling to the north-west of the landholding. This dwelling has been built.
- **Reg. Ref. 03/2485:** Permission was granted to Carmel O’Flaherty in December 2004 for a dwelling.

5.0 Policy Context

5.1. Kildare County Development Plan 2017 - 2023

- 5.1.1. Chapter 4 refers to Housing, Chapter 10 to Rural Development and Chapter 16 to Rural Design.

Map V1-4.4 of chapter 4 indicates that Maynooth and its environs is located in ‘Rural Housing Policy Zone 1’.

The Plan identifies criteria for an applicant to be considered for a one-off dwelling. An applicant must meet one of the following categories: A) is a member of a farming family actively engaged in farming the family land (Category 1), or a member of the rural community (Category 2), and B) meets one of the local need criteria set out in Table 4.3(a) and (b).

Category 2 of applicant in Zone 1:

A member of the rural community: The applicant must demonstrate a genuine local need to reside close to their family home by reason of immediate family ties or their active and direct involvement in a rural based enterprise.

Local Need Criteria in Rural Housing Policy Zone 1 for Category 2 is:

- (i) *Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare as members of 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 5km of the original family home may be considered.*

(ii) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community who have left the area but now wish to return to reside near to, or to care for immediate family members, seeking to build their home in the rural area on the family landholding or on a site within 5km of the original family home.

(iii) Persons who can satisfy the Planning Authority of their commitment to operate a full time business from their proposed home in the rural area where they have existing links to that rural area and that the business will contribute to and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location.

A note is provided below Table 4.3(b). It states:

Applications for rural one off dwellings will be considered, subject to the policies and objectives set out in the County Development Plan, where it is demonstrated that the development would not prejudice the environment and the rural character of the area. In this regard factors such as the sensitivity of the receiving environment, the nature and extent of existing development and the extent of development on the original landholding will be considered.

5.1.2. **Policy RH2** states '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'.

5.1.3. **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 (inter alia):*

(iv) The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing development in the area, the extent of 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.'

5.1.4. **Policy RH10** 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:

(i) The orderly and efficient development of newly developing areas on the edges of towns and villages;

*(ii) The future provision of infrastructure such as roads and electricity lines;
and*

(iii) The potential to undermine the viability of urban public transport due to low density development.’

5.1.5. **Policy RH12** seeks to ‘Discourage ribbon development (defined as five or more houses alongside 250 metres of road frontage). The Council will assess whether a given proposal will exacerbate such ribbon development, having regard to the following:

(i) The type of rural area and circumstances of the applicant;

(ii) The degree to which the proposal might be considered infill development;

(iii) The degree to which existing ribbon development would coalesce as a result of the proposed development;

(iv) Local circumstances, including the planning history of the area and development pressures.

(v) Notwithstanding the above, special regard will be given to the circumstances of immediate family members of a landowner on single infill sites in a line of existing dwellings with 5 or more houses along a 250 metres of road frontage.

5.1.6. Objectives relating to Rural Housing include **RO3** which seeks to implement the provisions of the Rural Housing Policy through the management of the provision of one-off housing in order to protect the physical, environmental, natural and heritage resources of the county, in conjunction with providing for rural housing for those persons who comply with the “Local Need” provision of the Plan.

5.1.7. Chapter 10 refers to Rural Development. There are numerous policies to support and protect agriculture from inappropriate urban development.

Policy RE9 states:

Protect agriculture and traditional rural enterprises from unplanned and/or incompatible urban development.

Chapter 16 provides advice on Rural Design.

5.2. **Sustainable Rural Housing Guidelines for Planning Authorities 2005**

The Rural Housing Guidelines seek to provide for the housing requirements of people who are part of the rural community in all rural areas, including those under strong urban based pressures. The principles set out in the Guidelines also require that new houses in rural areas be sited and designed to integrate well with their physical surroundings and generally be compatible with the protection of water quality, the provision of a safe means of access in relation to road and public safety, and the conservation of sensitive areas.

5.3. **Natural Heritage Designations**

The site is approximately 1.5km south of the Rye Water Valley/Carlton SAC (Site Code 001398).

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A First Party appeal was submitted by a Consultant on behalf of the applicant. In summary, it states:

- Notes reason for refusal raises no objection to the ability of the land to physically accommodate a building.
- Notes that while both applications Reg. Ref. 17/616 and subject application were assessed under the same Development Plan, the Planning Authority has expanded its objection to include fresh concerns. Consider new items have been added to bolster a weak objection.
- Council's new objection overlooks key provisions of the Sustainable Rural Housing Guidelines and the County Development Plan. Considers dwelling

falls within reasonable contemplation of these documents because the site comprises a vacant tract in a row of houses and the applicant's relationship with the landowner. The Council introduces 'the proximity of zoned lands', but no provisions can be found within the Plan which draws a distinction between rural areas abutting existing centres and those in more remote parts.

- Refers to 'pivotal point' relating to the capacity of the area to absorb one extra dwelling.
- Refers to the settlement hierarchy containing 74 centres which envisages a higher rate of housing completions in the countryside than in small centres.
- Objections based on capacity of a particular locale to absorb new development are somewhat nebulous, if not downright unreliable, especially in the absence of harm to the environment.
- No part of the reason for refusal points to any particular harm - the Development Management Guidelines oppose decisions based purely on policy considerations and which do not involve a critical assessment of a development.
- Refer to policy RH9 but consider a degree of practical harm is required in order to justify a refusal. Regarding RH10 consider this provision is only triggered in 3 circumstances viz. to allow for a planned approach to new residential areas, to facilitate infrastructure and to promote public transport – no part of the Planning Report shows how this proposal would breach these clauses.
- Highlight a previous Co. Kildare appeal ref. PL09.224721 and refer to Inspector's Report which referred to the ability of an area to absorb new housing.
- Notes Planning Report alluded to another Board decision ref. PL09.246935 but considers cases markedly different with the Board questioning the appellant's compliance with rural housing policy and opposing scale of dwelling. Note the Board raised 'urban sprawl and ribbon development' on the basis that this house would have extended a line of houses – the present proposal would simply complete a row of dwellings. While the other reason

referred to over-development of an original landholding, this issue has not been raised in the present appeal.

- Concludes that the dwelling is to be occupied by an individual who satisfies the rural housing policy and a longstanding member of the community. The Council accepts that the site can accommodate a dwelling and will not cause harm.

6.2. Planning Authority Response

The Planning Authority responded to the appeal. In summary, it states:

- Notes local road is quite narrow and winding with the area comprising a large number of one-off dwellings. Notes there is a further site within the family landholding to the west of the family home.
- Notes contents of first party appeal which relate to the capacity of the area to accommodate a new dwelling. Refers the Board to the planning history of the site and previous planning reports.
- Having examined the first party appeal, consider that the applicant has failed/unable to address the concerns raised in the refusal relating to policies RH9 and RH10.
- Consider policy RH9 and RH10 should be taken into consideration in the assessment of the appeal, given the location of the site in the context of proximity to urban settlements. In addition references policy RH12.
- Having regard to development pressure in the area and the local planning history considers the cumulative impact of rural housing is unsustainable and contrary to the Sustainable Rural Housing Guidelines.
- References PL09.246935 refusal by the Board and considers concerns are applicable to the subject site.
- Considers area has experienced significant residential over-development. Area has limited capacity and the precedent it would set for further one-off housing would be contrary to proper planning and sustainable development of the area.

- Concludes that while the applicant is deemed to comply with rural housing need policies, it is considered that the location/siting in an area already over-developed would lead to further haphazard and piecemeal development in close proximity to urban centres.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with Local Housing Need Policy
- Capacity of area to absorb development
- Referenced Cases
- Appropriate Assessment

7.1. Compliance with Local Housing Need Policy

- 7.1.1. The subject area is located in Zone 1, as identified in the Development Plan Map 4.4, which is in an area under strong urban influence being within close proximity of three of the largest urban centres in north Kildare, namely Maynooth, Leixlip and Celbridge. The Council considers that the applicant is in compliance with the Local Housing Need Policy on the grounds that she has close family ties with the area. I accept that the applicant has close family ties to the area, but I have concerns with the applicant's 'genuine need' to live in this rural area having regard to the applicant's place of employment in Blackrock, Co. Dublin some 35km away.
- 7.1.2. I draw the Board's attention to the note that is appended to the Development Plan under Table 4.3(b) which outlines the local needs criteria. In this particular circumstance, I consider that this note is of importance having regard to the specifics of the appeal.
- 7.1.3. The note states that applications for "*rural one off dwellings will be considered,, where it is demonstrated that the development would not prejudice the environment and the rural character of the area. In this regard factors such as the*

sensitivity of the receiving environment, the nature and extent of existing development and the extent of development on the original landholding will be considered”.

- 7.1.4. I refer to this note because it clearly states that while an applicant may comply with local needs criteria laid out in Table 4.3(b), there are other policies and objectives which equally must be complied with. I consider this is important in this instance, because the applicant considers that this refusal introduces new grounds, different to those in the earlier refusal Reg. Ref. 17/616, including proximity to zoned lands and ribbon development. The applicant considers these new grounds are immaterial as well as stating that “objections based on the capacity of a particular locale to absorb new dwellings are somewhat nebulous, if not downright unreliable...”.
- 7.1.5. The note clearly states that factors to be considered are the nature and extent of existing development and the extent of development on the original landholding. I agree with the Planning Authority that the nature and extent of development is excessive in this particular area and there is already substantial development on the original landholding. Thus, as this note directly relates to the table which sets out the requirements for applicants to comply with local housing need, I am satisfied that they are directly relevant.
- 7.1.6. Moreover, as noted above I am not satisfied that the applicant has demonstrated a genuine need to live in this area. The applicant does not work in agriculture or another rural based occupation, and therefore does not have a rural locational need to be based here, in an area under development pressure and in such close proximity to three large urban areas.

7.2. Capacity of area to absorb development

- 7.2.1. The applicant considers that the Council’s claim that an area has reached tipping-point in terms of accommodating residential development is entirely arbitrary. Furthermore, the applicant states that while policy RH9 refers to the capacity of an area to absorb further development, it is considered that a certain degree of practical harm is required in order to justify a refusal of permission.
- 7.2.2. While it could be argued that the determination that an area has reached a tipping point is subjective, I travelled extensively along the local road as part of my site visit,

and I consider that the local area has very little capacity to absorb further development. There are quite a number of pockets of development within the area bounded by the R449, the R148, the M4 Motorway and the eastern edge of Maynooth which I consider to be exhibiting signs of over-development, as well as ribbon development. The area is clearly an area under significant development pressure for urban generated dwellings. I consider that any area lost to residential land use is a loss of agricultural land which is clearly contrary to policies which seek to protect agriculture.

- 7.2.3. Moreover, the Sustainable Rural Housing Guidelines provide non-subjective information in relation to ribbon development. Appendix 4 of the Guidelines notes that ribbon development will be located on the edge of towns, and exhibit characteristics such as high density of almost continuous road frontage type development where 5 or more houses exist on any one side of a given 250m of road frontage. In this case there are already more than 5 houses on both sides of the road along less than 250m of road frontage.
- 7.2.4. Thus, I am satisfied that the proposal is contrary to policy RH9 with respect to the capacity of the area to absorb further development, in particular given the extent of existing development in the area, and the extent of ribbon development in the area.
- 7.2.5. With respect to the degree of development on a single original landholding, I note that there are three dwellings within the blue line as shown on the drawings. There is a site to the west of the family home which is similar to the subject site. I also note the extensive planning history associated with the landholding.
- 7.2.6. The applicant considers that policy RH10 is only triggered in three circumstances and no part of the Planning Report showed how this proposal would breach the clauses. I consider that the proposal does breach RH10 particularly sub-clause (iii). Piecemeal and haphazard development close to urban centres could have the potential to undermine the viability of urban public transport due to low density development.
- 7.2.7. In conclusion, I consider that the proposal would be contrary to policies RH9 and RH10 having regard to the capacity of the area to absorb further development. While there may be no physical harm to the area as referred to by the applicant, I am of the opinion that there will be, 1. A reduction in the land available for agricultural

purposes, 2. An excessive density of urban generated development, and 3. A demand for public services in an area where the Council has no plans to provide for such services. Furthermore, it would set an unwelcome precedent for further dwellings on the landholding and in the vicinity.

7.3. Referenced Cases

7.3.1. Within the appeal submission, reference is made to other cases. One of the cases is referred to by the applicant as being relevant – PL09.224721, and another referred to by the Planning Authority PL09.246935. I have read the Board's decision in both cases.

- **ABP Ref. PL09.246935:** The Planning Authority referred to this case as being relevant as it is located within the locality, Kilmacredock Lower, c.400m north of the subject site. The applicant considers that this case differs markedly because the Board questioned the applicant's compliance with the local housing need and opposed the design of the dwelling.

The Planning Authority refused the Kilmacredock Lower development for two reasons and the Board refused it for three reasons in November 2016. The Board did not consider that the applicant came within the scope of the housing need criteria for a house in this location, regardless of the fact that the applicant demonstrated close family ties to the area. The first reason included '*... The proposed development, in the absence of an identified locally-based need for the 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 second reason referred to urban sprawl and ribbon development. The third reason referred to the design proposed.

I consider this case to be relevant as it is a recent case. It is located in close proximity, therefore in the same area which I consider to be over-developed. The applicant did not have a locational need to live in the area, not being employed in a rural enterprise, which is similar to the subject case and the dwelling would be the 5th dwelling along a stretch of road, which suffers from ribbon development on both sides of the road.

Both cases exhibit similar characteristics, and I consider there is little difference between both cases and the applicant's circumstances.

- **Ref. PL09.224721:** The Board decided to grant permission in December 2007 for a dwelling in the Curragh. The Planning Authority recommended a refusal for the proposal having concerns with the backland nature of the site. The applicant's compliance with local needs was accepted as she had resided in the existing dwelling on the land. The Board had regard to the pattern of development in the vicinity, the "Sustainable Rural Housing Guidelines for Planning Authorities" and considered that, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, and would not be prejudicial to public health. However, I note that this application was assessed under a different Development Plan and is not located in the same area. I am satisfied that this case is not a precedent for the subject case.

7.4. Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. Taken in conjunction with existing development in the vicinity, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and would contravene the policy of the planning authority, as expressed in the current Development Plan, to direct residential development to serviced centres which policy is considered to be reasonable. The proposed development

would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would constitute undesirable ribbon development in a rural area outside lands zoned for residential development and would, therefore, be contrary to the proper planning and sustainable development of the area.

Ciara Kellett
Inspectorate

15th February 2018