



An
Bord
Pleanála

Inspector's Report ABP-300826-18.

Development	Permission for the development including removal of a condition and the construction of a single storey dwelling.
Location	Roseberry, Newbridge, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	16/1332.
Applicant(s)	Eanna Geraghty.
Type of Application	Permission.
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Eanna Geraghty.
Observer(s)	None.
Date of Site Inspection	16 th May 2019.
Inspector	Philip Davis.

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1.0 Introduction

This report is an updated version of a report submitted in appeal **PL09.248196** following a Judicial Review. My report is substantively the same, with updates for the most recent development plan and in addressing the applicant's submission on traffic safety. The original appeal was by the applicant against the decision of the planning authority to refuse permission for a dwelling in a rural area for reasons relating to policy.

2.0 Site Location and Description

Roseberry townland is located just north of the Newbridge, County Kildare in an area characterised by flat open agricultural lands intersected with drainage ditches – much of it seemed to have been bog or wetland up to the early 19th Century.

Roseberry is to the north-west of the mainline railway from Dublin to Portlaoise, which has to a large extent formed the northern and western extent of the urban area of Newbridge. The townland is characterised by a mix of agricultural land and bog, with near continuous strips of one-off housing development on most of the third-class roads extending from the small number of bridges over the railway.

The appeal site is located at the northern end of Roseberry, about 3-3.5 km from the centre of Newbridge, and outside the functional town boundaries. It is on an 80kph limit road known as the Ring of Roseberry, which is a third-class country L-road lacking footpaths running north and north-west from the built up area of Newbridge. The road is mostly developed on the southern side with a ribbon of bungalow dwellings on half acre sites, while the northern side of the road is marked by a deep drainage ditch and open flat countryside. The road forms a loop, eventually joining up with the R416 Newbridge to Milltown road.

The site, with an area given as 0.3660 hectares, and part of a landholding approximately twice this size, is a field to the rear (south) of a dwelling fronting the main road and includes a narrow lane between that dwelling and an adjoining one to the south-east. The landholding extends further back to another similar plot along a track. The site is flat and in meadow, and bounded by ditches and hedges, with the rear garden of the family dwelling marking the northern boundary.

3.0 Proposed Development

The proposed development is described on the site notice as follows:

- a) *The removal of condition no.9 of previously approved planning permission file reference no. 73/232 which required lands to be sterilised from future residential development;*
- b) *The construction of a single storey dwelling with a floor area of 211.1 sqm;*
- c) *The provision of a new on-site wastewater treatment system and percolation area;*
- d) *The provision of a new dual access vehicular entrance that will serve both the proposed new dwelling and the applicant's parent's existing dwelling. The portion of the dual access entrance serving the new dwelling will replace an existing agricultural entrance; and,*
- e) *All associated site works.*

4.0 Planning Authority Decision

4.1. Decision

The planning authority refused for one reason – in summary, that it is contrary to policies RH5 and RH11 of the CDP as it represents haphazard and piecemeal development in a rural area.

4.2. Planning Authority Reports (original application)

4.2.1. Planning Reports

The planning report outlines a long and complex planning history – notes that condition number 9, relating to the family home north-west of the site, sterilizes 5 acres of land and 150 yards of road frontage. The report notes a series of refusals (including on appeal) for a dwelling on the lands (one grant of permission, although not implemented). Notes long stated concerns about overdevelopment along this road. Recommends a refusal of permission.

4.2.2. Other Technical Reports

Water Services: Recommends conditions.

Appropriate Assessment Screening Report: Concludes that although the site is within 1km of Mouds Bog SAC, no impacts are likely on the conservation objectives or overall integrity of any Natura 2000 site.

4.3. Prescribed Bodies

Irish Water: Standard response.

4.4. Third Party Observations

Suzanne Doyle of Tully, Kildare, wrote in support of the application.

Sean Ó'Fearghaíl, TD, wrote to support the application.

5.0 Planning History

The previous appeal (**PL09.248196**) which was refused for two stated reasons was subject to judicial review and is now returned to the Board for further consideration.

In 2015 the Board upheld the decision of the planning authority (**14/580**) to refuse permission to Aoife Geraghty for a dwelling on the landholding (just south of the current appeal site). The reasons given for refusal relate to traffic hazard and impact on a Natura 2000 site, Mouds Bog SAC (**PL09.243943**).

Permission **73-232** granted permission for a dwelling (the family home) on the site subject to a condition (no.9) sterilizing the entire 5 acres of land and 150 yards of frontage.

In recent years there have been a series of refusals for applications to build a dwelling or delete condition 9, including **06-449, 15-1124, 05-2310, 05-2308, 05-2309, 13-658** and **14-162**. There is one grant of permission **07-1812**, for Aoife Geraghty for a dwelling. A later application (**12-1004**), was refused permission for the extension of this permission.

I note a recent Board decision on an appeal against the decision to refuse permission for a retention of a dwelling several hundred metres north on Rosebery Lane – the Board refused permission for four reasons (**PL09.244338**)

6.0 Policy Context

6.1. Development Plan

The previous appeal related to the development plan at the time – a new development plan, the **Kildare County Development Plan 2017-2023** now applies. The site is several hundred metres north of the Newbridge town boundary as indicated in the **Newbridge LAP 2013-2019**. The site is in an area indicated as 'Rural Housing Zone 1' which is the area under the strongest pressure for rural housing. This zone has stricter 'local needs' criteria to qualify for a dwelling. The two policies referred to in the refusal – RH5 and RH11, now equate to policy objectives **RH9** and **RH10** – these are substantively the same, with some minor additions to the list of design criteria in RH9.

6.2. Natural Heritage Designations

The site is just over 500 metres from **Mouds Bog SAC**, site code 002331. **Pollardstown Fen SAC** site code 00396 is approximately 3.5 km to the west.

7.0 The Appeal

7.1. Grounds of Appeal

A very detailed appeal addressing wide aspects of the planning history and proposals were submitted. Key points are as follows:

- It is noted that in the previous refusal on appeal the Board did not accept the issue of overdevelopment of the area.
- It is argued that the policies cited by the planning authority are not consistent and in line with principles set out in the National Spatial Strategy and the Sustainable Rural Housing Guidelines and other Development Plan policies.

- It is noted that the planning authority had no problem with the design of the dwelling.
- Previous Board decision to grants for rural dwellings in Kildare – PL09.224721 and PL09.24795 and others – are quoted in reference to an argument that there is sufficient capacity in the area for additional dwellings.
- The planning authority opinion that the area is deficient in services is questioned given the proximity of the site to the town.
- It is noted that there is no specific policy against backland development and that the Council has stated that it will be assessed on a case by case basis.

In addition, the following submission has been made with the renewed appeal, I would recommend that this submission is read in full as it is highly detailed, but I would summarise the key points as follows:

With regards to policy issues:

- It is noted that in appeal reference **PL09.243943** the appellants sister had satisfied rural housing policy (refers to Porter & Anor v ABP).
- It is argued in some detail that the current CDP has a greater presumption in favour of on-off housing in the countryside than the previous adopted plan on the basis of increased allocation for rural housing (Table 3.2 of the Plan).
- It is argued that the 'qualification' test for rural landowners is substantively the same as when the Board concluded in **PL09.243943** and **PL09.248196** that the applicant qualified.
- It is argued that the NPF does not apply in this appeal as it was not intended to apply to individual proposals. It is argued in some detail that achieving the statutory objectives of the Development Plan with regard to the provision of housing should be the primary consideration.
- It is submitted that having regard to the local topography and pattern of development, a one-off dwelling would not have a significant impact on the locality.
- It is noted that the Board did not state that the site was overdevelopment in its previous reasons for refusal – and further notes that this is consistent with

other previous decisions on the site. Likewise, the Council has recently granted permission for dwellings in Roseberry (e.g. 16/375 and 16/376).

- It is argued that some previous Board decisions did not accept the planning authority's contention that the area is under 'strong urban pressures'.
- It is argued, with regard to a previous appeal in the Curragh (**PL09.224721**) that a priority should be given to the housing need for local applicants.

With regard to road safety:

- Notes decision of Hogan J. in Wicklow County Council v Fortune (NO.2) with regard to road safety and the need for a scientific approach.
- It is noted that it was not disputed that sightlines of 2 x 50 metres are achievable.
- It is argued that the nature of the road will lead to drivers taking appropriate measures for safety, especially with regard to the sharp turn close to the site.
- It is argued that submitted evidence indicates low speeds of around 40kph or lower are normal on this road.
- The report attached by Transportation Planning Services Ltd is attached arguing that a 40-metre sightline would be adequate.
- Notes the Boards approach in **ABP-302216-18** in which an access in Galway was permitted with lower sight lines.
- A visibility study assessment is submitted to confirm that adequate sight lines can be achieved.
- It is indicated that it is thought that the single fatality which occurred at this corner occurred notwithstanding low speeds, and that the sharp corner leads to very low speeds.
- A very detailed set of traffic counts is attached in support of an argument that traffic levels are very low along this stretch of road.

7.2. **Planning Authority Response**

With regard to the traffic support submitted the board refers to the standards set out in the DMRB for sight visibility – it is stated that the Roads, Transportation & Public Safety Department still has concerns in relation to the proposed entrance and they consider that it could result in a traffic hazard due to the restricted sight visibility.

7.3. **Applicants response**

- It is noted that the Council is satisfied with the illustrated distances.
- It is argued that the submitted study indicates that traffic in the vicinity of the site is travelling at a speed which is even slower than the figures advanced previously, and it is argued that no part of the Councils current response suggests that the proposed sightlines are inadequate or otherwise not achievable.
- It is noted that no objections from the Council were outlined in previous applications such as reg. ref. 07/1812 or 14/162.
- It is again restated that their belief is that there is no traffic hazard at the site due to very slow existing traffic speeds.

7.4. **Observations**

None

8.0 Assessment

Having inspected the site and reviewed the appeal documents, I consider that the appeal can be addressed under the following general headings:

- Principle of development
- Pattern of development
- Traffic safety
- Design and visual impacts
- Pollution
- Flooding
- Heritage
- Appropriate Assessment

8.1. Principle of Development

The appeal site is outside the bounds of the town of Newbridge and is in a 'Rural Housing Zone 1' as defined in the current Development Plan (Kildare County Development Plan 2017-2023). Although the planning authority does not state this explicitly, it would appear that this equates to an area 'under strong urban pressure' with regard to Sustainable Rural Housing Guidelines criteria. The site is close to the growing town of Newbridge but is outside the development boundary and zoned areas and is in an area with a near continuous string of one-off houses, so I would consider it quite unambiguous that it should be considered as an area 'under strong urban pressure'. The site is not served by the towns sewerage system, or footpaths and streetlights and there are no development zoned areas nearby. It is approximately 3.5 km by road from the Irish Rail station.

In such areas there is a strong presumption against planning permission except for those applicants who qualify under local needs criteria. It is not disputed by the planning authority that the applicants qualify under local needs. The planning authority decided to refuse, citing two specific policies, RH5 and RH11 in the previous CDP – these have been generally (with some minor alterations, which I would consider generally irrelevant to this appeal) by policies RH9 and RH10. These state:

RH 9 *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:*

(i) 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 and respect the character of the area. Development shall have regard to Chapter 16 Rural Design Guidelines (and any subsequent changes to these guidelines)

and Chapter 17 Development Management Standards.

(ii) Appropriate landscaping of proposed development using predominantly native species as per Table 17.2 of this Plan.

(iii) The protection of features that contribute to local attractiveness including; landscape features, hedgerows, trees, historic and archaeological landscapes, water bodies, ridges, skylines, topographical features, geological features and important views and prospects.

(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.

(v) The ability to provide safe vehicular access to the site without the necessity to remove extensive stretches of native hedgerow and trees. The need for the removal of extensive roadside hedgerow may indicate that the site is unsuitable for development.

(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.

(vii) 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);

(viii) The need to comply with the requirements of The Planning System and Flood Risk Management Guidelines for Planning Authorities, DEHLG (2009).

RH 10 *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.

The applicant has argued in some detail that the overall thrust of policy (national and local) is to favour houses to qualified applicants, but this is not not the case, with a clear hierarchy of appropriate locations set out in Table 4-1, strongly favouring established settlements, while section 4.12 on Housing in Rural Areas notes the unsustainability of trends towards widespread one-off housing (page 84):

While there is a need to recognise the genuine needs of people living and working in rural areas and the contribution that they make to rural community life, the incremental level of rural housing development in the county is considered to be unsustainable in the longer term.

The open rural character of many areas has been eroded by piecemeal housing development and the capacity of the environment and the road network to accommodate new development is reaching its capacity in many areas of the county. This, coupled with a sustained demand for rural housing

that will continue into future generations, creates an imperative to carefully manage future rural housing development in County Kildare and to facilitate the provision of more sustainable housing options for rural communities.

There is a need to strike a reasonable balance between the need to support sustainable development, the diversification of the rural economy, the promotion of economic development, and the protection of the environmental and natural heritage resources of the county. Maps 4.1, 4.2 and 4.3 detail the increase in rural housing between 1998 and 2015 by Electoral Division.

It is within this context that there are strong qualifications on the general recognition of genuine needs, reflected in the policies quoted above. I would consider this overall strategy to be generally in accordance with both national and regional policy, which strongly favours densification and the direction of new residential development to existing settlements and serviced lands and the restriction of one-off housing to applicants of genuine need subject to other planning and sustainable development considerations.

The planning authority considered that the proposed development does not comply with the two stated policies with particular regard to the pattern of development, specifically that it represents haphazard and piecemeal development close to an urban area. Given the overall pattern of development in the area (I discuss this in more detail in section 8.2 below), I would concur with this conclusion.

I note that with one exception there is a long history of the planning authority refusing permission on the site, and that the original permission for the family dwelling had a sterilization condition, which I would consider reasonable under the circumstances. I also note that the Board has recently refused permission for a dwelling on the landholding, and that in another recent Board decision retention for a dwelling north of the site was also refused. There has therefore been a generally consistent approach to applications for permission on this site and the vicinity. While the applicant does draw attention to a number of other applications and decisions in the immediate area, and other Board decisions, I would consider that the planning authorities approach to this site has been generally consistent, and there is no specific reason to suggest that refusing permission for a person 'qualified' under exemptions is against established policy or practice.

I would therefore conclude that while the applicant does qualify for housing need exemption, having regard to both policies set out in the development plan, and the planning history of the lands and the area, there is a general presumption both in terms of policy and in planning history against developing backland sites along this stretch of road, which has already been subject to what appears to be a very high degree of random and ribbon development. The spread of development along this minor road undoubtedly represents an unsustainable form of development in this rural area and while this represents questionable decisions in the past this is not a justification for continuing a highly unsatisfactory form of development next to an established urban area with extensive zoned lands for housing. I would therefore recommend that the Board refuse for the policy reasons stated by the planning authority, notwithstanding the minor changes in the new County Development Plan.

8.2. Pattern of development

The appeal site is accessed via a narrow farm lane between two dwellings. There is a mostly continuous ribbon of one-off houses on the south-west side of the road for several hundred metres. There are only a small number of dwellings on the opposite side, most probably because of the location of deep land drains running along the north-eastern side of the road. There is one large farmstead set back from the road, and further north-west of the site there are a small number of recently built bungalows at the end of a track. Otherwise, development is entirely of standard road-frontage houses.

This area lacks normal services such as footpaths and sewerage and is not part of the zoned development area of the town and the nearest zoned lands (in the Newbridge LAP) to the south are zoned agriculture. As such I would concur with the view of the planning authority that permitting development of this nature would represent haphazard development and would set an undesirable precedent and as such would be contrary to the policy objectives set out in the section above.

8.3. Traffic safety

The site is located on an L-road which runs generally north from Newbridge, over a bridge crossing on the main railway line. The road is unusually straight, with a

distinct 'kink', which appears to reflect its construction (judging from older OS maps) in the first half of the 19th Century as part of drainage works to the edge of the raised bog. The site is accessed via a track between two existing houses, approximately 40 metres south of the 'kink' in the road.

There is a small memorial at this turn indicating there may have been a road fatality at this point – the RSA website indicates a single car fatality in the 80kph zone on the road in 2007. The Board refused the previous appeal on this site (**PL09.243943**) for reasons relating to traffic safety.

The road is within the 80kph speed zone. The planning authority in its submission to the Board notes that the DRMB sets out standards for sight visibility for single houses as 150 metres where the design speed (note, not the speed limit) is 80kph, and consequently state that they consider that the proposed development would endanger public safety. The acceptable sight visibility is 50 metres at 42 kph design speed.

The applicant has submitted copious technical studies indicating that the 'real' speed of traffic on this stretch of road is less than 40 kph, and as such the 50 metre sight line claimed to be achieved is safe. While I do not doubt that given the nature of the road most cars are driven cautiously and carefully, and the unusual turn and narrow carriageway can act as a form of informal traffic calming, the past fatality, and an element of common sense would strongly indicate that a minority of drivers will drive to the speed limit due to the generally straight alignment. The long straight section from the railway bridge crossing to the turn may well encourage this on occasion for drivers unfamiliar with the road.

I would therefore concur with the opinion of the planning authority that upgrading the access to allow for a new dwelling at this point would represent a traffic hazard and I would recommend that it be refused planning permission for this reason.

8.4. Design and visual impact

The proposed dwelling is modern and low key and the house would be largely hidden behind existing garden hedges and trees. The area is not subject to any landscape designations and is generally quite flat, with some smaller hills in the wider area.

8.5. **Pollution**

The proposed development is to be served by a proprietary wastewater treatment system. Site suitability assessment on file indicates that it is on highly permeable sandy subsoil with the watertable 1.1 metres from the surface, although I note the identification of higher 'mottling', indicating a higher seasonal groundwater level, possibly above the maximum level in the EPA guidelines. I also note that the on-site assessment states that there is no watercourse/stream within 250 metres – in fact the deep drain on the road boundary (which has free flowing water) is within 60 metres of the site. I further note that the lands appear to have been either on, or close to the edge, of the historic extent of the raised bog.

The site would seem to be just about within the criteria set out in EPA Guidelines, although I note the very high proliferation of such units in the vicinity and I would be concerned at the implications of adding yet another one on such a marginal site, especially given the very high water table. I note that this was not raised as an issue in this or in previous appeals, so I would not recommend a refusal for this reason.

8.6. **Flooding**

The site is in lands which have been extensively drained. It appears to be at the edge of what would have been the historical extent of Mouds Bog. There is a very deep land drain on the opposite side of the road. There are no records of flooding on the site.

8.7. **Heritage**

There are no recorded ancient monuments or protected structures within the vicinity of the site.

8.8. **Appropriate assessment**

The site is just over 500 metres from Mouds Bog, an SAC (site code 002331). The features of interest are:

Active raised bogs [7110]

Degraded raised bogs still capable of natural regeneration [7120]

Depressions on peat substrates of the Rhynchosporion [7150]

The appellants submitted an AA Screening Report (the planning authority also did a screening), both of which indicated no identified impacts, subject to appropriate mitigation measures on the proposed wastewater treatment system (as the site appears to be in hydraulic continuity with the bog). I note that there is no information on file as to the potential cumulative impacts from the many wastewater treatment systems in the vicinity.

The Board has previously refused permission for a dwelling on the landholding for reasons of its possible impact on the SAC and I note in that Direction in that decision noted concerns about the absence of an NIS. The reports submitted by the applicant don't actually provide much more solid scientific evidence about pathways and existing impacts, but do provide an overview of the conservation objectives of the site. While I would have some doubts about the issue of pathways between the site and the in-combination effect on water quality of so many wastewater treatment units in the area, having regard to the small size and scale of the proposed development I would consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site No. 002331, or any other European site, in view of the site's Conservation Objectives.

9.0 Recommendation

I recommend that the Board uphold the reason for refusal by the planning authority. I also recommend that the Board refuse for traffic safety reasons.

10.0 Reasons and Considerations

1. It is considered that the proposed development constitutes haphazard and piecemeal development of a rural area close to an urban centre and would set an undesirable precedent for further such developments and would thus be contrary to policy objectives RH9 and RH10 of the Kildare County Development Plan 2017-2023, which are considered reasonable and consistent with the Sustainable Rural Housing Development Guidelines 2005. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. Notwithstanding the proposal to increase the sightline to the north-west of the site to 50 metres, it is considered that this is still substandard for the nature of this road close to an urban area within an 80kph speed zone. The proposed development would result in a traffic hazard due to the restricted visibility to the north-west of the entrance due to the poor alignment of the road. The proposed development would, therefore, endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.

Philip Davis
Planning Inspector

16th May 2019