



An
Bord
Pleanála

Inspector's Report ABP-300882-18

Development	Permission for development that will consist of a proposed one and half storey dwelling house, detached domestic garage, on-site well, proprietary waste water treatment system, new vehicular access and associated site works.
Location	Athclare, Dunleer County Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	17/649
Applicant(s)	Cliona McCann
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	Third Party
Appellant(s)	John & Christina Howell
Observer(s)	None
Date of Site Inspection	21 st of May 2018
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The site with stated area of 0.4ha, is located on the eastern side of the narrow public road L-6273-0. This is in the townland of Athclare, to the south of junction 12 (M1) Dunleer and the junction with the R132. The roadside boundary is marked by a ditch with hedgerow and trees. There is a row of mature trees along the southern boundary. The remaining boundaries are unidentified and the site is to be taken off the greater field area. There is a vehicular access to an adjoining dwelling to the south and another for a dwelling on the opposite side of the road.
- 1.2. The site is elevated in undulating countryside, with a number of dispersed houses in the area. There is a two storey traditional type farmhouse adjacent to the southern boundary of the site. This has first floor windows which look towards the site. There is a lower profile single storey dwelling to the west on the opposite side of the narrow local road. The entrance to this property is proximate to that proposed for the subject site. At present there is no existing field gate from the road into the subject site, which is to be taken off the larger field area.

2.0 Proposed Development

- 2.1. This is for the construction of a one and a half storey dwellinghouse, detached domestic garage, on-site well, proprietary waste water treatment system, new vehicular access and associated site works.
- 2.2. The application form provides that the area of the site is 0.40ha and the area of the proposed works are 230.20sq.m.

3.0 Planning Authority Decision

3.1 Decision

On the 1st of February 2018 Louth County Council granted permission for the proposed development subject to 9no. conditions. These generally concern waste water treatment, construction related issues and development contributions.

Condition no.2 provides an occupancy condition.

Condition no. 4 refers to Landscaping.

Condition no. 5 to wastewater treatment.

3.2. Planning Authority Reports

3.2.1. Planner's Report

The Planner has regard to the locational context of the site, planning history and policy and to the recommendations of the Council's Internal Reports. They consider that the proposed house type is consistent with the design guidance for rural housing as set out in the LCDP 2015-2021. However, they had concerns about a number of issues and requested Further Information to include the following:

- The applicant was requested to submit documentary evidence to support a local housing need.
- To provide further details regarding the construction of the effluent treatment system & percolation area.
- To confirm whether a well or connection to the watermain is proposed.
- To confirm that every dwelling within 100m of the site has been contacted in relation to wells.
- To submit a revised Landscaping Plan incorporating indigenous species.

3.2.2. Further Information response

This includes the following:

- Additional documents to demonstrate compliance with local needs.
- Details relative to the construction of the treatment/percolation area, site suitability assessment and soakway details.
- Confirmation that a well is to be installed and that neighbours within 100m have been contacted.
- Details of landscaping proposals.

3.2.3. Planner's response

3.2.4. The Planner had regard to the F.I submitted and recommended that permission be granted subject to conditions.

3.3. **Other Technical Reports**

Infrastructure Section

They have no objection to the proposed development.

Environmental Section

They requested that further information be requested to include a groundwater risk assessment, an assessment on the impacts of waste water discharge, confirmation relative to details regarding the pwwts and to percolation tests carried out.

They considered that adequate information had been submitted in the F.I response and recommended conditions.

3.4. **Third Party Observations**

A Submission has been received from local residents concerned about the proposed elevated siting, adverse impact on proximate residential dwellings, pwwts and well, access and entrance and on the character of the rural area. As these are the subsequent Third Party Appellants and their concerns are broadly similar these are discussed further in the context of the grounds of appeal below.

4.0 **Planning History**

The Planner's Report provides that there is no planning history pertaining to the subject site.

5.0 **Policy Context**

5.1. **Louth County Council Development Plan 2015-2023**

The application site is located within Development Control Zone 5 where the objective seeks: *To protect and provide for the development of agriculture and*

sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance. Critical infrastructure projects of local, regional or national importance will also be considered within this zone.

Policy RD39 includes: *To consider developments falling within the following categories; limited one-off housing**,

S2.19 Rural Housing Policy

Section 2.19.1 provides the Local Needs Qualifying Criteria – Policy SS19 refers.

Section 2.19.2 provides a Definition of a Local Rural Area – Policy SS20 refers.

Section 2.19.5 provides a Definition of Qualifying Landowner.

Section 2.19.6 refers to Application of Occupancy Conditions Policy SS23 refers.

Section 2.19.7 provides the Development Management Assessment Criteria for One-off Rural Housing. Policies SS24 to SS29 refer.

Section 2.19.11 refers to Dwelling gross floor areas and minimum site size Policy SS51/52 and Table 2.9 refers.

Section 2.19.12 refers to Ribbon Development Policy SS53 refers.

Section 2.19.15 refers to Access and notes that all applications will be required to show how visibility standards appropriate to the class of road as detailed in Tables 7.4 and 7.5 - Chapter 7 Transport) can be met - Policies SS59 and SS60 refer.

Section 2.19.16 refers to Domestic Garages/Outbuildings – Policy SS61/62 refers.

Section 2.19.17 refers to Roadside boundaries – Policies SS63/64 refer.

Section 2.19.18 refers to Wastewater – Policy SS65 refers.

Section 2.20 refers to Rural Housing Design and Siting Criteria – Policies SS66- 68 refer.

Chapter 7 refers to Transport and Section 7.3.6 to Entrances. Table 7.4 provides the Minimum Visibility Standards. Table 7.5 to Vehicle Access gradients and Fig. 7.1 to Junction Visibility Splays Policy TC12 refers.

Chapter 8 refers to the Environment, Section 8.4 to Water Quality and Section 8.4.2 to the Water Framework Directive. Section 8.5 to the Natural Water Systems and

Groundwater. Section 8.7 to On Site Wastewater Treatment and Disposal Systems. Policies ENV19/22 refer.

5.2. **The Sustainable Rural Housing Guidelines 2005**

This seeks to encourage and support appropriate development at the most suitable locations. Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working full-time or part-time in rural areas.

Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.
- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.

Section 4.4 is concerned with Access and restriction of such on National Primary and Secondary Roads. Regard is also had to Roadside Boundaries Section 4.5 is concerned with Protecting Water Quality and Site Suitability issues.

5.3. **Code of Practice Wastewater Treatment Disposal Systems serving Single Houses**

This document (2009) by the EPA relevant to single houses (p.e <10) and replaces SR6:1991 and the EPA Manual 2000 for 'Treatment Systems for Single Houses'. The objective is to protect the environment and water quality from pollution and it is concerned with site suitability assessment. It is concerned with making a recommendation for selecting an appropriate on site domestic wastewater treatment and disposal system if the site is deemed appropriate subject to the site assessment

and characterisation report. The implementation of the Code is a key element to ensure that the planning system is positioned to address the issue of protecting water quality in assessing development proposals for new housing in rural areas and meeting its obligations under Council Directive (75/442/EEC).

5.4. EU Water Framework Directive

The purpose of the EU Water Framework Directive (WFD) 'is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which prevents further deterioration and promotes protection and enhancement of water resources.

5.5. EU Habitat Directive

The aim of the EU Habitat Directive is 'to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies'.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party Appeal has been submitted by local residents John & Christina Howell. Their concerns include the following:

- The site is elevated and situated on the skyline, above, adjacent and opposite existing houses, the proposed development will cause overlooking and loss of privacy.
- They are concerned that the proposal will impact adversely on water quality and contaminate their well, when draining through the shale rock to the water vane.
- The proposed entrance will result in devastating damage to the road, existing wall, hedge grove and scaling back of the field to gain entrance. It will detract from the historic Old Coach Road.

- The proposed entrance is extremely close to bedrooms of another house and to another entrance and will result in noise pollution.
- Two exits so close together will cause safety problems for school children walking past to get the bus.

6.2. Applicant Response

Environmental Heritage Planning Services have submitted a First Party response on behalf of the applicant. This includes the following:

Impact on Residential Amenities

- The right to a view or skyline is not protected by planning policy and such views are observed in the surrounding area and in general. They are not designated within the Louth CDP as being of any particular merit or value worthy of special protection.
- RES 28 of the Louth CDP establishes a minimum separation distance of 22m between existing and proposed development. The proposed development allows for in excess of minimum separation distances.
- Landscaping proposals will further mitigate against any possible negative impacts.
- The proposal will be no different to other residential properties and will not create levels of noise or traffic that could negatively impact on residential amenity.

Impact upon Water Supply

- They submit that the appellant's concerns regarding possible contamination of their well water are highly questionable. They note agricultural practices carried out to address the appellant's complaint to the Council about malodorous smells not water contamination.
- They have regard to Section 8.7 of the Louth CDP and note that this recognises: *the provision of satisfactory waste water treatment is essential for the protection of the environment* and must comply with ground water and surface water regulations.

- Detailed information pertaining to the proposed foul water treatment system was submitted with the application and also in response to the Council's F.I request. They note that the Council's Environment Section were satisfied with the extent of information provided and concluded that this proposal is in compliance with the EPA *Code of Practice: Wastewater Treatment Systems for Single Houses (2009)*.
- The proposed treatment system is in full compliance with the details and requirements of Environmental Policies ENV19 and ENV21 relative to waste water treatment systems. They note and will comply with condition no.5 of the Council's permission. This provides a suitably robust means of ensuring that this aspect of the proposed development will have no negative impact upon the existing hydrological regime.

Proposed New Vehicular Entrance

- Submitted drawings detail the extent of existing hedgerow which requires replanting to provide the necessary sight distances and visibility splays for a safe vehicular entrance as required under Section 7.3.6 (Entrances) of the CDP.
- They note the local road is a Class 3 with a speed limit of 30kmph. The Council's Infrastructure Section raised no objection to the proposed entrance nor to its staggered position opposite the neighbour's entrance. They do not consider this arrangement would lead to confusion for walkers.
- The proposed vehicular entrance is in accordance with Policy TC12 and relative to visibility splays.
- The F.I submitted clarifies the extent of hedgerow that requires minimal realignment to accommodate the new entrance. Details of planning and landscaping have been submitted. This proposal is in compliance with Policies SS60 and SS63 relative to minimal impact on existing roadside boundaries.
- There is no evidence that this is the historic Old Coach Road, the road is not designated a historical monument or place recognised or registered on the

National Monuments Service's Archaeological Survey of Ireland sites and monuments record, or protected under the Louth CDP policies.

Concluding Remarks

- The applicant has satisfactorily demonstrated compliance with the local needs qualifying criteria relevant to Development Zone 5 as set out in Section 2.19.1 of the CDP and subsequent compliance with Policies RD39 and RD40.
- The scale massing and visual appearance of the proposed dwelling is in keeping with the general vernacular and built pattern of neighbouring dwellings comprising this small hamlet.
- They submit that the appeal is unsupported by any relevant national guidance or planning objective and policy set forth in the policies of the Louth CDP and request that it be dismissed.

6.3. Planning Authority Response

They ask the Board to take the Planner's Reports into account. They also note the following:

- The Environment Section of the Council requested among other matters that a Ground Water Assessment be submitted. Due to an oversight this was not included in the Council's Further Information request.
- Notwithstanding this the Environment Section of the Council was consulted regarding the F.I submitted, a site inspection took place and the Environment Officer was able to include that there are no wells within 60m of the application site.
- Thus, it was concluded that the proposed development is in compliance with the EPA Code of Practice Guidelines 2009 and that there will be no threat of environmental pollution. They note that the Environment Section subsequently recommended that planning permission be granted subject to conditions.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. As provided in Section 2.7 of the Louth County Development Plan 2015-2021, the county contains - *significant rural areas and it is recognised that there is a need to protect and support rural settlements and the countryside by accommodating limited growth in accordance with the needs of genuine rural dwellers whilst providing careful management of our physical and environmental resources. All of County Louth falls within 'rural areas under strong urban influence' as defined by the National Spatial Strategy (NSS) 2002 by reason of its proximity to Dublin and its strong urban structure and for this reason, to facilitate the careful management of rural one-off housing in County Louth, Local Needs Qualifying Criteria have been outlined in detail in Section 2.19.1 of this Plan.* Policy SS 19 requires the applicant to demonstrate compliance with Local Needs Qualifying Criteria relevant to the respective Development Zone as set out in Section 2.19.1.
- 7.1.2. The subject site is located in the rural agricultural area and is in Development zone 5, where as noted in Policy RD 39 limited one-off housing may be permitted. The local needs criteria include, that the applicant is the son/daughter of a qualifying landowner and must demonstrate a rural housing need and show that they do not already own a house or have not owned a house within the rural area of the County for minimum of 5 years prior to making an application.
- 7.1.3. It is provided on the application form that the site is being transferred to the applicant from her mother subject to planning permission. The location of the family home is shown to the north of the site. In response to the Council's request, additional documentation has been submitted as part of the F.I to demonstrate compliance with Local Needs. The applicant provides that this is her family home since she was born in 1988, which her parents constructed in 1985. Also, that she has never previously constructed a house and it still remains her family home. The Planner's Report notes that the applicant has submitted a declaration witnessed by a peace commissioner/practising solicitor that she does not own a house within the rural area of the County within the last five years. Therefore, it is considered having regard to

the documentation submitted, that the applicant complies with the Local Needs Criteria as specified.

7.2. Design and Layout and Impact on the Character and Amenities of the Area.

- 7.2.1. The Site Layout Plan submitted shows that the proposed house is to be set back 41m from the public road. This is to avoid interfering with views from the first floor windows at the rear of the existing traditional two storey farmhouse that faces the site. Along with the set back the proposed dwelling is shown set 21m off the southern site boundary.
- 7.2.2. The floor plans include a kitchen, sitting and living rooms on the ground floor with the latter set back in the rear single storey element, and 3no. bedrooms at first floor level. External finishes include natural stone, render and slated pitched roof. The application form provides that the floor area of the proposed works is 230.30sq.m. As shown on the floor plans the g.f.s of the ground floor including the single storey rear element is c. 150.3sq.m and of the first floor is c.80sq.m. The single storey element is to be linked by a flat roof with a pitched roof over the rear living room area. Regard is had to Section 2.19.11 and Table 2.9 of the Louth CPD relative to dwellings g.f.a. & minimum site size. As the site area is 0.4ha and exceeds the minimum size it is considered that the proposed g.f.a is acceptable.
- 7.2.3. The site is elevated above the road. As shown on the Site Layout Plan the contours, show this to be approx.2-3m above the road level (71.6). As shown on the elevations an element of cut and fill is proposed above existing ground level and the FFL is to be 74. The elevations show that the proposed house is to be 8m to ridge height. It is noted that this will appear higher than the traditional farmhouse to the south of the site, and than the single storey bungalow set at a lower level on the opposite side of the road.
- 7.2.4. Section 2.20 of the Louth CDP relates to Rural Housing Design and Siting Criteria. This includes reference in Section 2.20.2 to Building into the Landscape. It is noted that there are concerns about building on the skyline and that in view of the elevated nature of the site, the proposed development would appear visually obtrusive. In view of the 8m height proposed on this elevated site, the proposed dwelling will be more visible in the landscape than adjacent dwellings. I would also be concerned

that the dwelling while set back from the road will appear more suburban in form and would not add to the rural character of the area. It is considered that having regard to the design criteria that there may be scope for a revised house type that would be more built/integrated into the landscape and would not exceed 7m in height.

- 7.2.5. The proposed single storey garage is shown on a similar building line sited between the proposed dwelling and the southern boundary. As shown on the plans this is to be 4.5m in height and on a similar FFL. It is to be 60sq.m in floor area. It is recommended that if the Board decide to permit that it be conditioned that external finishes match the proposed dwelling house. Also, that a landscaping plan be implemented.

7.3. Access issues

- 7.3.1. It is noted that the site is located to the south of junction 12 Dunleer (M1) and is accessed via a Local Class 3 road, off the R132. It is c.125m from the junction with this busy road network. The accommodation road is narrow and undulating. As shown on the Site Layout Plan, the proposed access is to be sited at the northern end of the site. There is no field gate to the road along the site frontage at present. Minimum visibility standards in respect of all new entrances are set out in Table 7.4 and 7.5 of the CDP Policy TC12 relates. This requests that sight distances of 75m are available in either direction. The Site Layout Plan shows 50m either side and the First Party notes that the Plan provides a caveat to minimum sight distances of 85% on such roads where the speed limit is below 50kmh as is the case with the subject site. It is of note that the Council's Infrastructure Section does not comment on the sightlines issue or object to the proposed development.
- 7.3.2. The Third Party concerns about the removal of roadside boundaries including hedgerows to facilitate sightlines, and about the historic nature of the Old Coach Road are noted as is the First Party response. The former also have concerns about the staggered nature of the proposed entrance on this section of road. Section 2.20.7 of the CDP refers to the need to integrate the proposed development with existing Roadside Boundaries and to leave existing roadside hedgerows and ditches intact as much as possible. The First Party provide that landscaping and planting information provided in response to the Council's F.I request clarifies the extent of hedgerow that requires minimal realignment to accommodate the new entrance and

the mix of native hedgerow species proposed. They refer to compliance with CDP Policies SS 60 and SS 63 relative to roadside boundaries and road safety. Having regard to the Sight Layout Plan submitted, including at F.I stage I am concerned that as shown that some realignment will be necessary to facilitate sight lines to the north of the application site which are not shown within the red line boundaries. This does not appear to be within the landholding of the applicant (no blue line boundary shown) and a letter of consent from the landowner has not been submitted.

7.4. Regard to Disposal of Effluent

- 7.4.1. As this is an unserviced rural area it is proposed to provide an onsite treatment system. The location of the proposed waste water treatment system including percolation area is shown to the north of the proposed dwelling on the Site Layout Plan. Regard is had to Section 2.19.18 and Policy SS 65 of the Louth CDP which refers to protection of groundwater and surface water from contamination by domestic effluent. This and Section 8.7 seek to ensure that such developments are in accordance with the recommendations contained in the *Code of Practice: Wastewater Treatment Systems for Single Houses (2009)*.
- 7.4.2. A Site Suitability Assessment for one-off wastewater treatment systems has been submitted with the application. The Site Characterisation Form notes that the site is in an area where the Aquifer Category is of extreme vulnerability and the category is Poor. The groundwater protection response is R2¹. It notes that there are generally free draining gravelly subsoils and raised percolation areas due to bedrock close to surface level. The targets at risk are ground water as a resource given that bedrock may be encountered close to ground level and the no. of private wells in the vicinity are noted. They provide that O.S maps indicate that the minimum separation distances can be achieved as set out in the EPA Code of Practice and GSI ground water protection response documents.
- 7.4.3. It notes that there is a shallow slope as the site is located on agricultural land within rolling landscape. There are 8 dwellings within 250m of the site, served by septic tanks/wwts and private wells. The revised Site Layout Plan shows the proximate location of wells both within the site and on the opposite side of the road. The Third Party concerns about possible contamination of their well are noted. They provide that they were told that the water vein for their well came underneath the field of the

proposed site. They are concerned that the proposed development will further contaminate their well when draining through shale rock to the water vein. The First Party consider this is an unqualified assumption and highly questionable. They note that detailed information pertaining to the proposed foul water treatment system was submitted with the application and in response to the F.I. They also noted that the Council's Environment Section were satisfied that there were no existing wells within 60m of the proposed treatment system. It is noted that the Site Layout Plan submitted at F.I stage shows the well serving the adjacent dwelling to the south within the site and close to the southern boundary is c.52m away from the proposed percolation area and the proposed well is c.27 away. Regard is had to Table B.3 of the EPA Code of Practice relative to recommended minimum distance between a receptor and a percolation area or polishing filter.

7.4.4. The Site Characterisation Form gives that the depth to trial hole as 1.4. The 'T' tests provide the result of T=67. Table 6.3 of the Code of Practice outlines the interpretation of the percolation test results. This provides that the ground is unsuitable for a septic tank system and maybe suitable for a secondary treatment system with a polishing filter at the depth of the T-test hole. 'P' test results = 15.61 are within the acceptable range for a secondary treatment system with polishing filter. Details have been submitted showing that it is proposed to install a packaged wastewater treatment system and polishing filter in accordance with the EPA Code of Practice. This includes that tertiary treatment is proposed in order to reduce the surface area of the filter drain field. It is recommended that appropriate conditions relative to this issue be included should the Board decide to permit.

7.4.5. However, I am concerned that taking note that the well of the adjoining property to the south is within the subject site, that the location of the septic tank/wwts for this property has not been shown. This proposal will add to the proliferation of individual wwts and private wells in this area. In the absence of a Groundwater Assessment (as originally requested by the Council's Environment Section – but as noted by the Council not provided) I would be concerned that it has not been ascertained that the proposed development would when taken in cumulation with existing systems would not lead to the pollution of groundwater in this case. Having regard to these issues I would be concerned that it has not been shown that the proposal would be in

compliance with Policy SS 65 relative to the proliferation of individual wwts and protection of groundwater.

7.5. Screening for Appropriate Assessment

- 7.5.1. It is noted in that the site is not proximate to any Natura 2000 sites and the Planner's Report provides that they are not aware of any source/pathway/receptor routes between the site and any Natura sites. They refer to the Boyne Coast and Estuary SAC (side code: 001957) & SPA (004080 c.11kms from the site), Clogherhead SAC (site code: 001459 c.11kms), and Dundalk SAC (000445) and SPA (004026 c.9kms).
- 7.5.2. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the distance to the nearest Natura 2000 sites, 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

- 8.1. I recommend that permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

1. Having regard to the siting, design, scale, and two-storey nature of the proposed development, of this large suburban house type, on an elevated site, above the skyline in a rural area outside lands zoned for residential development, it is considered that the proposed development would constitute an overly dominant feature in the landscape and would impact adversely on the visual amenity and character of the rural area. The proposed development would, therefore, be contrary to Section 2.20 of the Louth County Development Plan 2015-2021 and the proper planning and sustainable development of the area.
2. It is considered that, having regard to the free flowing drainage characteristics of the site which is located within an area where there is a possible risk to groundwater as a resource given that bedrock may be encountered close to

ground level, that in the absence of a Ground Water Assessment being carried out and taken in conjunction with existing development in the vicinity, including a concentration of individual waste water treatment systems and private wells that the Board is not satisfied that the proposed development would not cumulatively have an impact to groundwater in the area. Therefore, the Board is not satisfied based on the documentation submitted that the proposed development would comply with Policy SS 65 and Section 8.7 of the Louth County Development Plan 2015-2021 and would not impact adversely on water resources in the area.

3. Having regard to the details submitted on the Site Layout Plan and as revised by the Further Information submitted, the Board is not satisfied that the proposed development can be carried out on lands within the applicant's ownership or that the consent of the adjoining landowner to the north has been obtained for the section of realignment of roadside boundaries required as shown outside of the red line boundary of the application site. They are also not satisfied that as per Policy SS 63 it has been demonstrated that the new access can be located having regard to both road safety and the protection of existing roadside hedgerow, trees and boundaries.

Angela Brereton
Planning Inspector

31st of May 2018