



An
Bord
Pleanála

Inspector's Report ABP-300885-18

Development	Construction of a new house
Location	Blackberry Lane, Newbridge, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	17/1285
Applicant(s)	Dearbhail Kelly
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Dearbhail Kelly
Observer(s)	None
Date of Site Inspection	11 th July 2017
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located in Newbridge, Co. Kildare. It is located c. 1.5km to the north-west of the town centre off the Morrinstown Road, on a lane called Blackberry Lane. It is zoned for agricultural purposes and is located within the Newbridge Local Area Plan 2013 – 2019 boundary.
- 1.2. Blackberry Lane forms the north and west boundary of a substantial parcel of land, which is bounded by the Kildare railway line to the south, and Morrinstown Road to the east. On the far side of the railway tracks, to the south, there are housing estates. Morrinstown Road leads to another housing estate to the north-east of the land.
- 1.3. A number of dwellings exist along the lane. The lane is narrow and in poor condition particularly on the western section of the lane. Blackberry Kennels are located on the opposite side of the lane c. 250m west of the subject site. With the exception of the dwellings forming the boundary of the north and west and facing Morrinstown Road, the land is a mix of agricultural uses.
- 1.4. The appeal site itself fronts onto the northern section of Blackberry Lane. The site is stated as measuring 0.312 Ha and is relatively level and appears to not be in active use. The site is bounded by hedgerows, mature trees and timber post and wire fencing. A single storey dwelling is located to the east of the site and a field is located to the west. The field to the west is currently grassed and maintained. A dormer dwelling is further west again. As the crow flies, Newbridge Train Station is located c.800m to the east. Pollardstown Fen SAC is located c.750m to the west.
- 1.5. Appendix A includes maps and photos¹.

¹ Note a site visit was carried out by this Inspector on an earlier appeal which was subsequently withdrawn.

2.0 Proposed Development

- 2.1. It is proposed to develop a two storey detached dwelling 204.5sq.m in area. The dwelling has a narrow footprint and has a ridge height of 7.34m. Living areas are proposed at ground floor level with four bedrooms at first floor.
- 2.2. The proposed finishes include a mix of plaster, stone and slate. The roof is pitched bookended with chimneys at either end. A site suitability assessment accompanies the planning application which indicates that the site is suitable for a septic tank and percolation area.
- 2.3. The application is accompanied by a number of documents including a Planning Report, as well as an Architect's Planning Report. A substantial number of documents accompany the application indicating the applicant's links with the area.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for four reasons. The reasons are summarised as follows:

1. The site is zoned 'I – Agricultural' in the Newbridge Local Area Plan 2013 – 2019. Dwellings are open for consideration. Applicants must be able to demonstrate a need to live in an agricultural zone. Applicant's current residence is on lands zoned 'B – existing/infill residential'. It is not considered that the applicant can demonstrate compliance with rural housing policy.
2. The focus of the rural housing strategy is to facilitate the legitimate needs of people with regard to one-off housing. The applicant has not demonstrated compliance with the policy and would materially contravene policy RH2 of the County Development Plan.
3. Policy RH9(iv) of the Plan is to ensure that applicants comply with all other normal siting and design considerations, including the capacity of the area to absorb further development. Due to extent of ribbon development, it is considered that the proposed development would exacerbate an excessive density of development in a rural area lacking certain public and community

services, and would contribute to increasing suburbanisation and contravene policy RH9(iv).

4. Policy RH10 of the Plan seeks to control level of piecemeal and haphazard development of rural areas close to urban centres. Proposed development by reason of its proximity to Newbridge Town would further exacerbate the level of development in proximity to the town where there are zoned lands. To further promote development would set a precedent and would contribute to the unsustainable development of this rural area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

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

- Considers proposal complies with the Rural Design Guidelines in terms of design.
- Notes dwelling would be 4th in a row along a 250m stretch of road. Does not consider site to be an infill development as an infill site will be created to the immediate south-west if planning permission is granted. Notes policy RH10 seeks to control level of piecemeal and haphazard development of rural areas close to urban centres and settlements. By reason of its location in close proximity to Newbridge where adequate lands are zoned, it would further exacerbate the level of development in proximity to these areas where lands are zoned. Notes that this is not family land but it is proposed to be purchased from a third party.
- With respect to local need, acknowledges that applicant has grown up close to the site but within lands zoned B: Existing Residential. Notes argument put forward in applicant's planning report, but considers that the Planning Authority is consistent in its approach to local need and the parameters as laid out in the Development Plan. States that to be considered for development on lands zoned '1 – agricultural' applicants must be able to demonstrate a need to live on agricultural zoned land. The applicant does not present a local need to build in an area zoned '1' on 3rd party lands.
- Concludes that issues pertaining to the previous planning application remain and have not been adequately addressed.

- Planner recommends refusal of permission

Decision is in accordance with the Planner's recommendations.

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.

3.3. **Prescribed Bodies**

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

3.4. **Third Party Observations**

None received

4.0 **Planning History**

On the subject site:

- **KCC Reg. Ref. 17/40:** Permission was refused to the applicant by the Council in March 2017 for a dwelling. Reasons for refusal were very similar to the subject reasons. The applicant appealed the decision to the Board but the appeal was withdrawn in September 2017.

In the vicinity:

- **KCC Reg. Ref. 17/1023:** Outline permission for a dwelling was granted in December 2017 for a dwelling on the western side of Blackberry Lane subject to 20 conditions.

5.0 **Policy Context**

5.1. **Newbridge Local Area Plan 2013 – 2019**

- 5.1.1. Under the Newbridge Local Area Plan the site is zoned 'I – Agriculture' on Map 7.

Part A of the Plan provides an Introduction and Context. Part B refers to the Policies and Objectives and Part C refers to the Land Use Zoning Objectives.

- 5.1.2. Section 6 of Part A refers to Planning for Residential Expansion. It notes '*The Plan ensures the supply of suitably zoned serviced land to accommodate the future growth of Newbridge in line with its designation in the Regional Planning Guidelines as a Large Growth Town II*'.
- 5.1.3. Section 7.2.3 specifically refers to Housing in the Agricultural Zone. It states '*The primary aim for the agricultural zone in Newbridge is to preserve the existing agricultural and equine use of the areas zoned for this purpose, and to prevent urban generated development which would interfere with the operation of farming/ bloodstock or rural resource based enterprise*'. It further states '*Within the agricultural zone in Newbridge, housing will be confined to people with a genuine housing need and who can demonstrate that they comply with the relevant category of local need outlined in the County Development Plan*'.

Policy HA1 states:

To manage the provision of one off housing on lands zoned as '1 – Agricultural'. Limited one off housing will be permitted in this zone subject to compliance with the rural housing policy of the CDP 2011 – 2017 or as subsequently amended (Rural Housing Policy Zone 1). Documentary evidence of compliance with this policy must be submitted as part of the planning application, including a separate statement by the applicant on the need to reside in the area.

Table 17 in Part C refers to Land Use Objectives. Zoning Reference '1 – Agricultural' is '*To Retain and Protect Agricultural Uses*'. It is noted that:

The purpose of this zoning is to ensure the retention of agricultural uses and protect them from urban sprawl and ribbon development. Uses which are directly associated with agriculture or which would not interfere with this use are open for consideration. This includes limited housing for members of landowners' families/persons who can demonstrate a need to live in the agriculture zone (in accordance with policy RH4 as set out in the Kildare County Development Plan 2011 – 2017, or as amended).

5.2. Kildare County Development Plan 2017 - 2023

Chapter 4 refers to Housing. Section 4.12.7 outlines the Rural Housing Policy. Newbridge 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: is a member of a farming family or a member of the rural community and meets one of the local need criteria (i) – (iii). Category of applicant 2 refers to members of the rural community and (i) must have grown up and spent substantial periods of their lives (12 years) living in the rural area and who seek to build their home in the rural area on their family landholding or where no land is available in the family ownership, a site within 5km of the original family home, (ii) Grown up and spent substantial periods of their lives (12 years) living in the rural area who have left the area, but now wish to return to reside near to, or to care for immediate family members, (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.

Policy RH9 states:

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.

Policy RH10 states:

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.

5.3. Sustainable Rural Housing Guidelines for Planning Authorities, 2005

Section 3.2.3 of the Guidelines refers to Rural Generated Housing. It states: *'Development plans in defining persons considered as constituting those with rural generated housing needs, should avoid being so prescriptive as to end up with a very rigid development control system'.*

5.4. Natural Heritage Designations

Pollardstown Fen SAC (Site Code 000396) is located c. 750m to the west of the site and Mouds Bog SAC (Site Code 002331) is located c.2.4km to the north.

6.0 The Appeal

6.1. Grounds of Appeal

A consultant on behalf of the applicant lodged an appeal against the Planning Authority's decision to refuse permission. The appeal included a cover letter and a planning report. In summary it states:

- This is a small proposal and the Council raises no objection to the ability of the land to physically and functionally accommodate a building.
- The reasons for refusal overlap and can be grouped into two pairs – compliance with rural housing policy, and to the ability of the area to accommodate the dwelling.
- Considers application was accompanied by paperwork which shows that the applicant is from Blackberry Lane, and the Councils denial of the applicant's eligibility is based on the fact that her family dwelling is on zoned land.

- Considers Council has focused on location of the family home on residential land rather than whether the applicant is a member of the rural community which is a test in adopted policy. Given the appellant's historic familial links with this immediate locale, submit she is a member of the rural community.
- The applicant was raised on the same road as the subject site and in a house, which although beside an estate, comprises a detached dwelling on its own independent allotment, in the nature of a one-off house. The difficulty arises from the fact that the family home is located on the residentially zoned side of the urban/rural divide. A distinction should be drawn between individuals who are part of the urban community and one whose roots lie within the rural area.
- Reference is made to the original report prepared by the Inspector on the withdrawn appeal² where the Inspector considered the applicant to be from the rural area.
- The second issue concerns the capacity of the area to accommodate the house – do not believe that this proposal would cause such harm so as to warrant withholding consent. Reference is made to the Planning Authority's recent decision to permit a dwelling on Blackberry Lane under Reg. Ref. 17/1023 issued after earlier refusal of permission for the present appellant under Reg. Ref. 17/40. This would tend to suggest that the area has not actually reached a watershed in terms of its ability to accommodate extra housing.
- Reference is made to other decisions whereby the Board overturned decisions of the Planning Authority to refuse permission for reason of capacity of an area to absorb development.
- Note that the Planning Authority accept that the site is within walking distance of the largest retail and recreational area in the county, yet oppose the proposal on the basis that the rural area lacks public services – difficult to endorse such a position given the juxtaposition of this land in Newbridge.
- Consider Planning Authority simply reproduced a standard reason for refusal without properly considering whether such a concern applies in this case, and has ignored the proximity of this property to the built-up area surrounding Newbridge.

² PL09.248321 – Withdrawn appeal

7.0 Assessment

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. 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

7.2. Compliance with Local Housing Need Policy

7.2.1. This is the second application for a dwelling on this land by the same applicant. The Planning Authority refused this second application for similar reasons to the first application, two of which pivoted on the fact that the applicant had not adequately demonstrated compliance with the Local Housing Need Policy.

7.2.2. The Planning Authority assessment notes that the applicant's parent's house (where the applicant currently resides) is located within residential zoned lands. This house is located on the border of the lands zoned existing residential and agricultural. The applicant's parents' house is in the nature of a one-off house – it is a standalone dwelling on a large plot facing Blackberry Lane to the south of the railway tracks, 1.3km from the subject site. Housing estates are located to the rear of the parent's house. However, houses across the road are within the agricultural zoning.

7.2.3. The applicant has provided ample evidence of her ties with the area, and indeed, provided evidence of the long family ties to this area of Newbridge. I am satisfied that with the exception of her parent's dwelling, that happens to be on the rural/urban divide and in the residential zoned side of the road, the majority of her extended family, including her mother's family home, have ties to the rural and agricultural zoned part of Newbridge.

7.2.4. The rural housing policy of Kildare considers that Newbridge is in Zone 1 with respect to rural housing policy. The Kildare County Development Plan states that for a person to be considered for a rural dwelling in Zone 1 they must meet certain

criteria. In this case, the applicant is stating that they are a member of the rural community. The policy requires that they not only be a member of the rural community, but also meet one of the local need criteria (i) – (iii). I consider that the applicant could be deemed to comply with a category of applicant who is a member of the local community and with criteria (i): *must have grown up and spent substantial periods of their lives (12 years) living in the rural area and who seek to build their home in the rural area on their family landholding or where no land is available in the family ownership, a site within 5km of the original family home.*

7.2.5. I consider that the applicant can be considered to be from the rural area, albeit the built-up area of Newbridge has grown to incorporate part of Blackberry Lane. I accept that ample evidence has been provided to demonstrate that the applicant has grown up and lived in this area of Newbridge. I therefore consider that the applicant complies with the rural housing need policy.

7.2.6. However, of key importance is whether or not the applicant has a genuine need to live in a rural area. The Newbridge LAP states '*Within the agricultural zone in Newbridge, housing will be confined to people with a genuine housing need and who can demonstrate that they comply with the relevant category of local need outlined in the County Development Plan*'. The LAP clearly states that housing in agricultural zoning will be confined to those with a genuine need to live in this zone. The land is owned by a third party and is not in active agricultural use. I do not accept that the applicant has a genuine housing need to live in the agricultural zone of Newbridge. The applicant has submitted a Statement of Need letter – however this does not indicate why the applicant needs to live in agriculture zoned land over and above any other residential zoned area in Newbridge. This is contrary to the requirements of policy HA1 of the Newbridge LAP.

7.3. **Capacity of area to absorb development**

7.3.1. The Planning Authority refused permission on the basis that it did not consider that the area had the capacity to absorb another dwelling, and considered that the proposed development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities.

- 7.3.2. Having visited the site previously, I note that there are a substantial number of dwellings along Blackberry Lane, particularly along the west side of the lane. The proposed site is one of a small number of sites that remain undeveloped on the north side of the lane. However, there is very little development on the opposite side of the lane which results in this part of the lane continuing to have rural characteristics despite the proximity to Newbridge Town.
- 7.3.3. Policy RH9(iv) which was referred to in one of the Planning Authority's reasons for refusal, refers to the capacity of the area to absorb further development. I consider that the lane has very little capacity to absorb further development. The Planning Authority decided not to zone this area for residential development in the current Local Area Plan, and consider that sufficient suitably zoned serviced land to accommodate the future growth of Newbridge has been provided for elsewhere within the Local Area Plan boundary. This area was purposely zoned agricultural and to permit further development would exacerbate an excessive density of development, contrary to the intent of the agricultural zoning which is to ensure the retention of agricultural uses and protect them from urban sprawl and ribbon development.
- 7.3.4. Policy RH10 seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. I consider that this proposal would intensify piecemeal development close to the urban centre of Newbridge, contrary to Policy RH10.
- 7.3.5. The Planning Authority had concerns that the area was lacking in certain public services and community facilities. I do not agree with the Planning Authority with respect to community facilities considering the site is within walking distance of the town. However, there is a lack of public services including wastewater and roads. I have concerns with road infrastructure. The road is very narrow and in poor condition in places with limited opportunities for two cars to pass each other. During my previous site visit I noted that quite a number of vehicles use the lane, possibly as a 'rat-run' from Station Road to the R445. I have concerns that to permit another entrance on to this road would add to the volume of traffic already using this road.
- 7.3.6. In conclusion, I am satisfied that the addition of this dwelling would exacerbate an excessive density of development and would be contrary to policies RH9(iv) and

RH10 which seeks to control haphazard and piecemeal development close to urban centres.

7.4. Appropriate Assessment

7.4.1. An Appropriate Assessment (AA) screening report has not been submitted by the applicant.

7.4.2. I follow the staged approach to screening for appropriate assessment as recommended in both EU Guidance and by the Department of Environment, Heritage and Local Government: -

1. Description of the plan or project and local site or plan area characteristics.
2. Identification of relevant Natura 2000 sites and compilation of information on their qualifying interests and conservation objectives.
3. Assessment of likely significant effects-direct, indirect and cumulative, undertaken on the basis of available information.
4. Screening statement with conclusions.

7.4.3. Project Description and Site Characteristics

The proposed development is as described in the report above and in the application documentation.

7.4.4. Relevant Natura 2000 Sites, Qualifying Interests and Conservation Objectives

Two Natura Sites are identified as being within a 15km radius of the site. The sites are:

Site Code, Site Name and Designation	Approx. distance from the site at Blackberry Lane	Qualifying Habitats and Species
000396 Pollardstown Fen SAC	750m	Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davalliance</i> [7210]; Petrifying springs with tufa formation (Cratoneurion) [7220]; and Alkine fens [7230]. Greyer's Whorl Snail [1013]; Narrow-mouthed Whorl Snail [1014]; and Desmoulin's Whorl Snail [1016].
002331 Mouds Bog SAC	2.4km	Active raised bogs [7110];

Site Code, Site Name and Designation	Approx. distance from the site at Blackberry Lane	Qualifying Habitats and Species
		Degraded raised bogs still capable of natural regeneration [7120]; and Depressions on peat substrates of the <i>Rhynchosporion</i> [7150].

The Natura sites do not have linkages with the proposed site – there are no watercourses on the site.

7.4.5. Conservation Management Plans for the sites have been published.

000396 Pollardstown Fen SAC

To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

002331 Mouds Bog SAC

To restore the favourable conservation condition of Active raised bogs in Mouds Bog SAC, which is defined by a list of attributes and targets stated.

7.4.6. *Assessment of likely effects*

The site is not within a designated site, thus there would be no direct impacts from the proposed development. The SACs are water dependent ecosystems, and therefore, any changes to the groundwater regime or surface water quality as a result of the proposal could have adverse effects on the habitats and species for which the Pollardstown Fen SAC and Mouds Bog SAC are designated.

The site is not directly linked with either Natura 2000 site.

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Pollardstown Fen SAC, or any other European site, in view of the site’s Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of an NIS) is not therefore required.

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

The proposed development is located in an area zoned 'I- Agricultural' in the current Newbridge Local Area Plan 2013 – 2019, for which the objective is to preserve the existing agricultural and equine use of the areas zoned for this purpose and to prevent urban generated development which would interfere with the operation of farming/ bloodstock or rural resource based enterprise. This objective is considered reasonable. It is a policy of the planning authority, as set out in the plan, to channel housing into serviced centres and to restrict development in rural areas to that necessary to serve the needs of those engaged in agriculture and other rural activities. The proposed development would contribute to ribbon development in this area, lead to demands for the uneconomic provision of further public services in an area where these are not proposed and would interfere with the rural character and attractiveness of the area. The proposed development would, therefore, contravene materially the development objective as set out in the development plan and be contrary to the proper planning and sustainable development of the area.

Ciara Kellett
Inspectorate

18th May 2018