



An  
Bord  
Pleanála

## Inspector's Report ABP 300916-18

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<b>Development</b>	Subdivision of existing site, construct dormer bungalow and waste water treatment plant.
<b>Location</b>	Stephenstown Court, Two Mile House, Naas, Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority Reg. Ref.</b>	17/1313.
<b>Applicant(s)</b>	Evergreen Construction Partnership.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	Evergreen Construction Partnership.
<b>Observer(s)</b>	Michael and Maire Wilson.
<b>Date of Site Inspection</b>	1 <sup>st</sup> May 2018.
<b>Inspector</b>	Susan McHugh.

## 1.0 Site Location and Description

- 1.1. The appeal site is located in the rural settlement of Twomilehouse approx. 5kms southwest of Naas, 5kms northeast of Newbridge and 4km north of Kilcullen Co. Kildare. The site is located on the western side of the village and is accessed via the existing residential estate of Stephenstown Court. The estate is characterised by large detached bungalows on large plots.
- 1.2. The site is regular in configuration and has a stated area of 0.273ha. It is bounded to the south east by an existing house No. 23 Stephenstown Court which together share an access from the cul de sac. The appeal site is accessed via a short unsurfaced driveway which runs along the front boundary of No. 23. The observer resides in No. 22 further to the south east.
- 1.3. The site is bounded to the northeast by the rear boundary of house No. 16 Stephenstown Court, to the northwest by open agricultural land and to the south west by a linear area of grassed open space serving the residential estate. Site boundaries are defined by a timber post fence.
- 1.4. An existing 220 KV ESB pylon (Tower No. 8) is located within the area of open space approx. 10m from the southwestern site boundary, with the overhead lines running diagonally across the western part of the site.

## 2.0 Proposed Development

- 2.1. Permission is sought for the subdivision of the existing site and construction of a detached dormer bungalow, secondary effluent treatment system and all associated site works.
- 2.2. The proposed dwelling has a stated floor area of 277sqm and accommodates living dining, kitchen, utility, playroom, wc, and master bedroom en-suite at ground floor and four no. bedrooms at first floor with two shared bathrooms.
- 2.3. The maximum ridge height of the roof is 7.66m. It includes a single dormer window to the front and two to the rear, with rooflights to the side south east facing elevation.
- 2.4. The chimney serving the ground floor living room to the rear is positioned forward of one of the first-floor dormer windows to the rear north east facing elevation.

- 2.5. The house is located approx. 3m from the side boundary with the existing house to the southeast No. 23, and approx. 8m from the rear boundary to the northeast with No. 16 Stephenstown Court.
- 2.6. The proposed Oakstown waste water treatment system and percolation area to be located to the northwest of the site.
- 2.7. The application is made in the name of Evergreen Construction Partnership with Tony Kelly, 21 Alderwood Grove, Springfield Tallaght Dublin 24 given as the name of the company director. The owner of the site is Shay White
- 2.8. The application was accompanied by the following;
  - A letter from ESB International in relation to design clearances and states they have no objection to the proposed development.
  - Letter of consent from the landowner, (Not on file)
  - Site Characterisation Report.
  - Planning Report.

### 3.0 Planning Authority Decision

#### 3.1. Decision

The planning authority decided to **refuse** permission for one reason, as follows;

1. Chapter 17 section 17.11.2 'Applications Proximate to Overhead Lines' of the Kildare County Development Plan 2017-2023 sets out that development in proximity to a 220kV overhead line requires a clearance distance of 30 metres either side of the centre line or around a pylon. As detailed in the site layout plan submitted the proposed dwelling if permitted would be located within 30 metres of the centreline of the existing 220kV overhead line. Therefore, it is considered that the proposed development would contravene the requirements of the Kildare County Development Plan 2017-2023, would set an undesirable precedent for similar proposals elsewhere in the county, and

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

### 3.2. **Planning Authority Reports**

#### 3.2.1. **Planning Report** (dated 25<sup>th</sup> January 2018)

Basis for the planning authority decision. Includes:

- The applicant is required to demonstrate compliance with housing policy under VRS3 which shall be primarily for local need. The applicant has indicated that they would accept a condition which would require the prospective owner to comply with local demand.
- The location of the chimney stack to the rear as detailed in the northeast elevation is located directly in front of one of the dormers and is unacceptable.
- The proposed house is located 22m from the existing 220kV overhead line and is contrary to section 17.11.2 of the Kildare County Development Plan (2017-2023) and is unacceptable. To set back the proposed dwelling would break the building line and disrupt the established pattern of development in the estate.
- The contiguous elevation in respect of the existing house to the south east differs from that on site.
- No detailed landscaping proposals submitted.
- No elevational details have been submitted for the site entrance.
- A refusal of permission for one reason is recommended.

#### 3.2.2. **Other Technical Reports**

**Area Engineer** – No objection subject to conditions.

**Transportation** – No objection subject to conditions.

**Water Services** – No objection subject to conditions.

**Environment** – No objection subject to conditions.

**Chief Fire Officer** - No objection subject to conditions.

### 3.3. **Prescribed Bodies**

**Irish Water** – No objection subject to conditions.

### 3.4. **Third Party Observations**

One submission was lodged by Michael and Maire Wilson with an address at No. 22 Stephenstown Court. Issues raised can be summarised as follows;

- Proximity of the proposed house to the 220kV line.
- Lack of a connection to the existing local sewerage system.
- Siting of proposed house not in keeping with established building line.
- Access and road safety concerns.
- Speculative development by owners in adjoining house.

## 4.0 **Planning History**

### 4.1.1. *Parent Permission*

**P.A. Reg. Ref. 00/884:** Permission **granted** 02/11/2000 for housing development with for 23 units (application provided for 33 units). Condition No. 2 limited the number of houses to 23 only, namely house numbers 1 to 23 inclusive.

### 4.1.2. *Appeal Site*

**P.A. Reg. Ref. 16/967:** Permission **refused** 04/11/2016 for subdivision of existing site for the construction of a detached house for Shay White. The two reasons for refusal referred to;

- local need - material contravention of Policy V3 of the Kildare County Development Plan 2011-2017, and
- proximity of the development to the ESB lines which was contrary to section 19.9.2 with respect to applications proximate to Overhead Lines.

4.1.3. *Adjoining house to the Southeast (No. 23)*

**PA. Reg. Ref. 15/714:** Permission **granted** 07/04/2016 for construction of a detached dormer bungalow, single storey garage, connection to foul sewer and entrance for Fiona White. This permission has been implemented.

**P.A. Reg. Ref. 15/400:** Permission **refused** 07/07/2015 for construction of a detached dormer bungalow with a one and a half storey element, single storey garage and connection to foul sewer and entrance for Fiona White.

## 5.0 Policy Context

### 5.1. Kildare County Development Plan 2017-2023

5.1.1. **Volume 1 Chapter 3** of the plan relates to settlement strategy and sets out a hierarchy of settlements throughout the county. Two Mile House is identified in the County Settlement Hierarchy as a '*Rural Settlement*'.

5.1.2. **Section 3.4.5** of the plan refers to the role of Rural Settlements which is to '*develop as local centres for rural catchments with growth appropriate to cater for local demand*'. The plan states that '*lower densities will be encouraged in appropriate locations to provide alternatives to one-off rural dwellings in the immediate rural area.*' The '*planning framework for future development of the rural settlements is detailed in Volume 2, Section 2.*'

5.1.3. **Chapter 16** sets out Urban Design Guidelines.

5.1.4. **Chapter 17** sets out Development Management Standards.

#### **Section 17.11.2 Applications Proximate to Overhead Lines**

*'In determining applications proximate to overhead power lines the planning authority will have regard to the clearance distances as recommended by the Electricity Supply Board (ESB):*

*-For development in proximity to a 220kv overhead line, a clearance distance of 30 metres either side of the centre line or around a pylon is required.'*

5.1.5. **Volume 2** of the plan refers to villages and rural settlements the lower tiers of the settlement hierarchy.

5.1.6. It is indicated in **section 2.3** that *‘these settlements will develop as local centres for their rural catchments with growth appropriate to cater for local demand. Expansion will be controlled to minimise pressure on services, the environment and unsustainable commuting patterns. Each of the 18 no. Rural Settlements is subject to a development strategy (refer to Section 2.6). Each settlement strategy comprises a settlement core, existing built up area, settlement expansion area and a settlement boundary. The lands within the defined settlement boundaries do not constitute zoned lands.’*

5.1.7. **In section 2.4** policies in relation to rural settlements are outlined including;

**VRS 3:** *‘Facilitate sustainable population growth in the identified Rural Settlements with growth levels of up to 20% over the Plan period to cater primarily for local demands. Local demand for rural settlements is defined as persons residing for a period of 5 years within a 10km radius of the site. ‘Primarily for local demand’ shall be defined as being in excess of 50% of the overall development.’*

**VRS 4:** *‘Generally permit density levels in accordance with indicative levels outlined in Table 4.2 of this Plan. Proposals shall conform to the Development Management Standards contained in Volume 1 Chapter 17 of this Plan. Exceptions may be made to development management standards in infill/brownfield sites within village centres or settlement cores where the scheme is of exceptional quality and design.’*

5.1.8. **Section 2.6** outlines the overall strategy for the settlements and table 2.7 sets out requirements in relation to core areas and existing settlements.

Map Ref: V2-2.3 refers to Two Mile House and the appeal site is designated as an area of *‘Existing Settlement’*.

The Development Objectives for Existing Settlements state the following;

- *New development proposals shall accord with the population growth level of up to 20% designated for each settlement.*
- *Any proposals for residential infill should preserve or improve residential amenity, being at an appropriate scale, density and form to the existing residential character of the area.*

- *All infill development proposals will be subject to a high quality design response and will not negatively impact on the residential character and residential amenity of the existing settlement.*
- *All proposals will be subject to the relevant development managements standards set out in Volume 1, Chapter 17.*

## 5.2. Natural Heritage Designations

There are no designated areas in the vicinity, the following European sites are within a 15km radius of the appeal site.

Site Name	Designation	Site Code	Distance
Pollardstown Fen	SAC	000396	8.1km W
Mouds Bog	SAC	002331	6.9km NW
Poulaphouca Reservoir	SPA	004063	9.9km SE

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.2. A first party appeal against the decision to refuse permission by the planning authority has been lodged by Derek Whyte Planning Consultant acting on behalf of the appellant Evergreen Construction Partnership (ECP).

6.3. It was accompanied by a letter from the ESB International dated 11<sup>th</sup> May 2017, a contiguous elevation, and a site layout plan for another residential development granted under P.A. Reg. Ref. 15/161. In summary, it states:

- A balance must be struck between implementation of the policy as it relates to separation distances to overhead power lines and the objective of the policy which is for safety reasons.

- The proposed development is located in an identified settlement area which should benefit from a more positive presumption rather than a refusal.
- There are no safety concerns from the ESB in relation to the proposed development.
- The reason for refusal does not have regard to distances recommended by ESB and the 30 metre quantitative measurement is not the determining element for permission but rather the advice of the competent body in this case the ESB.
- Precedent established in Kildare under P.A. Reg. ref. 15/161 where permission was granted for a house located 20 metres from a 220kV line by agreement with ESB.
- Regarding a material contravention of the Development Plan the Board could still grant permission on the basis that there are conflicting objectives between the ESB and the Kildare County Development Plan.
- Request the Board to overturn the decision of Kildare County Council.

#### 6.4. Planning Authority Response

The planning authority responded to the first party appeal on 12/03/2018.

- Under normal circumstances, given the location of the site within a designated 'existing settlement' the proposed development would be acceptable in principle.
- Given the proximity of the site to both the overhead line and the adjacent pylon (sated as Tower No. 8) a grant of permission would be permanently injurious to the residential amenities of the proposed dwelling house.
- The proposed dwelling appears to be for speculative purposes as the applicants reside in the adjacent dwelling to the southeast (No. 23 Stephenstown Court).
- Query the assertion that permission has been given from the ESB, and note that the letter is signed by an employee of ESB International and not ESB networks, which is considered the more appropriate competent authority.

- The proposed separation distance of c. 22 metres from the line would result in an unacceptable visually dominant and overbearing impact on the house.
- Request the Board uphold the decision to refuse permission.

## 6.5. Observations

6.5.1. One observation was submitted from the following parties;

- Michael and Máire Wilson, with an address at 22 Stephenstown Court.

6.5.2. The issues raised are summarised as follows;

- Note the appeal is based on a letter provided by ESB which states they have no objection to the proposed development.
- Satisfied that Kildare County Council took guidance from the Development Plan.
- Unclear on the interest of the applicant, Evergreen Construction Partnership.

## 7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate assessment also needs to be considered. The issues are addressed under the following headings;

- Planning Policy
- Compliance with Development Management Standards
- Appropriate Assessment

### 7.2. Planning Policy

7.2.1. In section 5 above I have outlined the main provisions of the current Kildare County Development Plan 2017-2023 relating to this development.

7.2.2. Two Mile House is identified as a rural settlement the second lowest tier in the hierarchy based on population and social infrastructure supporting it and the

surrounding area. There are specific provisions in the plan in particular in sections 2.3 to 2.6 of volume 2 in relation to the future expansion of rural settlements and modest incremental growth.

- 7.2.3. Specific to Two Mile House, in volume 2 of the plan which refers to lower tier settlements, the appeal site is designated as an 'existing settlement' in Map V2-2.3. The development of the residential development is therefore, in principle acceptable.
- 7.2.4. The issue to be considered is whether the development complies with policies and provisions in relation to rural settlements as set out in the written statement. These are set out in section 3.4.5 of volume 1 and in volume 2 of the plan.
- 7.2.5. Essentially expansion of the rural settlements is to develop these settlements as local centres for rural catchments with growth appropriate to cater for local demand with the encouragement of lower densities to provide alternatives to one-off rural dwellings in the immediate rural area.
- 7.2.6. In relation to policies in relation to rural settlements these are outlined in section 2.4 and details were submitted as required by;
- Policy VRS 3 to facilitate sustainable population growth to cater 'primarily for local demand' which is defined as being in excess of 50% of the overall development.
- 7.2.7. I note the issue raised by the planning authority and the observer to the appeal in relation to the proposed dwelling which appears to be for speculative purposes. It is asserted that the applicants reside in the adjacent dwelling to the southeast (No. 23 Stephenstown Court). In this regard I note that the current application is made in the name of Evergreen Construction Partnership (ECP), the name and address given for ECP is Tony Kelly, 21 Alderwood Grove, Springfield, Tallaght Dublin 24, and that the appeal has been lodged with the permission of the landowners Shay White with an address at Stephenstown Court. The letter of consent however from the landowner was not available on file. It is also noted that the letter from ESBI which accompanies the application is addressed to Shay White with an address at 23 Stephenstown Court.

- 7.2.8. I note from the application and the first party appeal on behalf of ECP The applicants have indicated that they would be willing to accept an occupancy condition and have cited a recent planning decision in the vicinity.
- 7.2.9. I also note the previous reason for refusal cited under P.A. Reg. Ref. 16/967 referred to local need and the material contravention of Policy V3 of the Kildare County Development Plan 2011-2017 and note the applicant in this case was Shay White. In addition, permission was also granted to Fiona White under PA. Reg. Ref. 15/714 and this permission has been implemented at no. 23.
- 7.2.10. In overall terms the proposed development provides for the subdivision of an existing residential plot for infill development in an established residential estate. The development I consider complies with the overall stated policy set out in the county settlement strategy and for Two Mile House which are set out in the statutory development plan. While I note that policy VR3 refers to catering primarily for local demand, I consider in the context of the provisions of the development plan that a condition to comply with policy VRS 3 to facilitate sustainable population growth is reasonable in the context of the plan.
- 7.2.11. I would bring the Boards attention to P.A. Reg. Ref. 16/645 ABP Ref. PL09.248860 granted permission by the Board in October 2017 for 13 no. houses at Tow Mile House. Condition no. 2 of this permission included an occupancy condition for a period of 7 years by persons who comply with the provisions as set out in accordance with VR3 of the Kildare County Development Plan 2017-2023 in respect of six of the thirteen no. houses. If the Board are minded to grant permission a similar condition would be reasonable in the instant case.
- 7.2.12. In conclusion, I am satisfied that the subdivision of the site and a proposed dwelling house to be acceptable in principle.

### **7.3. Compliance with Development Management Standards**

- 7.3.1. The planning authority's reason for refusal relates to non-compliance with Development Management Standards as set out in Chapter 17 section 17.11.2 which refers to 'Applications Proximate to Overhead Lines'.

- 7.3.2. The development plan sets a standard for development in proximity to a 220kV overhead line that requires a clearance distance of 30 metres either side of the centre line or around a pylon. As detailed in the site layout plan submitted the proposed dwelling if permitted would be located within 30 metres of the centreline of the existing 220kV overhead line. The planning authority in its decision considered that the proposed separation distance of c. 22 metres from the 220kV overhead line would result in an unacceptable visually dominant and overbearing impact on the proposed house.
- 7.3.3. In this regard from my examination of the site layout plan Drawing No. ECP/PLN-002 dated September 2017 submitted, the proposed house is located approx. 36m from the existing Tower 8 (Pylon) and 21m from the overhead line at its closet point.
- 7.3.4. I would note also however that the correspondence from ESBI states that a radial clearance of 23m must be maintained from the nearest Tower 8 (Pylon). The letter also refers to the Health and Safety Authority (HSA) '*Code of Practice for Avoiding Danger from overhead Electricity Lines*' September 2008. I would note that this is under another code which is outside the jurisdiction of the Planning Code.
- 7.3.5. While the planning application was accompanied by a letter of support from ESB International (ESBI), the planning authority are of the view that ESB Networks are the competent authority in this regard. The letter from ESBI dated 11<sup>th</sup> May 2017 is noted and the reference to a drawing 'ITM + 2 metres further set back. Drwg received 11/05/2017, however I can find no evidence of this drawing in the application. The letter also refers to the previous application under P.A. Reg. Ref. 16/967 Drawing No. SW/PLN-003 P.A. which similarly I can find no details of.
- 7.3.6. I have reviewed Drawing No. SW/PLN-002 submitted under P.A. Reg. Ref 16/967 dated August 2016 on the Councils website and would note that the proposed house was set back approx. 22.5m from the front site boundary. Under the current application as indicated on Drawing ECP/PLN-002 the proposed house is set back approx. 26.4 from the front site boundary.
- 7.3.7. It is clear, therefore, under the current application that the proposed house is set back further from the existing pylon and overhead lines. I would note, however, that in an attempt to maximise the separation distances to the overhead lines, the proposed house is set back approx. 4m from the front building line and extends

approx.13m beyond the rear building line of No. 23. It is also located approx. 8m from the rear boundary with house No.16. The layout therefore, would be out of character with the existing pattern of development within the estate.

- 7.3.8. I have had regard to the precedent cited by the applicant in the appeal under P.A. Reg. Ref. 15/161, where permission was granted for a house in Clane, Co. Kildare, which was located 21 metres from a 220kV line by agreement with ESB. However, I would note that in that case the overhead line did not pass over the site, and in any event each application is assessed on its own merits.
- 7.3.9. In my opinion the appeal site is innately unsuitable for the proposed dwelling house. The overall site I would suggest is large for a reason, as the 220kV overhead lines which traverse the site represents a significant constraint to development.
- 7.3.10. While I note the correspondence from ESBI I am not satisfied that sufficient evidence has been submitted to corroborate the applicants' assertion that the parameters set out in the Development Plan are overly cautious. I am satisfied that the location of the proposed house does not meet the requirements of the County Development Plan.
- 7.3.11. I would also note with regard to mitigation measures that the configuration of the site does not facilitate the relocation of the proposed house further away from the overhead lines to address the issue without impacting further on the residential amenity of adjoining residential properties. Notwithstanding the revised layout of the proposed house under the current application I am not satisfied that the proposed development addresses the previous reason for refusal under P.A. Reg. Ref 16/967.
- 7.3.12. I am satisfied therefore that the reason for refusal should be upheld.

#### **7.4. Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and serviced location, no appropriate assessment issues arise and it is not considered that the 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.

## 9.0 Reasons and Considerations

1. The proposed development would be located within 30 metres of the centreline of the existing 200 kV overhead line. Chapter 17 section 17.11.2 'Applications Proximate to Overhead Lines' of the Kildare County Development Plan 2017-2023 sets out that development in proximity to a 220 kV overhead line requires a clearance of 30 metres either side of the centre line or around a pylon. Therefore, it is considered that the proposed development would contravene the requirements of the Kildare County Development Plan 2017-2023, would be out of character with the established pattern of development in the area, and accordingly would be contrary to the proper planning and sustainable development of the area.

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Susan McHugh  
Planning Inspectorate

25<sup>th</sup> May 2018