



An
Bord
Pleanála

Inspector's Report ABP-301123-18

Development	Construction of new two storey-dwelling house, detached garage, waste water treatment system and all associated site works and services.
Location	Marlinstown, Mullingar, Co. Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	17/6351
Applicant(s)	Derek & Karen Sheeran.
Type of Application	Outline Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Derek & Karen Sheeran.
Observer(s)	None.
Date of Site Inspection	25 th May 2018.
Inspector	Karen Kenny

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Marlinstown, a rural area to the east Mullingar. The site is in the hinterland of Mullingar Town, being approximately 210 metres east of the development boundary defined by the Mullingar Local Area Plan 2014-2020.
- 1.2. The site is located along an undeveloped stretch of rural road. Lands in the immediate vicinity are in agricultural use and the closest dwelling is located over 200 metres to the south of the site. It is to the east of the N52 Mullingar bypass and is accessed via a local road (L57131) from a roundabout on the N52 to the north of the site. Marlinstown Cemetery (RMP WM019-080) is located over 115 metres to the north of the site.
- 1.3. The site itself is part of a larger agricultural field that is laid to grass, with tree and hedge line boundaries along north west, south west and north east boundaries. The south east boundary is unmarked. The site is not prominent or highly visible within the wider area, due to an undulating landscape and dense planting along roadside and field boundaries.

2.0 Proposed Development

- 2.1. Outline permission for a two storey dwelling house, detached garage, waste water treatment system and all associated site works and services.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission. The reasons for refusal can be summarised as follows:

1. The site is located in a rural area within the hinterland of Mullingar. On the basis of the documentation submitted, it is considered that the applicants do not come within the scope of the criteria for rural residential development.
2. The development continues the development of roadside residential plots which continues the ribboning form of development that is occurring in the area and together with its prominence to the roadway and loss of hedgerow would cause harm to the scenic qualities of the landscape in this area.

3. The development would cause harm to the setting of a graveyard, which is a recorded monument (RMP Ref. WM019-080).

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The report of the Planning Officer generally reflects the decision to refuse permission.

3.2.2. Other Technical Reports

District Engineer: No objection. The report recommends that the hedgerow is set back by 6 metres from the centre of the road to provide a passing bay to front of the property and that sightlines of 90 metres are provided.

3.3. **Prescribed Bodies**

DCHG: Development has potential to cause damage to natural heritage due to removal of hedgerow.

3.4. **Third Party Observations**

A representation was received from an elected member of Westmeath County Council, in support of the application.

4.0 **Planning History**

None.

5.0 **Policy Context**

5.1. **Rural Housing Guidelines**

- 5.1.1. Sustainable Rural Housing - Guidelines for Planning *Authorities*, issued by the DEHLG in 2005 identify the environs of Mullingar as an area under strong urban influence. The guidelines require that only people who are part of the rural

community are facilitated for one-off housing in such areas and that there is careful management of the rural environs of major urban areas to ensure their orderly development in the future.

5.2. Development Plan

5.2.1. The Westmeath County Development Plan 2014-2020 is the relevant statutory plan. The site is situated in a rural area outside of a designated settlement. Map 11.1 identifies two rural area typologies in Westmeath, namely 'Structurally Weak Rural Areas' and 'Strong Rural Areas under Significant Urban Influence'. The appeal site is in the 'Strong Rural Areas under Significant Urban Influence' typology. The following policies relating to rural housing are relevant:

- **P-SRA1:** To accommodate demand from individuals for permanent residential development in strong rural areas who have strong links to the area and who are an intrinsic part of the rural community, subject to good planning practice, environmental carrying capacity and landscape protection considerations.
- **P-LHN1:** To permit residential development in areas outside of the development boundaries of the settlement hierarchy subject to the following circumstances:
 - (1) Persons who are actively engaged in agriculture, horticulture, forestry, bloodstock and peat industry,
 - (2) Members of farm families seeking to build on the family farm,
 - (3) Landowners and members of landowners' families (landowner for this purpose being defined as persons who owned the land in question since the year 2000),
 - (4) Persons employed locally whose employment would provide a service to the local community,
 - (5) Persons who have personal, family or economic ties within the area, including returning emigrants
 - (6) Persons who wish to return to farming and who buy or inherit a substantial farm-holding which is kept intact as an established farm unit, will be considered by the Council to be farmers and will be open to

consideration for a rural house, as farmers. Where there is already a house on the holding, refurbishment or replacement of this house is the preferred option.

- P-RH1:** To ensure that, in permitting one-off rural housing, key rural assets such as water, natural and cultural heritage and landscape quality are protected and maintained.
- P-RH2:** To protect the natural assets of the county including ground and surface water, and ensure that physical standards are met including soil conditions suitable for effluent disposal and the avoidance of flood areas.
- P-RH3:** To protect the integrity of the landscapes as identified in Chapter 6 the Landscape Character Assessment and protected views.
- P-RH4:** To ensure all proposed on-site wastewater treatment systems shall comply with the EPA Code of Practice for Wastewater Treatment and disposal Systems serving Single Houses (2009) and any revision thereof.
- P-RH5:** To ensure that waste water treatment systems are installed by competent persons with regular monitoring and testing carried out on the treatment system, in accordance with the planning permission and in accordance with Circular SP5-03.
- O-RH1:** To have regard to the Department of Environment, Community and Local Government's Sustainable Rural Housing Guidelines 2005, and any subsequent amendment in the assessment of applications for rural housing.
- O-RH2:** To resist the clustering of septic tanks in areas of identified ground water vulnerability.
- P-GRH1:** To have regard to the Westmeath Rural Design Guidelines and the Department of Environment, Community and Local Government Sustainable Rural Housing Guidelines in the assessment or rural residential proposals and any subsequent amendments in the assessment of applications for rural housing.

- P-GRH2:** To promote the clustering of houses particularly on the same landholding or for the same family and promote shared accesses to minimise hedgerow removal.
- P-GRH3:** To control ribbon development, especially close to the Gateway towns and villages.
- P-GRH5:** To ensure that the road network is adequate to cater for the development and that the traffic movements generated by the development will not give rise to a traffic hazard.
- P-GRH6:** To retain, insofar as practicable, existing hedgerows and trees on new house sites. Replacement trees and hedgerows should be of native species.
- P-GRH7:** To resist urban generated and speculative residential development outside the settlement hierarchy.

Section 14.4 of the Development Plan and the Westmeath Rural Design Guidelines set out guidance in relation to the design and siting of houses in rural areas.

5.3. **Natural Heritage Designations**

None.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A first party appeal has been received in response to the decision of Westmeath County Council to refuse permission. The grounds of appeal can be summarised as follows:

- The applicants have lived in the townland of Marlinstown for over 14 years at a distance of 750 metres from the site.
- The applicants have strong established links within the community being involved in local sporting and social clubs. Children attend the local school, Curraghmore NS, and applicant is a member of the parent's association.

- Applicant is an e-worker for a multinational company and has a need for a secure purpose-built home office. The absence of same is resulting in unnecessary commuting to Dublin City Centre.
- Requirement for ground floor independent living space for an aging parent who has a progressive walking disability. Sustainable Rural Housing Guidelines allow for rural dwellings to meet a health requirement.
- No sites or suitable properties available to meet specific needs. Unserviced settlements are not viable due to disruption and the lack of broadband.
- The site is located 210 metres from the Mullingar Town boundary. Permission was granted for a multinational superstore and car dealership within similar proximity to the boundary. Council zoned the subject lands Enterprise and Employment in the 2008-2014 Development Plan. This was subsequently scaled back in light of the economic downturn and guidelines published by the Department of the Environment.
- Permission has been granted to 3 no. applicants for dwellings along the subject roadway since 2008. The proposed development is situated between two clusters of domestic dwellings. The site is serviced and the proposed development would not add significant traffic to the roadway. A proposed 'pull in' area would enhance the roadway. The Council added a car park c. 1 km further along the roadway to allow access to the Canal Amenity Area. The site is proximate to the main road and the area engineer had no objection.
- Council have failed to provide any one-off development opportunities or suitable homes within the settlement hierarchy.
- Development is not ribbon development, as the closest house is 350 metres from the north-western edge of the site and 225 metres from the south-eastern edge of the site. The site has 60 metres road frontage and is over 90 metres in width.
- In terms of the concerns raised in relation to design and loss of hedgerow, the application seeks outline permission. The layout is indicative only and no design details have been submitted.

- The development would not impact on the graveyard to the north given its separation and the intention to provide planting and screening. The existing stone gateway to the graveyard was replaced with a new entrance over 20 years ago. There is no right of way via the subject field. The gateway is privately owned and does not form part of the protected monument that is the graveyard.
- Council made no effort to seek clarification or further information in relation to matters raised.
- The rural housing policy is contrary to Article 43 (Freedom of Movement of People) of the Treaty on the Functioning of the European Union.

6.2. **Planning Authority Response**

No response has been received from the Planning Authority in relation to the grounds of appeal.

6.3. **Observations**

None.

7.0 **Assessment**

7.1.1. The application seeks outline permission for a two storey dwelling on a site that is situated in a rural area in the hinterland of Mullingar Town.

- Compliance with Rural Housing Policy
- Impact on Scenic Qualities and Landscape
- Archaeology
- Traffic
- Other Issues
- Appropriate Assessment

7.2. Compliance with Rural Housing Policy

7.2.1. The first reason for refusal states that, on the basis of the documentation submitted, it is considered that the applicants do not come within the scope of the criteria for rural residential development.

7.2.2. It is established in the Westmeath County Development Plan 2014-2020 that the appeal site is located in a 'Strong Rural Area under Significant Urban Influence'. Policy LHN1 of the Development Plan sets out the criteria for rural residential development in 'Stronger Rural Areas' as follows:

"To permit residential development in areas outside of the development boundaries of the settlement hierarchy subject to the following circumstances:

- (1) Persons who are actively engaged in agriculture, horticulture, forestry, bloodstock and peat industry,*
- (2) Members of farm families seeking to build on the family farm,*
- (3) Landowners and members of landowners' families (landowner for this purpose being defined as persons who owned the land in question since the year 2000),*
- (4) Persons employed locally whose employment would provide a service to the local community,*
- (5) Persons who have personal, family or economic ties within the area, including returning emigrants.*
- (6) Persons who wish to return to farming and who buy or inherit a substantial farm-holding which is kept intact as an established farm unit, will be considered by the Council to be farmers and will be open to consideration for a rural house, as farmers. Where there is already a house on the holding, refurbishment or replacement of this house is the preferred option".*

Policy GRH7 seeks to resist urban generated and speculative residential development outside the settlement hierarchy.

7.2.3. The grounds of appeal argue that the applicants have established links with the rural community, having lived in the Marlinstown area for over 14 years. The applicant's residence is at a stated distance of 750 metres from the site and is located in an established housing area that is within the development boundary of Mullingar. It is

stated that the applicant's children attend a local national school and that the family are involved in the schools Board of Management and in local sporting and social clubs. The grounds of appeal state that one of the applicants is employed by a multi-national company with offices in Dublin and that he requires a secure purpose-built home office space to facilitate e-working. A case is also made on health grounds, on the basis that a parent of one of the applicants has a progressive disability and will require purpose built semi-independent living space in the foreseeable future.

7.2.4. On the basis of the details submitted with the application and appeal I would concur with view of the Planning Authority. The applicants have not demonstrated a rural housing need that is specific to the appeal site or to the immediate rural area, based on the criteria set out under Policy P-LHN1 of the Development Plan. I am of the view that the proposed development, if permitted, would constitute urban generated rural housing and that it would, therefore, be contrary to the terms of the Rural Housing Guidelines and the Westmeath County Development Plan.

7.2.5. In relation to the applicant's argument that the policy contained in the Development Plan is contrary to Article 43 (Freedom of Movement of People) of the Treaty on the Functioning of the European Union, I would note that Circular Letter PL 2/2017 issued by the Department of Housing, Planning, Community and Local Government in May 2017, addresses Article 43 and advises that the existing 2005 Guidelines remain in place.

7.3. Impact on Scenic Qualities and Landscape

7.3.1. The second reason for refusal states that the proposed development would continue the development of roadside residential plots which continues the ribboning form of development in the area and together with its prominence to the roadway and loss of hedgerow would cause harm to the scenic qualities of the landscape. The appeal site is located along an undeveloped stretch of rural road with the closest dwelling located over 200 metres to the south of the site. The development would not therefore, in my view, represent ribbon development. However, I would concur with the Planning Authority's view that the proposal to remove hedgerow would impact negatively on the rural character and amenities of the area. I would also have concerns in relation to the impact of piecemeal housing development at this location, on the open character of transitional lands that are proximate to the development

boundary of Mullingar and on the potential for such development to impact on the orderly and efficient development of the town in the future.

7.4. Archaeology

- 7.4.1. The third reason for refusal relates to the impact of the proposed development on the graveyard to the north which encompasses Recorded Monument WM019-080. The grounds of appeal argue that the development maintains an adequate separation from the monument and that existing and proposed planting would mitigate any potential impacts on the Recorded Monument. I would note that a submission on the file from the Department of Culture, Heritage and the Gaeltacht relates to nature conservation only and does not comment on archaeological heritage issues. I consider that the development maintains a substantial setback from the graveyard and that any potential for impacts could reasonably be mitigated through screening and design. On this basis, I would not consider this to constitute reasonable grounds for refusing outline planning permission.

7.5. Traffic

- 7.5.1. The site is located on a minor local road which has a single carriageway and requires cars to pull in to allow another car to pass. While adequate sightlines can be achieved from the proposed vehicular access, I am of the opinion that the narrow local road has limited capacity for further development. It is a policy of the Development Plan (GRH5) to ensure that the road network is adequate to cater for development and that the traffic movements generated by a development will not give rise to a traffic hazard. I consider that the proposed development, by itself or by the precedent which a grant of permission would set for other similar development, would adversely affect the use of the road and be contrary to Policy GRH5 of the Development Plan.

7.6. Other Issues

- 7.6.1. It is proposed to install a septic tank and percolation area. I am satisfied, based on the submitted site characterisation form and having inspected the site, that the proposed treatment system is suitable and that it meets the requirements of the EPA

Code of Practice for Wastewater Treatment & Disposal Systems Serving Single Houses (2009) in terms of separation distances (based on the distances set out in Table 6.1), depth of subsoil (based on the recommended depth of 0.9 metres in Table 6.2) and the design of the system.

- 7.6.2. The subject application seeks outline permission for a two storey dwelling. The site is not prominent or highly visible, due to the undulating landscape and the level of mature planting along roadside and field boundaries. I consider that a two storey dwelling would be acceptable in principle on the appeal site. Detailed design matters relating to the design, scale and mass of the development would be considered at consequent permission stage.

7.7. Appropriate Assessment

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

8.0 Recommendation

- 8.1. I recommend that permission be refused for the reason set out below.

9.0 Reasons and Considerations

1. The site is located in a rural area that is outside of a designated settlement and is proximate to the development boundary of Mullingar, as defined by the Mullingar Local Area Plan 2014-2020. The area is identified in the Westmeath County Development Plan 2014-2020 as an "Area Under Strong Urban Influence". Housing is restricted at this location to persons who demonstrate a local housing need in accordance with the criteria set out in Policy LHN1 of the Development Plan. It is considered that the applicant does not come within the scope of the housing need criteria set out in the Development Plan. Furthermore, the proposed development, in the absence of any identified locally based housing need, would contribute to the encroachment of random rural

housing development in an area that is close to the urban centre of Mullingar and would militate against the preservation of this transitional rural environment. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development is located along a minor county road which is substandard in terms of its width and alignment. It is a policy of the Westmeath County Development Plan 2014-2020, in the case of rural housing development, to ensure that the road network is adequate to cater for the development and that the traffic movements generated by the development will not give rise to a traffic hazard (P-GRH5). This policy is considered reasonable. It is considered, that the development, by itself or by the precedent which the grant of permission for it would set for other relevant development, would adversely affect the use of the road. The proposed development would therefore be contrary to the terms of the Development Plan and be contrary to the proper planning and sustainable development of the area.

Karen Kenny
Senior Planning Inspector

31st May 2018