



An  
Bord  
Pleanála

## Inspector's Report ABP-301140-18

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<b>Development</b>	Bungalow, double garage, stable building, new vehicular entrance, wetland polishing filter system
<b>Location</b>	Ashfield Stud, Millicent Road, Clane, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	17/1440
<b>Applicant(s)</b>	Paul Lawlor
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Paul Lawlor
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	18 <sup>th</sup> of July 2018
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The subject site is located in a rural area south of Clane village in Co. Kildare off Millicent Road. It is located in a rural area, within the designated Rural Housing Policy 1 Area.
- 1.2. There is a considerable concentration of one off houses to the east of the site on the approach from Clane along Millicent Road. On the opposite side of the road to the subject site is Millicent Golf Club. The general topography is low lying flat land.
- 1.3. The site area is 3.327Ha, and it is a long deep site with direct access onto Millicent Road. The land is relatively flat with a rise towards the northern end of the site. The site is currently used for grazing livestock. It is located midway within a large field, and the proposal will break up a large agricultural footprint.
- 1.4. There is a mature hedgerow along the road frontage, and open fences along the eastern and western site boundaries.
- 1.5. The Appendix to this report includes maps and photographs of the site.

## 2.0 Proposed Development

- 2.1. The proposed development includes:

A bungalow (408sq.m.) which is L-shaped, with 4No. bedrooms. The ridge height is 6.37metre, and the elevations consist of a render finish with black/ grey roof tiles/ slates.

A double garage (86.5sq.m.) which matches the finish of the dwelling.

A stable block (72sq.m.) consisting of 3No. stables, tackroom and dung storage area

The site layout drawing indicates a subsurface reed bed system is proposed which will discharge to a soil polishing filter (90sq.m.)

New recessed entrance.

## 3.0 Planning Authority Decision

### 3.1. Decision

Kildare Co. Co. refused the proposed development for 4No. reasons, which are summarised as follows:

1. Policy RH3 states that applicants must demonstrate they have not applied for a rural dwelling previously. The applicant was granted planning permission under registration number 81/16, and has not explained this second application and is therefore contrary to policy RH3.
2. The wetland reedbed system is not acceptable, the site may not be suitable for onsite treatment system.
3. Policy RH9, which is to provide safe access without removing extensive stretches of native hedgerow, it is considered the proposed removal of hedgerow along the road frontage is unacceptable.
4. The proposal would set a precedent for the removal of rural landscape features such as hedgerows.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning Report is the basis for the decision to refuse. It notes:

- Paul Lawlor of Osberstown House was granted planning permission for a dormer dwelling under reference 81/16. The applicant does not comply with RH3 of the development plan.
- The backdrop of the elevated lands to the rear will integrate the house into the landscape. The setback of 145metres from edge of road is excessive
- 90metres of hedgerow is to be removed, and this is contrary to cited policies of the plan.
- Planner's recommends refusal citing 4No. reasons which are upheld in the decision.

### 3.2.2. *Other Technical Reports*

*Environment* requested additional information stating it was not a policy of Kildare Co. co. to permit wetland reedbeds as an option for on-site wastewater treatment.

*Water Services* had no objection.

*Roads Section* had no objections

### 3.3. **Prescribed Bodies**

No objections to the proposal from Irish water or Irish Fisheries.

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

There were none received during the statutory period.

## 4.0 **Planning History**

No relevant planning history relating to the site.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

Kildare County Development Plan 2017-2023

Chapter 4 refers to Housing. Section 4.12.7 outlines the Rural Housing Policy

#### **Table 4.3(a)**

Schedule of Local Need Category of Applicant 1

Local Need Criteria

#### **Rural Housing Policy Zone 1**

(i) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area. Where no land is available in the family ownership, a site within 5km of the original family home may be considered.

ii) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community who have left the area but now wish to return to reside near to, or to care for immediate family members, seeking to build their home in the rural area on the family landholding or on a site within 5km of the original family home.

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.

**RH 2** Manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

**RH 3** Require applicants to demonstrate that they are seeking to build their home in the rural area in Kildare for their own full-time occupation. Applicants will be required to demonstrate that they do not own or have not been previously granted permissions for a one off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances.

**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.

RH 11: To preserve and protect the open character of transitional lands outside of settlements in order to prevent linear sprawl near towns, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside.

***Sustainable Rural Housing Guidelines for Planning Authorities, 2005***

- 5.2. 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'*.

5.3 ***National Planning Framework published in February 2018.***

With reference to the development of rural areas, National Policy Objective 15 seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

National Policy Objective 19 seeks to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, it is policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural

housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements

#### **5.4 Natural Heritage Designations**

The closest designated site is Ballynafagh Bog and lake situated 5.1km to the north west of the site

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

Reid and Associates has taken this appeal on behalf of the applicant. The reasons for refusal could have been addressed by way of further information.

#### **6.2 Reason No. 1**

The house permitted under 81/16 was constructed and lived in by the applicant up until 2000., and the house to be sold due to exceptional financial circumstances. The dwelling was sold to Mr. Lawlor's mother in 1999. The applicant resided at the property and within various rented accommodations within 5km of the subject site. His mother passed away in a nursing home in 2017, and the dwelling was sold in September 2017 to pay for the nursing home fees.

The earlier permission should not preclude the clients current genuine housing needs and he should not be penalised for the exceptional financial circumstances which he encountered. The applicant complies with the provisions of Policy RH3 , he does not own a dwelling in Co. Kildare. He sold the house he was granted planning permission for in 1981 to his mother, which was sold to pay for her nursing home fees.

The applicant was born 4.7km form the site, and he has grown up and lived all his life in the area and complies with the Locals Needs criteria. The applicant is currently renting a house in Kilcock. He is a small local builder who works in the general locality of the site.

#### **6.3 Reason No. 2**

A site suitability report was submitted with the application and indicated the site is suitable for the discharge of septic tank and percolation area to ground water. The proposed treatment system is designed in accordance with the EPA Code of Practice. There is no objection to the reed bed polishing filter from the environment section. The second reason for refusal is unsustainable and there is no case the development would be prejudicial to public health.

#### **6.4 Reason No. 3**

The Tree Survey of the site submitted reveals the hedgerow fronting the site is in fair to poor condition. The height of the hedge is approximately 3metres. It has been continuously trimmed resulting in coppiced shoots and stunted and deformed stems. There is heavy ground growth of ivy. The poor condition of the hedge does not justify its retention or protection. The existing hedgerow could be retained until the house is occupied and a new hedgerow is established. Alternatively, the hedgerow could be retained along the roadside boundary, except at the recessed entrance.

There is no objection from the Transport Section of the planning authority to the proposal. The road is relatively straight with good visibility along it. A sightline of 70metre is more than adequate given the speed of cars along the road which is a 60kmph speed limit.

#### **6.5 Reason No. 4**

In view of the Arborists report which states the existing hedgerow is in poor condition, a suitable report to biodiversity is to retain the existing hedgerow in place until a new native hedgerow has been established. Policy NH1 allows for replacement of hedgerows where removing is unavoidable, and a new hedgerow complies with policies GI 8 and GI9 which seeks to ensure proper management of hedgerows.

#### **6.6 Planning Authority Response**

It remains the policy of Kildare Co. Co. not to permit wetland reed beds. It should be noted based on the Site Characterisation Form carried out by Larry Holton, the



Environment Section have no objection to the installation of a septic tank and percolation area.

## 7.0 **Assessment**

7.1 Under this appeal the proposal will be assessed under the following headings:

- Compliance with current development plan local needs policy
- Compliance with Rural Housing Policies
- Design and layout
- Access/ Roads
- Sewage Treatment
- Appropriate Assessment

### 7.2 **Compliance with current development plan local needs policy**

The planning authority did not assess this element of the proposal in detail. The applicant, Mr. Paul Lawlor, was born (1955) and reared in the general area all his life. He is a small builder and works in the general area. According to the appeal, he owns no house in the locality. He was granted planning permission to build a dwelling at Osberstown, in 1981, where he lived for 18years. The family house permitted in 1981 was sold to his mother in 1999, where she resided until she entered a nursing home. The applicant lived with his mother after she purchased the dwelling and rented other dwellings within 5km of the house. According to the appeal, his mother's house was subsequently sold in September 2017 to pay for nursing home fees. The Board should note, there was no evidence submitted on appeal to support the claim that the applicant sold his original house to his mother, or that the house was sold in 2017 to pay for nursing fees. According to the appeal file, the applicant is currently living in rented accommodation in Kilkcock, with no address

given. The land registry deeds for the site indicate the applicant was residing at 905 Ladycastle, The K Club, Straffan in May 2017.

7.3 The planning authority did not dispute that Mr. Lawlor does comply with the criteria of 2 of Rural Housing Policy Area 1. In view of the evidence submitted with the planning application, I would consider the applicant is from the area, and I would consider the applicant complies with the development plan rural housing policy, therefore can be considered for a one-off house in a rural area.

7.4 I do not consider the applicant has demonstrated a genuine 'need' to live in a rural area. I believe a small builder working in the locality can reside in urban and suburban locations, and there is no 'need' to build on a green field site in a rural area clearly under considerable development pressure outside of Clane. He only recently purchased the site, 3.327Ha in 2017, and if permission were permitted, it would dissect a large field into three lots. Therefore, the proposal would create an undesirable precedent for further one-off housing developments on either side of the subject site/ landholding.

7.5 I note the planning authority refused the development because of noncompliance with Policy RH3 of the development plan

***RH 3** Require applicants to demonstrate that they are seeking to build their home in the rural area in Kildare for their own full-time occupation. Applicants will be required to demonstrate that they do not own or have not been previously granted permissions for a one off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances.*

7.6 I consider this was unreasonable because the applicants original dwelling was granted in 1981, where he lived for 18years, and the sold to his mother in 199, where she lived until she required nursing home care and the house was sold in 2017 to pay for fees. Unfortunately, the applicant has not substantiated these claims, however, given the fact he only applied for one dwelling in the area over thirty years ago, and has not owned a dwelling since 1999 in the area, I considered to impose policy RH3 in this instance is not acceptable, and that reason for refusal should be dismissed by the Board.

## 7.8 Compliance with Rural Housing Policies

Upon examination of the general area from a site inspection, satellite photography and O.S. mapping, it is clear that the subject site has a large concentration of one-off housing to the east and to the south west beyond Hewetson National School. The gold club is located opposite the subject site. The site is located in a large agricultural green area, that has remained undeveloped under extreme development pressure. The dissecting of the landholding to create one large in-depth site, is totally incongruous to the general pattern of development in the area. The provision of a dwelling set back 145metres form the road edge in the middle of the expansive agricultural greenfield, represents haphazard and piecemeal development. The proposal is not related to the residual landholding, and the principle of this proposal is contrary to rural housing policies RH9 and RH10 of the development plan. In my opinion, this rural area south west of Clane village along Millicent Road, excluding the large tract of land where the subject site is located and Millicent golf club, is saturated with one off houses and individual sewage treatment systems. There is very limited capacity to absorb further development in the area. The topography at the subject site consists of level plains of grassland, and a dwelling in the middle of this tract of land, will be incongruous with the setting. The road serving the area is narrow, with no verges, and it is heavily trafficked with cars between village settlements, local traffic and cars attending the adjoining golf club.

## 7.9 Policy RH 11 is particularly relevant to this current proposal:

*To preserve and protect the open character of transitional lands outside of settlements in order to prevent linear sprawl near towns, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside.*

Having regard to the fact the subject site clearly dissects one of the last segments of lands with an open rural character along Millicent Road, the development will create a linear piecemeal advancement of ad hoc one-off dwellings. I conclude the proposal will ultimately blur the clear demarcation which exists at this location between one off housing and the rural countryside. The subject site is not an appropriate location for a one-off dwelling, given the context of the pristine tract of

land to adjoining clusters of one of housing to the east and west along Millicent Road.

#### **7.10 Design and layout**

The proposal is for a rendered 4bedroom bungalow which is setback 140metres form the edge of the road. The stable building will be further setback into the site addressing a paddock area. There is a double garage proposed to the rear of the dwelling. The setback of the dwelling is significant and not in keeping with the general pattern of development in the area.

There is no information regarding the proposed stables, the numbers of horses owned by the applicant, the amount of land for the horses, proposals for storage of hay and food stuffs, and the type of equestrian activities associated with the proposal.

#### **7.11 Access/ Roads**

Millicent Road is a rural road south of Clane village, which supports a high concentration of one off houses in the general vicinity of the site, and a golf club on the opposite side of the road to the site. A speed limit of 60km/hour applies to the subject site. Further east of the site at Carrigeen, there is a footpath along the roadside boundary to support pedestrian movement from a high concentration of one-off houses. However, fronting the site, there is no road verge. I noted that the sightline to the east from the proposed entrance is acceptable, however, there is a restricted sightlines to the west, due to the alignment of the road. I found walking along the road fronting the site during my inspection to be extremely dangerous, given the level and speed of the traffic and nowhere to walk except on the narrow road.

7.12 It is proposed to remove the hedgerow along the full length of the proposed roadside boundary. The planning authority did not accept the removal of the hedgerow as part of the proposal and this formed the basis for two reasons for refusal, with particular reference to development plan policy regarding retention of landscape

features. The appellant has stated the arborist report indicates the existing hedgerow fronting the site is in poor condition and not worthy of preservation. In visual amenity terms, the hedgerow is mature and dense along the roadside boundary and does contribute to the visual amenity of the area. However, I do believe the retention of the hedge is not a justifiable reason to refuse the planning permission for the dwelling house. I do consider the hedge removal is required to provide the required sightlines at the proposed recessed entrance. However, the hedgerow would require further removal to the west of the site to provide a satisfactory sightline.

7.13 In my opinion, the level of development along Millicent Road at this point is at saturation point and unsustainable, including a proliferation of individual entrances onto the road. The location of the golf club opposite the subject site, generates a significant level of traffic for a rural road and in addition to a national school further west along Millicent Road. The creation of a new entrance along a length of hedgerow that is intact for a distance of circa 500metre, would undermine the traffic safety of the road at this location, and possibly lead to a demand for more one off houses and entrances on the residual land holding either side of the subject site.

#### 7.14 **Sewage Treatment**

The site suitability report stated the drainage was good on the site, with no water table encountered. I did note during my inspection the ground was dry and particularly hard after a long dry spell. There was no vegetation associated with poor drainage. There are no watercourses in the general vicinity of the site. Therefore, the target risk is the ground water. A septic tank and percolation area is proposed, with a polishing filter to reduce the amount of land required for the percolation area. Reason Number 2 of the refusal cited a wetland reed bed system as the proposed on site wastewater treatment system, which appears to be an error on the part of the planning authority. On appeal the planning authority indicated it had no objection to the installation of a septic tank and percolation area on site.

### **7.15 Appropriate Assessment**

The subject site (3.327Ha) is located south west of Clane village. The closest designated site is 5.1km to the northwest at Ballynafagh Bog and Lake. The proposal is for a dwelling house with no direct or indirect links to any Special Protection or Conservation Area and is outside of a 5km zone of any such designation. There are no potential significant affects associated with the proposal and therefore, Appropriate Assessment is not required.

### **8.0 Recommendation**

- 8.1. I recommend the planning authority's decision to refuse the proposed development be upheld by the Board.

## 9.0 Reasons and Considerations

1. It is the policy of the planning authority as set out in the Kildare County Development Plan 2017-2023 to control piecemeal and haphazard development. This policy is considered to be reasonable. The proposed development would be in conflict with this policy because, when taken in conjunction with existing development in the vicinity of the site, it would consolidate and contribute to the build-up of ad hoc development in an open rural area. This would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development would consolidate and advance undesirable linear sprawl in a rural area outside lands zoned for residential development, would be contrary to the provisions of Policy RH11 of the Kildare County Development Plan 2017- 2023 and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements it would generate on a narrow, poorly aligned, substandard road, at a point where available sightlines are restricted to the west and would require the removal of an unreasonable length of hedgerow in order to provide adequate sightlines.

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Caryn Coogan  
Planning Inspector  
4<sup>th</sup> of September 2018

