



An
Bord
Pleanála

Inspector's Report ABP301667-18

Development	Construction of a dwelling with cellar and wastewater treatment system.
Location	Cullion Beg, Mullingar, County Westmeath.
Planning Authority	Westmeath County Council.
Planning Authority Reg. Ref.	18/6005.
Applicant	Gemma Hynes.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellants	Brendan and Brid Cawley.
Observers	None.
Date of Site Inspection	27 th July, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

ABP301667-18 relates to a third-party appeal against the decision of Westmeath County Council to issue notification to grant planning permission for the construction of a dwellinghouse together with cellar and proprietary wastewater treatment system at Cullion Beg, Mullingar, County Westmeath. The grounds of appeal argue that the proposed development represents a traffic hazard, will result in the pollution of groundwater and constitutes a speculative housing development where no adequate housing need has been demonstrated.

2.0 Site Location and Description

- 2.1. The subject site is located in a rural area in the townland of Cullenmore to the north-west of Mullingar Town. The site is located approximately 4 kilometres due north from the town centre. It is however located in a rural area, located to the immediate north-east of the N4 National Primary Route. However, it is not directly accessible from the N4. The site is located on the southern side of the local access road which traverses the N4 to the west and a separate grade to the dual carriageway.
- 2.2. The site occupies the north-western corner of a large field which is currently under grass. It incorporates a downward slope from east to west. The north-western corner of the site incorporates direct frontage onto the local third-class road which runs adjacent to the northern boundary of the site. The remainder of the northern boundary of the site is separated from the road by a narrow band of deciduous trees. The location of the access serving the proposed dwelling is located at the north-eastern corner of the site. The south-western boundary of the site is located approximately 50 metres from the N4 National Primary Route. A heavy and dense band of trees are located between the western boundary of the site and the N4.

- 2.3. In terms of surrounding settlement, a bungalow is located directly opposite the site on the northern side of the access road. A large agricultural shed is located to the rear of this dwelling. There are no other dwellings directly opposite the subject site. All other dwellings in the vicinity of the site are located along the local road further to the north-west. The nearest dwelling to the west is located approximately 150 metres away.
- 2.4. The local road serving the subject site is approximately 4-5 metres in width and is located within the 80 kph speed limit.

3.0 Proposed Development

- 3.1.1. Planning permission is sought for a single-storey U-shaped dwellinghouse which is located centrally within the subject site. The proposed dwellinghouse is to incorporate four bedrooms, a sitting room and dining room and kitchen area all at ground floor level and is to include nap plaster finish with a slate roof rising to a maximum ridge height of just over 6 metres. The house is also to incorporate a basement cellar (11.3 metres by 8.5 metres in size). The cellar is to incorporate a lounge area, a bathroom, a small study room and a utility room. The cellar is to be located partially under the footprint of the proposed house but is to extend in a southerly direction beyond the footprint at ground floor level. The gross floor area of the house is indicated at 311 square metres.
- 3.2. A percolation area and treatment system is to be located to the west of the house approximately 18 metres from the dwelling and 25 metres from the western boundary of the site. The proposed entrance is located at the north-eastern boundary of the site. The entrance to the dwellinghouse is located on the south-eastern elevation. A new wooden post and rail fence together with a new gate and stone walls at 45 degree splays are to be located adjacent to the proposed entrance.

4.0 Planning Authority's Decision

- 4.1. Westmeath County Council issued notification to grant planning permission for the proposed development subject to 11 conditions on the 30th April, 2018.

4.2. Initial Assessment by the Planning Authority

- 4.2.1. The planning application form indicates that the subject site occupies an area of 0.729 hectares and that the applicant in this instance is a prospective purchaser of the lands in question. The lands are owned by the applicant's father. The application was also accompanied by a letter from the applicant's GAA club stating that the applicant plays for the local GAA club.
- 4.2.2. Details of the site characterisation form indicates that bedrock was encountered at a depth of 1.2 metres below the surface and no water table was encountered during the trail hole excavation. A T-value of 53 was recorded in the percolation tests and a modified P-value of 55 was recorded also on site. It is proposed to install a package wastewater treatment system and polishing filter discharging to groundwater with a trench invert level of 0.5 metres below ground level.
- 4.2.3. A report from Irish Water stated that there was no objection to the proposal subject to standard conditions. A letter of objection from the current appellants was submitted the contents which have been read and noted.
- 4.2.4. A report from Westmeath County Council Area Engineer states that there is no objection subject to a number of stated conditions in relation to roads, surface water, sewage treatment and disposal, service cables, water supply and domestic heating oil storage. The Area Engineer's report indicates that the preliminary flood risk assessment maps do not indicate a flood risk for the site in terms of fluvial or pluvial flooding.
- 4.2.5. The planner's report notes that the subject site is located within a strong rural area under significant urban influence where 'local need' criteria applies. The planner's report expresses some concerns in relation to the overall design which is contrary to Westmeath County Council's Rural House Design Guidelines. Further details are also required in relation to landscaping.

4.3. Further Information Request

- 4.3.1. Based on the initial planner's report additional information was requested in relation to the following:

- Further details in relation to housing need and location of the dwelling within the family landholding. It is noted that development plan policy seeks to ensure that houses on family lands will be clustered and well set back from the public road.
- Revised design; including a more simplified form.

4.4. **Further Information Submission**

- 4.5. A submission was received on behalf of the applicant by MF Kelly and Associates which is summarised below.

It is stated that no planning applications have been made on lands that belong to the landowner (Michael Hynes Junior) who has been the owner of the lands since 1997. The landowner has had no planning applications granted for housing for any of his family in Westmeath. No lands have been sold for the purposes of building a dwellinghouse.

It is stated that the subject site is naturally landscaped with extensive planting along the northern boundary of the site and along the buffer zone adjacent to the western boundary between the subject site and the N4 motorway.

Revised house plans have also been submitted.

4.6. **Further Assessment by Planning Authority**

- 4.7. A further planning report dated 27th April, 2018 states that the further information submitted is acceptable to the Planning Authority and it is therefore recommended that planning permission be granted.
- 4.8. In its decision dated 30th April, 2018 Westmeath County Council granted planning permission for the proposed development subject to 11 conditions. Condition No. 2 required an occupancy clause pursuant to Section 47 of the Planning and Development Act 2000.

5.0 Planning History

Details of a number of planning applications are attached in a pouch to the rear of the file.

Under Reg. Ref. 96/930 Westmeath County Council on the 15th April, 1997 granted planning permission for the construction of a dwellinghouse and septic tank on a site approximately 200 metres to the east.

Under Reg. Ref. 97/632 planning permission was granted for a dwellinghouse and septic tank approximately 150 metres to the east of the subject site.

Under Reg. Ref. 02/540 planning permission was refused for a dwellinghouse approximately 100 metres to the east of the subject site for reasons relating to visual impact, ribbon development and the sites location outside the urban boundary of Mullingar Town.

Under Reg. Ref. 06/5272 planning permission was refused for a dwelling approximately 300 metres from the subject site. The reasons related to non-essential housing requirements, site suitability for wastewater and design.

6.0 Grounds of Appeal

The decision of Westmeath County Council to issue notification to grant planning permission was appealed by Brendan and Brid Cawley. The appellants live in the site directly opposite the appeal site. The grounds of appeal are outlined below.

The applicant has not indicated the appellants' vehicular entrance on the two site maps submitted with the application. It is stated that opposing entrances are dangerous on rural roads and contrary to established practice. The proposal will therefore result in an unnecessary traffic hazard. The site is situated in a rural location and does not have public lighting. Vehicles exiting both entrance simultaneously will be extremely dangerous. If the Board grants planning permission for the proposal it is requested that the entrance be relocated a minimum 30 metres to the east.

It is argued that sightlines of 120 metres are impossible to achieve. Westmeath County Council's planning report contains photographs which it is contended were

taken from the middle of the road which would indicate more generous sightlines than those currently afforded at the site.

Local authority guidelines require a splayed entrance in the interest of road safety. However, there is no proposal for a splayed entrance on the western side of the access.

The proposed site is in the Louth Owel catchment area and it is the stated policy of the local authority to control development in areas of high groundwater vulnerability.

It is contended that it is the applicant's intention to sell the site once planning permission has been maintained. It is suggested that the applicant has engaged in the sale and development of houses since the 1980s on farm lands in their ownership. Details of the various sites sold are indicated on a map submitted with the appeal.

It is also argued that the applicant does not meet the local need criteria as she is not engaged in agriculture, she is not seeking to build on the family farm nor is she employed locally. Furthermore, it is stated that the applicant currently lives in Mullingar which is 5 kilometres from her parents' house. It is argued that if planning permission is granted for the proposed dwelling the applicant will be 4 kilometres from her parent's house.

7.0 Appeal Responses

- 7.1. A response was submitted on behalf of the applicant by Sean Lucey and Associates Town Planning Consultants.
- 7.2. It is stated that the appeal site is located on a county road incorporating width varying from 5.5 to 6 metres. The road is lightly trafficked and requisite sightlines of 90 metres can be achieved in both directions at the proposed entrance. The dwelling will be completely screened from public view due to the extensive hedgerows along the northern boundary of the site. It is also argued that the proposal is fully in accordance with the policies and provisions contained in the development plan.
- 7.3. It is not possible to relocate the entrance as suggested in the grounds of appeal as such lands are located outside the applicant's ownership. Any potential conflict arising from traffic exiting simultaneously from the site is minimal having regard to

the lightly trafficked nature of the road. However, the applicant is both willing and happy to relocate and redesign the proposed entrance within the road frontage in lands which are under the family ownership. This, it is argued, could be accommodated by way of condition.

- 7.4. With regard to sightlines, it is stated that unobstructed sightlines of 90 metres in both directions can be achieved from a position 2.4 metres back from the entrance road. The high grassed bank to the west and associated wooded area do not impede sightlines.
- 7.5. With regard to the splayed entrance, it is stated that Condition No. 5 of the decision of Westmeath County Council to grant planning permission for the proposed development stipulates the design, form and layout of the entrance. The applicant will comply with all such requirements.
- 7.6. In respect of groundwater pollution, it is stated that the applicant carried out a site suitability assessment and it is not considered that the proposed development will give rise to any impact in terms of groundwater.
- 7.7. In matters relating to speculation and housing need, It is stated that the applicant grew up in the area, and now wishes to return to this area to live and raise a family. Condition No. 2 of the grant of planning permission incorporates an occupancy clause.
- 7.8. With regard to historic sales of plots of lands it is stated that there were few restrictions on such sales historically. It is argued that this is widespread practice at the time. The response to the grounds of appeal goes on to suggest that the various planning applications referred to in the grounds of appeal do not support the appellants' argument with the current application before the Board is speculative in nature as the various applications referred to (a) do not relate to lands under the applicant's ownership, (b) relate to retention of dwellings already constructed or (c) relate to incomplete applications.
- 7.9. Finally, with regard to local need reference is made to Policy P-SRA1 and it is stated that the proposal fully accords with this policy. The applicant, it is argued, satisfies the criteria through the fact that she was born and raised in this area on family owned land. It is also stated that she is the only child who lives in Ireland. All her siblings work abroad.

7.10. Planning Authority's Response to the Grounds of Appeal

It appears that Westmeath County Council have not submitted a response to the grounds of appeal.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Westmeath County Development Plan 2014 – 2020. The site is located in an area designated as a 'strong rural area under significant urban influence'. Section 11.6 of the development plan states that this area comprises most of the county and is characterised by stable population levels with well-developed town and village structures and a strong agricultural base. The policy is to facilitate housing development by people who have strong links to the particular rural area, who are an intrinsic part of the rural community.
- 8.2. Policy P-SRA1 seeks 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. Local housing need within strong rural areas under significant urban influence will be assessed having regard to the local housing need policy set out below.
- 8.3. PLHN1 – to permit residential development in areas outside 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 a person who owned 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 migrants.

6. People who wish to return to farming or who buy and inherit a substantial farmholding which is kept intact as an established farm unit, will be considered by the Council to be farmers and will be open for consideration for a rural house as farmers. Where there is already a house on the holding, refurbish or replacement of this house is the preferred option.

PLHN2 – to manage the development of one-off rural housing in conjunction with the rural typology map and local needs criteria. Applicants must submit documentary evidence of compliance with rural housing policy and comply with local need criteria.

9.0 Planning Assessment

I have read the entire contents of the file, have had particular regard to the issues raised in the grounds of appeal and have visited the site and its surroundings, I consider the pertinent issues in dealing with the current application and appeal before the Board are as follows:

- Road Safety and Traffic Issues
- Water Quality and Ground Protection
- Land Speculation and Housing Need

9.1. Road Safety and Traffic Issues

- 9.1.1. The grounds of appeal make reference to a number of issues regarding road safety and general traffic concerns. These include:

- The location of the proposed entrance.
- The design of the proposed entrance.
- Infrastructure serving the road.
- Sightline considerations.

- 9.1.2. The grounds of appeal suggest that the drawings submitted with the application exclude details of the appellants' entrance directly opposite the site. I refer the Board to the drawings submitted with the planning application. It is evident that the existing entrance on the northern side of the local access road directly opposite the site has

been indicated on the drawings submitted. Furthermore, I have visited the site in question and have taken due cognisance of the entrance in question in deliberating on the current application before the Board.

- 9.1.3. It is argued that it is not in the interest of road safety to permit two entrances on a local access road directly opposite each other. The Board will be aware that there are many instances both in rural and urban areas where entrances are located directly opposite each other on rural roads. The provision of entrances on opposites side of the road do not give rise to any significant traffic concerns in this instance as the entrances will not be intensely used, serving single dwellings only and the road in question is a lightly trafficked rural road.
- 9.1.4. The grounds of appeal also suggest that the applicant should relocate the entrance in order to address this issue. In response to this I do not consider that the location of the proposed entrance directly opposite an existing entrance provides any significant issue from a road safety point of view. Furthermore, any relocation of the entrance within the appellants' land may adversely impact on sightlines at any proposed relocated entrance, particularly in a westerly direction.
- 9.1.5. With regard to the lack of public lighting along this section of the road, the subject site is located in a rural area adjacent to a local rural road with modest development. It is inappropriate in my opinion to refuse planning permission in a rural area for any type of development purely on the grounds that there is no public lighting serving the roadway in question.
- 9.1.6. With regard to the splayed entrance this is a relatively minor issue which can be adequately addressed by way of condition. In this regard I note Condition No. 5(d), (e), (f) and (g) of the Planning Authority's notification to grant planning permission addresses issues with regard to the design of the entrance. I consider that if the Board are minded to grant planning permission in this instance a similar condition could be attached.
- 9.1.7. Finally, with regard to sightlines I note that the subject site and proposed entrance is located on a section of roadway where the 80 kilometre speed limit applies. The NRA Design Manual for Roads and Bridges require sightlines of 160 metres in each direction where the design speed of the road is 85 kph. The applicant in this instance has indicated that sightlines of 90 metres are available in each direction. Having

visited the site, I note that there are generous sightlines at the proposed entrance in a north-easterly direction. Sightlines in a westerly/south-westerly direction are restricted however to approximately 90 metres. In order to improve sightlines to a significant distance beyond the 90 metres would require largescale felling of trees in order to attain requisite sightlines. The attainment of 90 metre sightlines in a westerly/south-westerly direction is not sufficient in my opinion to ensure that road safety is not compromised as a result of the proposed development. The Board will note that previous grants of planning permission along this section of roadway on the southern side of the access road involved houses that were located further west. I suspect a primary reason for locating dwellinghouses to the east of the subject site was to incorporate appropriate sightlines. The restricted sightlines in a westerly direction at the proposed entrance in my view constitutes reasonable grounds for refusal as the proposal would pose a traffic hazard in my opinion.

9.2. Water Quality and Ground Protection

- 9.2.1. The grounds of appeal states that the subject site is located in the Lough Owel catchment area. It is stated that it is the policy of the Planning Authority to control development in areas of high groundwater vulnerability. The Board will note the details of the site suitability assessment for the proposed on-site wastewater treatment plant is contained on file. The trial hole was intact at the time of my site inspection. Having inspected the trial hole, I noted that there was no evidence of a water table within the hole. Furthermore, details contained on file indicate that the trial hole was excavated to a depth of 1.8 metres and no water table was encountered according to the information contained in the assessment.
- 9.2.2. While the subject site is located in an area designated as high vulnerability, the Board will note that such areas generally incorporate soil depth/bedrock depth to aquifer in excess of 3 metres. Having regard to my site inspection and the information contained within the site suitability assessment, I consider that there is sufficient soil depth to attenuate effluent to appropriate standards on the subject site. The fact that the applicant proposes to incorporate an on-site tertiary sand filter would further allay concerns in relation to groundwater contamination. Finally, in relation to this issue the Board will note that the subject site is located within a large field and there is no concentration of proprietary wastewater treatment plants in the immediate vicinity of the subject site. Furthermore, water supply serving the dwelling

is to be obtained from public mains. In conclusion, therefore I do consider that the proposed development represents a real or significant threat to groundwater in the area.

9.3. Land Speculation and Housing Need

- 9.3.1. I would agree with the applicant's response to the grounds of appeal that, having regard to the planning history associated with the site and its surroundings it appears that sites were parcelled off in the 1980s and early 1990s to facilitate rural housing demand. However, I would agree with the applicant's response in the grounds of appeal that there were fewer planning restrictions with regard to rural housing development during this period. It is not appropriate in my view to retrospectively apply guidelines which were first published by the Department in 2005 with regard to rural area types as espoused in the National Spatial Strategy to houses granted in the 1980s and 1990s. It appears that since the Sustainable Rural Housing Guidelines for Planning Authorities were adopted in 2005 the owner has not been in any way engaged in speculative housing. The proposed development therefore should be adjudicated on its merits and in accordance with the Rural Housing Policy Guidelines contained in the current development plan.
- 9.3.2. With this in mind the plan quite clearly and unambiguously sets out its rural housing policy in respect of rural housing need under Section 11.8 of the Plan. Included in the categories of persons permitted to build houses include, inter alia,
- Members of farm families seeking to build on the family farm.
 - Landowners and members of landowners' families (a landowner for the purposes of being defined as a person who owned the land in question since the year 2000). It is clear from the information contained on file that the applicant's father has owned the lands in question since 1997.
 - Persons who have a personal family or economic ties within the area including returning emigrants.
- 9.3.3. It appears to me therefore that the applicant in this instance being the daughter of the landowner complies with the housing need policy as espoused in Policy P-LHN1 as set out in the development plan. I am satisfied therefore that the housing need requirements as set out in the said plan have been met in this instance.

10.0 **Appropriate Assessment**

The subject site is located at its nearest point approximately 1.5 kilometres from Lough Owel SPA (Site Code: 004047) and Lough Owel SAC (Site Code: 00688). I have argued in my assessment above that the proposed development does not pose any threat to groundwater in the area as there are no other hydrological or hydrogeological pathways between the subject site and the Natura 2000 site in question. Therefore, having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development will be likely to have a significant effect individually or in combination with other plans and projects on a European site.

11.0 **EIAR Screening Determination**

On the basis of the information on file, which I consider adequate in order to issue a screening determination, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.

12.0 **Conclusions and Recommendation**

- 12.1. Arising from my assessment above I consider that the proposed entrance serving the subject site incorporates restricted sightlines in a westerly direction and as such would pose a traffic hazard and for this reason I recommend that planning permission be refused for the sole reason set out under the reasons and considerations below.

13.0 Reasons and Considerations

It is considered that the proposed development would endanger public safety by reason of a traffic hazard because of the additional turning movements the development would generate on a road where sightlines are restricted in a westerly direction.

Paul Caprani,
Senior Planning Inspector.

24th September, 2018.