



An
Bord
Pleanála

Inspector's Report ABP-301889-18

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| Development | Construction of a house, proprietary wastewater treatment system, new site entrance all associated site works. |
| Location | Ballymurphy, Tullow, Co. Carlow. |
| Planning Authority | Carlow County Council. |
| Planning Authority Reg. Ref. | 18/112. |
| Applicant | Brian & Charlene Maxwell. |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse. |
| Type of Appeal | First Party. |
| Appellant | Brian & Charlene Maxwell. |
| Observers | None. |
| Date of Site Inspection | 26th September 2018. |
| Inspector | Dáire McDevitt. |

1.0 Site Location and Description

- 1.1. The appeal site is located along an unsurfaced agricultural track off a private lane off the L2102 in the rural townland of Ballymurphy, c2km north of Tullow in Co. Carlow. There are 11 houses along this private lane and minor spurs off it. The site is taken off a family landholding of c.20.3 acres (8.2 hectares). The river Slaney Valley SAC is c.90 m southwest of the site.
- 1.2 The site, with a stated area of c.0.25 hectares, is L- shaped and is taken from a larger field. It is located to the rear of the applicant's parent's house and shed. It forms the southeastern corner of this larger field, with a shed bounding it the southeast and the rear boundary of a single storey house with an upper floor window facing the site. A timber fence forms the front (southern) boundary facing the track and the gable of the house on the opposite site of the track.
- 1.3 Access to the larger field, from which the site is take, is off the unsurfaced agricultural track, this also serves as access to sheds located to the southwest of the site.

2.0 Proposed Development

The proposed development consists of a single storey dwelling with a gfa of c. 144.24 sq.m on a site with an overall area of c. 0.25hectares.

The application also includes a private well, a proprietary wastewater treatment system and polishing filter and a new entrance.

The application documentation includes a Site Characterisation Form.

3.0 Planning Authority Decision

3.1. Decision

Refused permission for the following four reasons:

1. *The proposed development is located in an area which does not have sufficient capacity to absorb a development of this nature and when taken in conjunction with the existing development in the vicinity, would constitute an*

excessive density of development in this rural area. Furthermore, taken together with existing dwellings in the immediate vicinity the proposals would contribute to, consolidate and exacerbate an undesirable excessive pattern of development in this rural area under development pressure from Tullow town, which would mitigate against the preservation of the rural environment and lead to demands for the uneconomic provision of public services and community facilities. The proposed development would, therefore, conflict with the stated policy of Carlow County Development Plan 2015-2021 and would be contrary to the proper planning and sustainable development of the area.

- 2. The proposed development would, if permitted, conflict with the current Carlow County Development Plan 2015-2021 on the prevention of random rural development in particular haphazard, backland development with no road frontage, and would result in an undesirable precedent for further such development, and would therefore be contrary to the proper planning and sustainable development of the area.*
- 3. Having regard to the character and pattern of development, the orientation and siting of the proposed dwelling in relation to existing dwellings in the immediate vicinity would give rise to the potential for adverse effects on the residential amenities of adjoining properties, would depreciate value of housing in the vicinity, would result in an undesirable precedent for further such development and would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 4. The proposed site is located in a rural area, outside any designated settlement or town, where it is the policy of the Planning Authority that residential development be restricted to the current housing needs of agriculture, other restricted categories of persons, and to those with a functional need to live in the rural area, while protecting this area under urban influence from one off rural housing and from over development arising from the random development of such housing. Insufficient evidence*

has been submitted to demonstrate compliance with the provisions of Rural Housing Policy and accordingly it is considered that the proposed development would therefore, contravene the Rural Housing Policy as set out in the Carlow County Development Plan 2015-2021 and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (23rd May 2018)

- There are 11 houses along the private lane. The area is the subject of overdevelopment and has limited capacity to absorb more houses.
- The site with no road frontage, is in effect landlocked and constitutes backland development.
- Concerns that the proposal would result in overlooking of adjoining properties from ground floor windows.
- Over proliferation of septic tanks in the vicinity.

The report includes a Stage 1 Appropriate Assessment Screening Report that concludes that a Stage 1 Appropriate Assessment Screening report is required.

3.2.2. Other Technical Reports

Environmental Section. Further Information recommended on five points, ranging from details regarding ground water flow direction, soil polishing filter, adjoining wells and spot levels for wells and soil polishing filter.

Transportation Department. The proposal would have no effect on the adjoining road. No objection from a roads perspective.

Senior Executive Engineer, Tullow Civic Office. No objection subject to condition.

Water Services. No objection. Notes that the public water mains is c.100m from the site.

CFO. No objection subject to compliance with fire requirements.

3.3. Prescribed Bodies

Irish Water. No objection. Note that the area is served by a public water main, but this is located over 100m from the site.

3.4. Third Party Observations

None.

4.0 Planning History

There is no history of planning applications for the appeal site as per the Council's Planning Register.

Sites in the vicinity:

To the northwest within the same field:

Planning Authority Reference No. 10/63, refers to a 2010 decision to refuse permission to Noreen Ryan for a dwelling on the grounds of non compliance with the rural housing policy and random rural housing development and undesirable precedent.

Planning Authority Reference No. 09/226, refers to a 2009 decision to refuse permission to Noreen Lyons for a house on the same grounds as 10/63.

Bounding the site to the southeast.

Planning Authority Reference No. 06/988 refers to an application by Siobhan Nireamoinn & Peter O'Connor for extensions.

To the southeast off the main private access lane:

Planning Authority Reference No. 04/479 refers to a 2004 decision to refuse permission to William O'Neill for a house on the grounds of non compliance with the rural housing policy.

Below is a sample of applications for granted houses along the lane:

Planning Authority Reference No. 05/944 refers to a grant of permission for Caroline & John Mulhall.

Planning Authority Reference No. 07/365 refers to an application by Phillip Smithers.

Planning Authority Reference No. 03/235 refers to an application by Stephen & Anne Smithers.

Planning Authority Reference No. 06/747 refers to an application by Amanda Darcy.

5.0 Policy Context

5.1 Carlow County Development Plan 2015-2021

The site is in a Rural Area under Urban Influence

Section 2.7.1.1 Rural Housing Policy

Section 2.7.1.3 refers to One-Off Housing in the Countryside

The Council recognises the need to maintain vibrant rural communities and respond effectively to the rural generated housing needs of the people of Carlow. It shall be the policy of Carlow County Council to facilitate the development of one off rural housing throughout the county by persons demonstrating local rural generated housing needs. In this regard positive presumption will be given to the building of rural dwellings by persons in certain categories.

Of particular note in this instance are:

- a) The dwelling will be for the persons own occupation and is required having regard to housing need and the applicants wish to live in the local area
- b) Good practice has been demonstrated in relation to site location and access, drainage and design
- e) The development of one-off rural housing will be subject to appropriate assessment in accordance with Article 6 of the Habitats Directive.

2.7.1.4 refers to persons who are an intrinsic part of the rural community

Such persons will normally have spent a substantial part of their lives living as members of an established local rural community and/or can demonstrate strong family ties with the local community. Examples include:

- Immediate family member of an existing householder/landowner who is intrinsically linked to the area to include son, daughter, mother, father, sister, brother, wishing to build a permanent home for their own use in the local area.

Documentary proof will be required to be submitted with applications to show compliance with the above policies.

2.7.1.7 refers to social/community, medical and personal circumstances

Under certain circumstances consideration may be given to applicants who can demonstrate a social/community, medical or personal need:

- Any persons wishing to live adjacent to immediate family members (son, daughter, mother, father, sister, brother) to provide care and support or vice versa.

Documentary proof will be required to be submitted with applications to show compliance with the above policies.

Section 2.7.3 refers to the design siting requirements. This includes the degree of development of the landholding, detrimental impacts on the rural character of the area, the need to integrate buildings with the physical surrounds, protection of features that contribute to the attractiveness and distinctiveness of the area, traffic and installation of on site waste water treatment and disposal systems.

In order to provide an alternative to one off houses in areas where significant development pressure and/or extensive ribbon development has led to difficulties in accommodating rural housing needs the Council may in such circumstances permit the clustering of dwellings (usually two – five in number) to accommodate persons within the relevant categories.

Section 2.7.7 refers to backland development. The Council discourages backland development. All new developments in rural areas must have minimum road frontage of 20m.

5.2 Guidelines

Sustainable Rural Housing Guidelines (2005):

The overarching aim of the Guidelines is to ensure that people who are part of rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures.

To ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated.

National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government (2018)

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence i.e commute catchment of cities and large towns and centres of employment. This will be subject to siting and design considerations.

In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009

Sets out guidance on the design, operation and maintenance of on site wastewater treatment systems for single houses.

5.3 Natural Heritage Designations

The nearest designated site is the Slaney River SAC (site code 000781) c. 90m west of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal seeks to address the reason for refusal and can be summarised as follows:

- The second named applicant is the daughter of the landowner and is being gifted the site. She currently resides in a respond house (No. 19 Oakley Height, Tullow, Co. Carlow).
- As the daughter of the landowner, she is entitled to build a house on family lands.
- The adopted rural housing policy has a negative impact on farmers gifting their children a site. The current scenario is an example of when an exception should apply.
- The density of development in the immediate vicinity should not hinder the applicant's ability to build a house on family lands.
- The applicant have no objection to enlarging the site, if required by the Board, should it prove environmentally acceptable.
- Access is off a lane, the applicant has set out that they are willing to tar the unsurfaced tack up to the proposed entrance which in effect would make it a roadway.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal which seek to address the Planning Authority's reasons for refusal which refers to compliance with the Councils Rural housing policy. There is a degree of overlap in the reasons for refusal. The issue of appropriate assessment and environmental impact assessment also needs to be addressed.

The issues can be dealt with under the following headings:

- Rural Housing policy.
- Traffic.
- Siting and Design
- Wastewater treatment.
- Appropriate Assessment.
- Environmental Impact Assessment.

7.1 Rural Housing Policy

7.1.1. The Sustainable Rural Housing Guidelines require planning authorities in addressing demand for rural housing to distinguish between rural generated housing need and urban generated housing need. Rural generated housing needs should, generally, arise from demonstrable connections to the site, to rural based occupations and/or relationship with the landowners.

7.1.2 It shall be the policy of Carlow County Council to facilitate the development of one off rural housing throughout the county by persons demonstrating local rural generated housing needs. The site is located in an area designated as under urban influence and is the subject of development pressure due to its proximity to nearby towns, namely Tullow and Carlow.

7.1.3 The second named applicant has set out in the grounds of appeal that she is the daughter of the landowner (landholding of c. 20.3 acres/c.8.2 hectares). I note that the planning application refers to the second named applicant (Charlene) as having resided all her life in the family home, adjoining the site, and that her husband has resided here since their marriage. The grounds of appeal refers to her place of residence, with her husband and children, as No. 19 Oakley Heights, Tullow, Co. Carlow. The second name applicant's links to the area have been outlined briefly in the grounds of appeal. However, no supporting documentation has been submitted. Based on the information on file I not am satisfied that the applicants have demonstrated that they comply with section 2.7.1.4 of the County Development Plan. Therefore, permission should be refused on this basis.

7.2. Siting & Design

7.2.1 The Planning Authority refused permission on the grounds that the proposal constituted haphazard backland development and that the site was in effect landlocked therefore does not comply with Section 2.7.7 which refers to backland sites. In my opinion, the location of the site to the rear of two houses and to the side of a third could be regarded as clustering rather than backland development.

7.2.2 The Planning Authority's reasons for refusal also referred to the siting and orientation of the house having the potential to have detrimental impact on the residential amenities of adjoining properties. I note that the site is predominantly rectangular with a small section projecting to the rear of a shed located to the southeast of the site. The proposed house, sited parallel to the agricultural track, fronts onto the gable to the house to the west of the track. The location of the shed on the adjoining site screens the proposal from the house to the south east (stated to be the applicant's family home). There is a mature boundary separating the site and screening it from a second house to the east.

7.2.3 There are no first floor opposing windows. The Area Planner referred to overlooking from ground floor windows in her report. I consider, having regard to the siting of the proposed house, its orientation on site and relationship with

adjoining properties overlooking is not a material consideration. Furthermore, it is commonly understood that overlooking between properties does not usually occur at ground floor level. This is because in most urban cases a two metre solid boundary from the front building line back, either a wall or fence, is erected to screen views and in rural areas landscaping along site boundaries is conditioned to screen sites. There is no standard in relation to separation distances which concern ground floor windows and new development. In my opinion, the existing and proposed boundary treatment would screen the site from the adjoining houses. I am satisfied the extent of site works required and the siting of the house would not have a detrimental impact on the amenities of the adjoining properties. I am satisfied that, if the Board consider granting permission, landscaping and screening could be dealt with by condition.

7.3 Traffic

- 7.3.1 The Area Planner concluded that that the site was landlocked with no road frontage or direct road access, therefore would be contrary to section 2.7.7 (backland development) of the current County Development Plan. At the time of inspection I noted that an unsurfaced agricultural access track runs along the front of the site and to the rear of the house to the west, leading to sheds located in the southwestern section of the field from which the site is taken.
- 7.3.2 It is proposed to access the subject site via this unsurfaced agricultural access track off an existing shared private lane. The applicants in the ground of appeal have set out that they have no objection to surfacing the section of the track to where it joins the private lane. However, no details have been submitted regarding right of way or letters of consent relating to the upgrading of the track or use of the private lane to access the site. The letter of consent on file refers to lodging a planning application on the appeal site.
- 7.3.3 The sightlines from the junction of the agricultural track and the existing surfaced private lane are somewhat inhibited. Notwithstanding, having regard to the fact that this is a secondary laneway providing access to eleven dwellings and where traffic speeds are low, I am satisfied that it is adequate. However, issue remains that based on the information on file that applicants

have not demonstrated that they can provide adequate access to the site or have the necessary consents to carry out the works to the upgrade the track to access the site off the adjoining private lane.

7.3.4 The question of ownership is a legal matter and outside the scope of a planning permission. In this context, I would draw attention to Section 34 (13) of the Planning and Development Act 2000 (as amended) which reads '*A person shall not be entitled solely by reason of a permission under this section to carry out development*'. Given the information available on file I am not in a position to ascertain that the relevant consents are in place.

7.3.5 The laneway exits onto the L2102 (Ballymurphy Road) one of the main routes to Tullow town. It was observed on site that good sightlines are achievable at the junction of the lane and the public road (L2102). It is also noted that there were no objections to the proposal from the Councils Transportation Department or the Senior Executive Engineer.

7.4 Wastewater Treatment

7.4.1 The Planning Authority in their reasons for refusal referred to the density of development in this rural area. This raises the issue of overproliferation of individual treatment systems. The grounds of appeal also note that the level of development in the vicinity should not preclude the development of the application site.

7.4.2 The density of development in a rural area served by individual effluent disposal systems has significant implications for public health. In this instance, the site is located in an area which is classified as highly vulnerable and has a ground water protection scheme in place. It is proposed to install a packaged wastewater treatment system and soil polishing filter to the north of the proposed dwelling. The Site Characterisation Report submitted with the application concluded that a packaged wastewater treatment system and pumped distribution soil polishing filter with discharge to ground water would be suitable. A T value of 29.53 (min/25mm) is reported. As the value was less than 90 a P Test was also undertaken to determine whether the site is suitable for a

secondary treatment system with polishing filter. The P test indicated a value of 4.83 (min/25). Depth of trial holes noted as 1.6m with bedrock at 1.3m, no mottling and no water table encountered. Water supply would be via a private well c. 34.7m from the proposed soil polishing filter. I note that there are a number of houses associate wells adjoining the site and the River Slaney is within c.140m of the site. Water mains are located c.100m from the site.

- 7.4.3 As highlighted by the Council's Environment Section there is a significant absence of information on file relating to likely ground flow direction, the location of neighbouring wells in the vicinity, including spot levels for existing and proposed wells and details for the silting chamber for the soil polishing filter.
- 7.4.4 Within the site, the proposed well would be down gradient of the percolation area, no details of the polishing filter are shown on the site layout plan. The site has a gradual slope from northeast to southwest. I am not satisfied, based on the information on file that the applicant has clearly demonstrated that the proposed system would not have a detrimental impact on existing and proposed wells.
- 7.4.5 Section 6.5 of the EPA Code of Practice relates to Site Improvement Works. It states that in many cases, site improvement works will not be sufficient to enable the site to be used for a system incorporating discharge to ground and it may be deemed unsuitable. A number of examples of where site works are not acceptable are cited including instances where there is bare bedrock exposed. It is detailed that trial holes were excavated that these clearly indicate that the depth of the bedrock is 1.3m. There were no trial holes open at the time of the site visit. Some exposed rock was observed on the site. However, based on the technical evidence submitted, including the detailed trial hole information, there is no evidence to suggest this is exposed bare bedrock.
- 7.4.6 Given the absence of information on file, as highlighted by the Council's Environment Section, and notwithstanding the above assessment and information submitted by the applicants regarding the adequacy of the proposed wastewater treatment system. I have a significant concerns regarding the concentration of wastewater treatment systems at this location and the

consequent risks and impacts to water quality that could arise from the proposed effluent treatment system taken in conjunction with the permitted treatment systems on adjoining sites. It is evident from the aerial photography and mapping that the subject site is located within a cluster of existing rural houses, all of which are served by wastewater treatment systems. This issue has not been adequately addressed by the applicant.

7.4.7 The Code of Practice sets out minimum separation distances between wastewater treatment systems and certain features, including separation distance from other wastewater treatment systems and wells. I note that the wider area comprises several houses which are serviced by single wastewater treatment systems which arguably could collectively lead to increased nitrate levels in the receiving groundwater, giving rise to potential for significant cumulative impacts on groundwater quality. In this context, I am not satisfied that there is sufficient information regarding dilution calculations and the potential cumulative impact of the proposed wastewater treatment system on groundwater quality. Accordingly, I recommend that planning permission is refused on the basis that the proposed development has the potential to give rise to significant cumulative impacts on groundwater quality and be prejudicial to public health.

7.5 Appropriate Assessment

7.5.1 There is no evidence of significant surface water conduits within the site. No watercourse were observed within the site or bounding the site, The closest Natura 2000 site is the Slaney River Valley SAC (site code 000781) c.90m to the west of the site and separated from it by houses, an access lane and a dense line of trees.

7.5.2 The Slaney River Valley SAC is an extensive site which is spread across three counties (Carlow, Wexford and Wicklow). Conservation Objectives and a National Park Management Plan has been prepared for the site.

7.5.3 Given the separation distance to the nearest identified watercourse to the west/southwest of the applicant's landholding, there is no hydrological connection to the designated site referred to in paragraph 7.5.1 above.

7.5.4 Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000781, or any other European site, in view of the site's Conservation Objectives. A Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.4 Environmental Impact Assessment

7.4.1 Having regard to the nature and scale the development which consists of single house in a rural location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

I recommend that permission be refused for the reasons and consideration set out below,

9.0 Reasons and Considerations

1. The site of the proposed development is located within an "Area Under Strong Urban Influence" as set out in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005 and in an area where housing is restricted to persons demonstrating social and economic local need in accordance with the Carlow County Development Plan 2015-2021. Furthermore, the subject site is located in a rural area that is under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, 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. Having regard

to the proximity of existing settlements to the subject site and having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy, notwithstanding the provisions of the current Carlow Development Plan, and would, be contrary to the proper planning and sustainable development of the area.

2. The Board is not satisfied that, when taken in conjunction with the high concentration of waste water treatment units in the area, the development would not contribute to unacceptable increase of nitrate levels in the receiving groundwater and result in an excessive concentration of development served by waste water treatment units in the area. Accordingly, it has not been demonstrated that the effluent which would be generated as a result of the development can be adequately treated and safely disposed of on-site without risk to groundwater quality. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

Dáire McDevitt
Planning Inspector

4th October 2018