



An
Bord
Pleanála

Inspector's Report ABP-301892-18

Development	The erection of two dormer style dwelling houses, each with separate garage, two sewage treatment plants and two percolation areas.
Location	Great Connell, Newbridge, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18356
Applicant(s)	John and Jamey Delaney
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	John and Jamey Delaney
Observer(s)	None
Date of Site Inspection	10 th Of September 2018
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject sites are located within a rural area, Great Connell, Co. Kildare, 4km to the south east of Newbridge town, and 4km north of Kilcullen. The general location is in close proximity to an interchange off the M7/M9, i.e. Junction 11/1. The sites are located south off the M9.
- 1.2. The subject sites are located on elevated ground, adjacent to the family home. Access to the sites is off the county road, from an existing entrance serving a bungalow, and landholding owned by the applicant's family. The access road would dissect a tree lined field, and sweep up towards a rear agricultural entrance to the family home. The site area is 0.66Ha.
- 1.3. There are two plots proposed to the west of the family home. One includes a galvanised shed which is currently used to store woods, and the other plot is within a small enclosed grove. The shed is to be removed as part of the proposal.
- 1.4. The family home is an irregular shaped single storey dwelling, with landscaped gardens, and an inclining access road positioned south of the subject sites, or further east along the county road from the proposed access to the serviced sites.
- 1.5. The location is picturesque with the backdrop of the family home, landscaped garden and mature trees. In addition, the trees provide screening from the surrounding area.

2.0 Proposed Development

- 2.1. The application is for 2No. dormer style dwellings for 2No. brothers, with individual detached garages, sewage treatment plants and two percolation areas.
- 2.2. A new vehicular access is proposed off an existing access road serving one existing dwelling, and a driveway to serve both dwellings.
- 2.3. The dwellings consist of a contemporary design, with dark timber cladding the main feature of the elevations, and dark coloured lined roofing finish. The dwellings are low profile with 7.1metre ridgelines.

2.4. It is proposed to install 2No. package wastewater treatment systems with polishing filters.

3.0 **Planning Authority Decision**

3.1. **Decision**

Kildare Co. Co. refused the proposed development for 3No. reasons which can be summarised as follows:

1. The subject site is located in an area under consideration for a future national road scheme and a route corridor identified within Leinster Orbital Route Feasibility Study. Policy |NR 3 seeks to recognise the importance of the route. The development is premature pending the determination of the planning authority of the route.
2. Policy RH2 is to manage the development of one off housing. The applicants have not sufficiently demonstrated compliance with the local needs criteria, and the development wo9uld materially contravene policy RH2.
3. The proposal would set an undesirable precedent for similar backland development which is out of character with the established pattern of development in the vicinity, and would contravene policy RH9 of the Kildare County development Plan.

3.2. **Planning Authority Reports**

3.2.1. ***Planning Reports***

The planning report states the development is premature in the absence of a road design layout for the Leinster Orbital Route. The development is also contrary to the development plan in terms of rural housing policy, and a refusal is recommended.

3.2.2. ***Other Technical Reports***

Roads, Transportation: No objection subject to conditions

Water Services – no objection subject to conditions.

Heritage Officer – no objections

Fire Officer – No objections. The application is not within 91 metres of the M7, and therefore has no impact.

Environment Section – The proposed sewage treatment systems were deemed to be acceptable subject to conditions.

3.3. **Prescribed Bodies**

Transport Infrastructure Ireland

The proposal is at variance with official policy in relation to control of development on/ affecting national roads. The site of the proposed development is located in an area considered for a future road scheme. The proposed development could prejudice plans for the design of this scheme and hence the application is premature pending the determination of this route. A grant of permission in instance is considered to be at variance with the provisions of the D0ECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012).

Irish Water – No objections

3.4. **Third Party Observations**

A political representation was submitted from a local T.D. supporting the applicants.

4.0 **Planning History**

08-1749

Planning application made for a cluster in-depth development served by a single entrance to the west of the site. This application was withdrawn.

ABP 300833-18

17/1226 ABP 300833-18

The same applicants as the current appeal, applied for 2No. dormer dwellings on a different site within the family landholding. The access arrangements for both applications are the same. The site boundary of 300833 is to the west of the subject site, and located on a lower gradient.

The planning authority refused the development for four reasons:

1. The proposed development is located within an area considered for a future national road scheme and a route corridor identified within the Leinster Orbital Route Feasibility Study, Policy NR3 of the County Development Plan refers. Premature pending the determination by the Planning Authority or the Road Authority of a road layout for the Orbital Route.
2. Would exacerbate an excessive density of development in the rural area, and set an undesirable precedent for similar backland development in the vicinity, and Contravene Policy RH9 (iv) of the Development Plan 2017-2023.
3. Contravene Policy RH10 of the Development Plan 2017-2023 which seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres.
4. Materially contravene Policy RH2 of the Development Plan 2017-2023 in relation to demonstrating local need.

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.

RH 13 Consider applications for the provision of a recessed cluster form of development. The cluster shall be designed in such a way that is appropriate to the rural context and shall be set back into the landscape from the public road. Clusters shall not exceed five houses and will be subject to normal, planning, siting, design and local need considerations. Where there is a likelihood of more than one applicant seeking planning permission over a period of time, the Council will engage with the landowner to provide for an appropriate site layout capable of accommodating a recessed cluster development.

RH14 Only consider family members for backland development. The proposed development shall have no negative impact on third parties/ neighbouring property owners and viable sites with sufficient independent percolation areas will be required

in order to meet technical guidelines. Sufficient screening will be required to screen the house from adjacent homes and this has to be in place prior to occupation of the house. Only single storey bungalow (including attic accommodation) type houses will be allowed in such backland locations to limit visual impact and overlooking.

5.3 National Policy

Sustainable Rural Housing Guidelines for Planning Authorities, 2005

- 5.4 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'.

5.5 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

5.6 Heritage Designations

Archaeological: KD023-015 Standing stone (original location) is located 130metres to the south east of the site.

The site is located 5.3km from Mouds Bog SAC to the south east, and 5.7Km from Pollardstown Fen SAC.

Record of Protected Structure: B23-12 Corbally House 430m to the south east of site.

6.0 The Appeal

6.1 Grounds of Appeal

The applicants, John Delaney currently resides in Australia, and John Delaney resides in London. These applicants are returning home and will work in the locally and wish to build a house each on the family's small farm.

The decision by Kildare Co. Co. under planning reference **17/1226** is the subject of an appeal, Board Ref. **300833**. It is confirmed that it is not the applicant's intention to implement both proposals, and a condition would be acceptable to this effect.

Kildare Co. Co. has raised no objection to the ability of the overall landholding to accommodate two new dwellings, it has not opposed the size or position of the dwellings, it has not objected to the design of the dwellings, it has endorsed the technical arrangements, in terms of water supply, sewage treatment and road safety.

6.2 M5 Route Corridor

The First reason for refusal states the site is located in an area considered for a future national road scheme and route corridor identified within the Leinster Orbital Route Feasibility Study. The proposal is premature pending the determination by the Planning Authority of a road layout.

Kildare Co. Co.'s Roads Design Office stated in a memorandum dated 8th of December 2017 on file reg. 17/1226 that no conflict exists between the proposal and the national network. The National Roads Office by report dated 10th of May 2018 equally raised no objection to the proposed development, under reg. no. 18/356, stating the application has no impact on the national road network.

The first reason for refusal has been prompted by the correspondence from the Transportation Infrastructure Ireland dated 24th of April 2018.

In 2007, the National Roads Authority published a feasibility report into Leinster Orbital route with the objective

Of which was to examine the feasibility of a new road link connecting the towns of Drogheda, Navan and Naas/ Newbridge/ Kilcullen. The land on which the proposed dwellings are to be erected falls squarely outside of any designated route corridors. According to submitted maps, it is clear the sites fall outside of the designated routes. The difficulty which arises is that in 2009 another study was undertaken to identify the possible locations of new junctions serving the Leinster Orbital Route and the subject site is on the edge of these zones, as indicated on Map 2. It was on this basis the planning authority refused the development. Yet the planning authority did not assess the veracity of the TII submission, especially to test its reference to Section 2.9 of D0ECLG Spatial Planning and National Roads Guidelines for Planning Authorities. Given that the Transportation Infrastructure Ireland website states of the planned M45 Motorway 'Status: Not to be considered until after 2035', and the route may 'open in 2040, or sometime later in the century, the County Council's approach is harsh.

Given the long-term nature of the M45 project and given the peripheral position of the subject site within the large area which has been earmarked for possible motorway purposes, it would suggest the design of the M45 would actually be hamstrung by the development, but there is no evidence to support such a view. The need to remain at least 91metres from the motorway creates a sterilisation of the Delaney family's landholding, in addition to the proximity to a national monument.

6.3 Rural Housing Policy

The planning register contains two entries in the name of the appellant's father which date from 1998-2008, the Council concluded that John and Jamie Delaney have not spent sufficient time living at the Delaney home to satisfy the rural housing policy. This is despite the fact evidence is submitted they were reared and educated in the area, and their parents still reside at Great Connell.

There are no specific reasons why the Council concluded that the applicants have not ties to the area over a 12 year period. The Board can examine all the evidence submitted with the application. John and Jamie Delaney lived with their parents in

excess of 12years and have since emigrated and now wish to return home, and care for their aging parents.

6.4 Backland Development

Policy RH13 of the development plan advocates a recessed cluster form of development set back from the public road. Derry Delaney is in line with policy RH14 as he is a farmer encouraging family members on backland development. The dwellings are beside the family home with no loss of amenity to the main dwelling. The third reason for refusal suggests the development will lead to infill development between the sites and the road, and it is not fair or reasonable to make this assumption about future planning proposals. This application should be assessed on its own merits as opposed to what may or may not occur in terms of future applications.

Policy RH9(iv) is not raising concerns over the landscapes ability to absorb further development, yet the planning officer on a preceding case in the area, 17/1226 stated the level of development in the area is relatively modest.

An alternative proposal is presented whereby the proposed development would be served by the existing access road serving the parents dwelling house with a spur road off it. It is acceptable to the applicants to attach a condition to this affect.

6.5 Planning Authority Response

Kildare Co. Co. stated it had no further comment to make on appeal.

7.0 Assessment

7.1. The main issues raised in the appeal are those relating to the reasons to refuse by Kildare County Council and I am satisfied that no other substantive issues arise. The issue of appropriate assessment is included at the end of the report. The issues arising in this appeal are dealt with under the following headings:

- Compliance with Rural Housing Policy
- Backland Development

- Future Road Scheme
- Appropriate Assessment

7.2 Compliance with Rural Housing Policy

The Board should be mindful that the planning authority has refused planning permission for 2No. dwellings to the same two applicants, John and Jamie Delaney, under planning registration number 17/1226 for four reasons which relate to rural housing policy, the capacity of the area to absorb two dwellings, availability of accommodation in Newbridge and the Leinster Orbital Route. The case is currently under appeal with the Board, reference ABP 300833-18, and remains undecided at the date of this report.

7.3 The Great Connell area outside of Newbridge is located in a designated area called Rural Housing Policy 1 Under Section 4.12.6 of the Kildare County Development Plan 2017-2023. The applicants must meet a certain criteria in order to be considered genuine local need for a house in a rural area under development pressure. The family have a modest land holding, however neither applicant is actively involved in farming on the landholding. In fact, according to the appeal submission, one applicant currently resides in Australia and the other resides in London. The applicant's claim to meet with Rural Housing Policy Zone 1 Criteria (ii) of Table 4.3

(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.

The Delaney family obtained planning permission for the family home under planning registration **98/745**. This was subject to a sterilisation agreement of the residual land holding, that was never formalised under the terms and conditions of the permission. The applicants resided with their parents in the house at Great Connell from 2000 onwards. There are copies bank statements, bills, driving licences etc to demonstrate that John Delaney lived at the family home up to 2008, and Jamie

Delaney resided there up to 2012. I am not entirely convinced about John Delaney residing in the area for 12 years, it would appear from the evidence submitted it was 8 years only. Both wish to return home now and construct a house on the family landholding. A letter from the local school states that John Delaney who sat his Leaving Cert. in 1999, resided at Connell Mor, Harbour Road, Great Connell during that time, which predates the permission granted to his father Derry in 1999 for the current family home. According to some correspondence, the family resided in Newbridge Parish prior to the constructing the dwelling at Great Connell, therefore it is not completely clear from the evidence submitted if John Delaney meets with the local needs criteria, however, his bother does.

7.4 In my opinion, both applicants do not meet with the Local Needs Criteria in that both have not proven they are from the area for over 12years. Therefore, Reason No. 2 of the Council's permission should be upheld.

7.5 **Backland Development**

The applicants had applied for planning permission for 2No. dwellings on the family landholding in 2017 resulting in a concurrent appeal for two dwellings on the same landholding (ABP 300833-18) by the same applicants at a different location within the landholding. In my opinion, this demonstrates the ad hoc and piecemeal approach to rural housing by both proposals. Both proposals, if permitted could be constructed independently of eachother as the site boundaries, access and driveways associated with both proposals do not overlap. The applicants have stated on appeal, that if either one of the applications is successful, a condition can be attached that only one of the permitted developments will be constructed. This is unacceptable, and unenforceable in planning terms.

Examining the current proposal, the development consists of two four bedroomed dwellings adjacent to the family home, positioned on an elevated site amidst mature planting. Having regard to the layout and natural screening, I do not consider the development will detract from the visual amenities of the area. The dwellings will be visible from the M7, however their overall design and specification creates a discreet design providing mature planting is retained and reinforced where required. The

applicants have argued that the proposal is in keeping with Policy RH14 of the development plan as regards backland development for family members.

***RH14** Only consider family members for backland development. The proposed development shall have no negative impact on third parties/ neighbouring property owners and viable sites with sufficient independent percolation areas will be required in order to meet technical guidelines. Sufficient screening will be required to screen the house from adjacent homes and this has to be in place prior to occupation of the house. Only single storey bungalow (including attic accommodation) type houses will be allowed in such backland locations to limit visual impact and overlooking.*

I note both dwellings are two storey units. They will be clearly visible from the family home and will overlook the rear garden area of the family home. Screening and planting can be provided to avoid undue overlooking, however the overall layout taken in conjunction with the existing dwelling is more suitable to a suburban setting than a rural setting.

I am concerned about the proposed access and driveway. I refer Site Layout Drawing dated 22/02/2018, as there are two other site layout drawings submitted with the application which relate to earlier planning applications on the landholding. The shared driveway is designed to cater for one dwelling only. In the event one of the dwellings is later sold following occupancy agreement period expiring, the proposed development is not sustainable as it is designed for a single dwelling. Having regard to the existing level of one off housing south of the sites along Harbour Road, and the concurrent planning proposal for 2No. dwellings, I consider the development will lead to a high concentration of one off houses in a rural area 'under strong urban influence'. The proposal contravenes policies RH9 and RH 10 of the development plan.

7.6 Future Road Scheme

The planning authority's first reason for refusal relates to the proposed development been located within an area considered for a future national road scheme and a route corridor identified within the Leinster Orbital Route Feasibility Study, Policy NR3 of the County Development Plan refers to this. The Leinster Outer Orbital Route

is protected through DoECLG policy including *Spatial Planning and National Roads Guidelines for Planning Authorities 2012*, *Regional Planning Guidelines for the Greater Dublin Area 2010-2022*, *the NTA Strategy for the Greater Dublin Area 2016-2035*, and Policy NR3 of the Kildare County Development Plan 2017-2023.

In addition, Transport Infrastructure Ireland, made a submission to Kildare Co. Co. stating the proposed development is located in an area considered for a national road scheme, and the development could prejudice plans for the design of the route, therefore it is considered to be premature in the absence of such plans. I have included in the Appendix of this report the Indicative Corridors of the proposed Lenister Orbital Route (NRA 2015). This project is currently at feasibility stage during which the need for the scheme and broad constraints are identified. The scheme has yet to go through the route selection stage and an exact route is, therefore, not known. The Draft Transport Strategy for the Greater Dublin Area 2016-2035 recommends protection of the potential route from development intrusion. The road certainly appears, from all evidence associated with the route, to be a longterm project.

The applicants argue that the Leinster Outer Orbital or M45 will not be considered until after 2035, and the site is on a peripheral position within a large area earmarked for the motorway, and that there is no proof the design process would be unduly constrained by the proposed development. It is submitted, the family landholding already suffers development sterilisation due to the 91meter buffer area associated with the M7 and the proximity to a National Monument along the eastern axis of the landholding. Unfortunately, the subject site is located within a possible junction zone area of the future motorway with the M7. Without the agreement of TII, who has objected to the proposal, the large designated area in which the site is located, cannot be reduced.

Having regard to fact the proposal is for two dwellings houses, their location in close proximity to junction 11 on the M7, within an area identified for a possible junction with the M7 and the proposed Lenister Orbital Route (M45) , and the clear planning policy at local, regional and national level for the Lenister Orbital Route, I consider that the proposed development is premature pending the determination by the

planning authority or the road authority of a road layout for the new route, and that Reason No. 1 should be upheld by the Board.

7.7 Appropriate Assessment

There was a screening process for Appropriate Assessment carried out by the planning authority. The nature and scale of the proposed development, the significant distance from Natura sites, there is no potential impact to any Natura 2000 site because of the proposal. 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 the planning authority's decision to refuse planning permission for the proposed development be upheld for the following reasons.

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 and proposed 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. Having regard to the location of the site in an area under strong urban influence, as identified 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 local need in accordance with the current Kildare County Development Plan 2017 - 2023, it is considered that the applicants do not come within the scope of the housing need criteria, as set out in the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The site forms part of an area which a future national road scheme and possible junction with the M7 and the Leinster Orbital Route may be constructed, as identified within the NRA Leinster Orbital Route Corridor Protection Study 2009, the Regional Planning Guidelines for the Greater Dublin Area 2010-2022 and the NTA Strategy for the Greater Dublin Area

2016-2035 and Policy NR3 of the Kildare County Development Plan 2017-2023. It is considered, therefore, that development of the kind proposed would be premature pending the determination by the Planning Authority or the Road Authority of a road layout for the Leinster Orbital Route.

Caryn Coogan
Planning Inspector

3rd October 2018