



An
Bord
Pleanála

Inspector's Report ABP-301930-18

Development	Private Dwelling House, Waste Water Treatment Facility, Access Road and all Ancillary Works.
Location	Leitrim West, Moyvane County Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/324.
Applicant(s)	James Vaughan.
Type of Application	Permission
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party
Appellant(s)	James Vaughan.
Observer(s)	Transport Infrastructure Ireland (TII)
Date of Site Inspection	22 nd November 2018
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site (0.94 ha) is located in the rural area circa 3 Km north-west of Moyvane Village, 8km south of Tarbert and 11km north of Listowel in County Kerry. The site is situated adjacent to Vaughan's Furniture Warehouse and Culhane Mechanical Services Ltd. site, west off the N69 National Secondary Route.
- 1.2. The surrounding area is characterised by an undulating topography there are some trees planted between the proposed site and Vaughan's furniture and Culhane Mechanical Services Ltd. site with some sparse planting of trees to the public roadside.
- 1.3. The area is rural and agricultural in nature with sporadic one-off housing. Two bungalows are located to the north of Vaughan Furniture building which was closed on the day of my site inspection. It appeared vacant and had a sign attached to the front boundary fence stating: 'for rent'. Ground conditions on the site appeared quite poor, water logged with rushes evident.
- 1.4. A single white line exists on the N69 outside of the proposed site, there are no roadside verges. The applicant intends to use the existing entrance serving Vaughan's furniture warehouse to access the proposed site.

2.0 Proposed Development

- 2.1. The proposal comprises permission to construct:
 - A Private Dwelling House (244.7 sq. m),
 - Waste Water Treatment Facility,
 - Access Road and
 - All Ancillary Works.
 - A Supplementary Application Form accompanies the proposed development, It is submitted that:
 - The applicant is a son of the landowner
 - Currently resides in his parents' house 40 m from the subject appeal site.

- He is employed as a carpenter / joiner in his father's firm, Vaughans Kitchens, Leitrim West Moyvane located adjoining the appeal site (40m)
- The proposed dwelling is to be occupied by the applicant as a primary permanent place of residence

3.0 Planning Authority Decision

3.1. Decision

Permission Refused for 4 number reasons summarised as follows:

R 1. It is policy of the p.a. regarding access onto the N69 National Secondary Road, as set out under section 7.2.1.3 of the Kerry CDP 2015 – 2021, that 'Development resulting in the intensification of an existing access will be favourably considered where there is no suitable alternative non-national public road access available.'

Having regard to the availability of access from the applicant's family landholding onto the local road network, it is considered that the proposed development would contravene the policy of the p.a. in relation to access onto National routes.

Furthermore, the development would be contrary to the Spatial Planning and National Roads Guidelines (Jan 2012)

R 2. The proposed erection of a dwelling at this location would constitute excessive density of ribbon development by virtue of its visual impact on the landscape and would interfere with the character of the landscape, which is necessary to preserve, in accordance with Objective ZL-1 of the Kerry CDP.

R 3. Having regard to the soil conditions on site, the p.a. is not satisfied on the basis of submissions made in relation to the application, that the effluent arising from the proposed development could be adequately disposed of on site. The proposed development would therefore be prejudicial to public health.

R 4. In the absence of pre- development archaeological testing for the propose development, the p.a. is not satisfied that the proposed development would not injure or interfere with the archaeological heritage of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planners Report sets out that the dwelling is to be built in a stronger rural area. The proposal is for a one-off dwelling house located on the N69, on lands zoned Rural General and designated as a Stronger Rural Area. It is noted that the applicant proposes to use an existing entrance off the N69 serving the applicants family's business – Vaughan's furniture on the adjoining site.

3.2.2. Other Technical Reports:

Roads Department: No objection subject to conditions.

Site Assessment Unit; Further information Requested.

County Archaeologist; The County Archaeologist noted there are no recorded monuments in the immediate vicinity but, given the scale of the proposal, pre-development archaeological testing should be carried out.

Irish Water (IW): No objection

Transport Infrastructure Ireland (TII): Report states that the proposal, if approved, would result in the intensification of an existing direct access to a national road contrary to official policy in relation to control of frontage development on national roads.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

4.1.1. On the Appeal Site itself

None

4.1.2. **Adjoining:**

- **Reg. Ref. 99/3646** Retention permission granted to James Vaughan to retain and complete joinery shop, extension, mezzanine floors, show room and offices.
- **ABP-300122-17 / Reg. Ref 17/478** Permission refused on the 22/03/2018 for a dwelling and effluent treatment system to Pdraig and Olivia Fitzmaurice. This site is located a short distance to the north of the subject appeal site on the same side of the public road (N69). The reason for refusal is stated as:

R. 1 'Having regard to the poorly-drained ground conditions on site in evidence during the site inspection, the cumulative pressures on water resources resulting from the number of premises in the area served by septic tanks, the designation of this area as being 'at serious risk' under the Environmental Protection Agency domestic wastewater risk classification, and notwithstanding the information submitted in support of the application and appeal, the Board is not satisfied, based on the submissions on file, that the proposed development will not pose an unacceptable risk to water resources in the area, in particular surface water resources. The proposed development would, therefore, be prejudicial to public health and be contrary to the proper planning and sustainable development of the area'.

5.0 **Policy Context**

5.1.1. Sustainable Rural Housing Guidelines for Planning Authorities, 2005

The guidelines refer to criteria from managing rural housing requirements while achieving sustainable development. Among the policy aims identified for sustainable rural housing are:

- Ensuring 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 location necessary to sustain rural communities is accommodated.
- Expanding on the rural policy framework set out in the National Spatial Strategy, the Guidelines provide that the people who are part of the rural community should be facilitated in the planning system in all rural areas, including those under strong urban based pressures. The principles set out in the Guidelines also require that

new houses in rural areas be sited and designed to integrate well with the physical surroundings and be generally compatible with:

- The protection of water quality and the arrangements made for on-site wastewater disposal facilities.
- The provision of a safe means of access in relation to road and public safety.
- The conservation of sensitive sites such as natural habitats, the environs of protected structures and other aspects of heritage.

Box 2 Stronger Rural Areas states:

The key development plan objective in relation to these types of areas should be to consolidate and sustain the stability of the population and in particular to strike the appropriate balance between development activity in smaller towns and villages and wider rural areas. The development plan should aim to strike a reasonable balance between:

(1) Accommodating proposals for individual houses in rural areas subject to good practice in relation to matters such as siting and design as outlined elsewhere in these guidelines,

(2) Actively stimulating and facilitating new housing development in smaller towns and villages to provide for balanced urban and rural choices in the new housing market and

(3) Carefully monitoring development trends to avoid areas becoming overdeveloped in terms of leading, for example, to extensive ribbon development. The overall approach in this regard in such areas is to ensure these areas maintain a stable population base in both urban and rural parts. In addition, policies should include references to:

- Selecting particular small villages and towns to pilot combined local authority and private investment to stimulate attractive high quality individual housing or private site developments to attract population growth and further investment,
- The need to monitor population and development trends in rural areas in order to identify areas at risk from population decline and trigger policies aimed at

encouraging appropriate levels of new development in rural areas and selected villages and smaller towns, and

- The need to monitor population and development trends in rural areas in order to identify pockets where very significant individual housing activity is occurring leading to ribbon development, wastewater disposal difficulties, traffic or other serious planning issues.

5.1.2. **Development Plan**

The site is governed by the policies and provisions contained in the Kerry County Development Plan 2015-2021.

The site is located in an area zoned 'Rural General' which is detailed in section 3.3.1 of the Plan. The following sections of the Development Plan are of relevance:

Chapter 3, Section 3.3 sets out Rural Development Policies.

Objectives numbers RS-1 to RS-6 constitute the overall objectives relating to Rural Housing Policy.

I note in particular **RS-4** which states: 'Ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County'.

RS- 6 which states: 'Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition, such development shall be subject to the inclusion of an occupancy clause for a period of 7 years. And

RS-12 Accommodation demand for permanent residential development as it arises subject to good sustainable planning practice in matters such as design, location, waste water treatment and the protection of important landscapes and environmentally sensitive areas.

Table 3.7 of the County Development Plan states that in an area zoned Rural General, any development permitted shall be for the use as a permanent primary place of residence.

Chapter 12 'Zoning and Landscape'. Policy relating to areas zoned Rural General in section 12.3.1 Rural (c) states that: 'It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.'

ZL-1 'Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives'.

ZL-4 'Regulate residential development in Rural Areas in accordance with the zoned designation of that area and the policies outlined in the Rural Settlement Strategy set out in Section 3.3 of this Plan.'

As per Map 3.1 the site is located within an area categorised as a Stronger Rural Areas. In these areas population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong rural/agricultural economic base. The key challenge in these areas is to maintain a reasonable balance between development activity in the extensive network of smaller towns and villages and housing proposals in wider rural areas.

It is an objective of the Council to:

RS-10 Facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised, subject to compliance with normal planning criteria and environmental protection considerations.

RS-11 Consolidate and sustain the stability of the rural population and to promote a balance between development activity in urban areas and villages and the wider rural area.

5.2. Natural Heritage Designations

The site is located approx. to:

- Bunnaruddee Bog Natural Heritage Area (NHA) located a short distance (1.2Km) to the west.
- The Special Area of Conservation: Lower River Shannon SAC is located (approx. 2.6 Km) to the south.
- Special Protection Areas: Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA is located some distance to the east (approx. 5.2 Km).

6.0 The Appeal

6.1. Grounds of Appeal

The issues raised are summarised as follows:

Access

- The applicant proposes to use an existing access currently utilised by Vaughans Kitchens and thus will not result in an intensification of the existing access.
- The proposal would not result in any traffic increase on the N69 as the applicant could walk to work. He currently uses the N69 for social and domestic purposes as he resides approximate to the appeal site.

Ribbon Development

- The proposal would not contribute to ribbon development with the closest dwelling some 90 m away and with several plots of land separating them
- The county development plan provides that provision will be made for farmers, members of farm families and people that have spent substantial periods of their lives as part of the established rural community building their first home.
- The property is well set back from the public road, using an existing vehicular entrance and retaining field boundaries.

Waste Water Treatment

- Following a site survey, it was noted that, the site is in fact suitable for a waste water treatment facility.

Pre-development Archaeological Testing

- Pre-development Archaeological Testing has not been required for previous planning permission applications for the construction of a private dwelling house.
- It is illogical to require pre-development Archaeological Testing

6.2. Planning Authority Response

None received.

6.3. An Observation was received from TII. It is summarised as follows:

- The proposed development is considered to be at variance with the provisions of official policy outlined in the Department of the Environment, Community and Local Government Spatial Planning and National Roads Guidelines (2012)
- The intensification of the direct access to the national road at a location where 100kph speed limit applies also raises significant road safety concerns.
- The application proposed conflicts with the objective to safeguard the strategic function of the national road network and to safeguard the investment made in the transport network to ensure quality levels of service, accessibility and connectivity to transport users.
- The proposal would inevitably bring about additional vehicular movements resulting in intensification of access onto and off the N69, national secondary route. This would arise from day to day occupation, patterns of activity associated with same and trips generated by other services, utilities, visitors etc. as well as the applicant.
- The proposal is contrary to the Kerry County Development Plan, in particular section 7.2.1.2 and objective RD-17

- The council has included further provisions in section 7.2.1.3 of the Development Plan in relation to 'exceptional circumstances' on other national roads in the County, incl. the N69. Such additional 'exceptions' were not agreed with TII and are considered to be at variance with the provisions of the DoECLG Spatial Planning and National Roads Guidelines.
- TII considers that the provisions of the DoECLG Spatial Planning and National Roads Guidelines should be considered to superseded provisions of the Development Plan that are at variance with the DoECLG Guidelines.
- In additional the provisions of section 7.2.1.3 of the Development Plan appear to directly conflict with Objective RD-17
- TII concurs with the decision of the p.a. to refuse planning permission for the subject application.

7.0 **Assessment**

The issues of the subject appeal case can be dealt with under the following:

- **Principle of the Development and Compliance with Policy**
- **Access onto and off the N69, national secondary route**
- **Wastewater Treatment**
- **Pre-Development Archaeological Testing**
- **Appropriate Assessment**

7.1. **Principle of the Development and Compliance with Policy**

- 7.1.1. The details submitted with the application indicate that the applicant James Vaughan grew up in a house located 40 m from the site, where it is submitted he currently resides. That he is the son of the landowners who operate the adjacent Vaughan Kitchens Furniture Designs Business, and that he is employed as a carpenter / joiner in his father's firm (Vaughans Kitchens, Leitrim West Moyvane) located adjoining the appeal site (40m)

- 7.1.2. Details submitted with the application would appear to indicate that the applicant family own lands to the west and south of the subject appeal site. The Vaughans Kitchens Building and dwelling to its north are not included within the submitted land ownership map blue line. It would appear that the applicant's landownership extends to road frontage onto the local county road to the south of the appeal site and west off the N69.
- 7.1.3. From my site inspection the Vaughan's Furniture Building looked closed and there appeared to be another Business 'Culhane Mechanical Services Ltd.' operating from the rear / north of the vacant Vaughan Furniture building. A sign stating: 'To Let' 'Yard and Office' was erected to the front boundary of the Vaughan Furniture Business site.
- 7.1.4. As in the case of ABP-300122-17 / Reg. Ref 17/478, see Planning history section of this report set out above, I consider that that the inferences of the Inspector in that case apply here. Given the nature of the Vaughans Furniture Business site on the day of my site Inspection, which I highlight took place on Thursday 22nd November 2018 at approx. midday one must question why the applicants could be assumed to have rural housing need at this location. No level of details in any substantive manner have been provided to determine that there is some form of an entitlement that may be bestowed on the applicant to allow him to be considered for a house at this location. As in the adjoining precedent case ABP-300122-17 / Reg. Ref 17/478 I am of the opinion that the housing needs of the applicant could be served within a serviced settlement in the vicinity of this site which would not preclude the applicant, James Vaughan, from carrying out his role as a carpenter / joiner.
- 7.1.5. I note that the proposed site is located within an area designated a 'Stronger Rural Area' in the current Kerry County Development Plan. Objectives include Objective RS-10 which seeks to facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised, subject to compliance with normal planning criteria and environmental protection considerations. Based upon the information available on the appeal file, there are no details to reasonably determine that the applicant is an intrinsic part of this rural community.
- 7.1.6. The second draft reason for refusal by the p.a. considers that 'the proposed erection of a dwelling at this location would constitute excessive density of ribbon

development by virtue of its visual impact on the landscape and would interfere with the character of the landscape, which it is necessary to preserve, in accordance with Objective ZL-1 of the Kerry CDP'. ZL-1 'Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives'.

7.1.7. I agree, that given the extent of one-off housing in the immediate vicinity of this site, there is no planning merit in seeking to facilitate further unnecessary and poorly serviced housing at this remote rural location, adjacent to a national secondary road where the maximum speed limit applies.

7.1.8. Regard being had to the definition of ribbon development set out in the Sustainable Rural Housing Guidelines for Planning Authorities, April 2005, i.e '...almost continuous road frontage type development, for example where 5 or more houses exist on any one side of a given 250 metres of road frontage', I consider that this reason for refusal is somewhat unwarranted, given that there are currently three dwelling within 250m of the appeal site.

7.2. Access onto and off the N69, national secondary route

7.2.1. The proposal is for a one-off dwelling house located on the N69 National Secondary Road on lands zoned rural general and designated as a Stronger Rural Area. The applicant proposes to use an existing entrance off the N69 serving the applicants family business – Vaughan's Furniture on the adjoining site. This entrance is located a point where a single white line exists on the N69.

7.2.2. An observation has been received from TII stating that the proposal is at variance with national policy. That the intensification of a direct access to the national road at a location where 100kph speed limit applies raises significant road safety concerns.

7.2.3. I agree that the appeal proposal conflicts with the objective to safeguard the strategic function of the national road network and to safeguard the investment made in the transport network to ensure quality levels of service, accessibility and connectivity to transport users.

- 7.2.4. Cognisance is had to the opinion of TII that the proposal would inevitably bring about additional vehicular movements resulting in intensification of access onto and off the N69, national secondary route. This would arise from day to day occupation, patterns of activity associated with same and trips generated by other services, utilities, visitors etc. as well as the applicant. In the context of the lack of a rural generated housing need for this development, I seriously question the sustainability of permitting the development of a further house onto the N69 National Secondary Road which would add unnecessarily to the volume of traffic accessing this road.
- 7.2.5. I agree that the proposal is not in compliance with Kerry County Development Policy in relation to National Roads as per Section 7.2.1.3 regarding the intensification of an existing access. Notwithstanding a report received from the Roads Department of Kerry County Council recommending conditions be attached to any grant of planning permission, I agree with the planning assessment and draft notification of decision to refuse planning permission on grounds of non-compliance with said policy.

7.3. Wastewater Treatment

- 7.3.1. I note the details of the site characterisation report submitted by the applicants to the planning authority (T-test 38 and P-test 22.69 site suitable for secondary treatment system) and the desktop considerations of the planning authority's Environment Section. Having inspected the site, I can confirm for the Board that the site was extremely wet, that there are extensive rushes evident throughout this site, a deep drain runs centrally within the site and the field boundary to the north of the site which perform a very important drainage function for this plot.
- 7.3.2. Notwithstanding the conclusions drawn in the site characterisation report and the desktop considerations of the Environment Section, I have grave concerns about the poor drainage characteristics of this site that are plainly evident in terms of the soft rush growth, the necessary land drains, and poor soil characteristics that culminate in ponding and which do not allow for surface water to percolate away safely on this site. Based on these observations at this site, I am satisfied to conclude that the proposed development would pose a significant pollution threat. This concern about such an adverse environmental impact is compounded by the extent of development in the immediate vicinity of this site, their dependence on individual septic tanks and

water treatment plants, and the consequent proliferation of such systems in a confined area.

7.4. Pre-Development Archaeological Testing

- 7.4.1. Refusal reason 4 of the notification of decision to refuse planning permission considers that in the absence of pre- development archaeological testing for the propose development, the p.a. is not satisfied that the proposed development would not injure or interfere with the archaeological heritage of the area.
- 7.4.2. There are no recorded monuments listed in either the Record of Monuments and Places or Sites & Monuments Record in proximity to the proposed development. The County Archaeologist's report, however, considers given the scale of the development site (0.94 ha) pre-development archaeological testing should be carried out across the site and a report submitted prior to any grant of planning permission.
- 7.4.3. I am of the opinion that this matter could be dealt with by way of condition of planning permission, should planning permission be deemed acceptable and forthcoming and it is not reasonable, in this instance, to refuse planning permission on such grounds.

7.5. Environmental Impact Assessment (EIA)

- 7.5.1. I note that the planning authority undertook a screening for Environmental Impact Assessment for this development and concluded that EIA is not required in this instance.
- 7.5.2. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive 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.

7.6. **Appropriate Assessment**

7.6.1. The proposed development site is not located within the confines of a Natura 2000 site however, it is situated within 15 Km of:

- Moanveanlagh Bog SAC,
- Stack's to Mullaghareirk Mountains West Limerick Hills and Mount Eagle Special Protection Area,
- River Shannon & River Fergus Estuaries SPA.

7.6.2. The p.a. carried out a screening report which concludes that there is no potential for significant effects upon a Natura 2000 site.

7.6.3. Having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

1. The site of the proposed development is located within a "Stronger Rural Area" as designated in the Kerry County Development Plan 2015-2021. This is a rural area where it is an objective to facilitate the provision of dwellings for persons who are an intrinsic part of the rural community in which they are raised. It is considered that the applicants have not demonstrated that they have been raised in the area in which the site of the proposed development is located nor have they demonstrated that they are persons who are an intrinsic part of this rural community. The proposed development, in the absence of any identified locally-based social and economic 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, conflict with the Development Plan provisions relating to sustainable rural housing and would, thus, be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because the site is located alongside the heavily trafficked National Primary Route, N69, at a point where a speed limit of 100 Km/h applies and the traffic turning movements generated by the development would interfere with the safety and free flow of traffic on the public road. Furthermore, the proposed development would also contravene the objectives of the Kerry County Development Plan 2015 – 2021 and the DoECLG Spatial Planning and National Roads Guidelines (Jan 2012) which are considered reasonable to preserve the level of service and carrying capacity of the National Primary Road and to protect the public investment in the road.

3. Having regard to the poorly-drained ground conditions on site in evidence during the site inspection, the cumulative pressures on water resources resulting from the number of premises in the area served by septic tanks and notwithstanding the information submitted in support of the application and appeal, the Board is not satisfied, based on the submissions on file, that the proposed development will not pose an unacceptable risk to water resources in the area, in particular surface water resources. The proposed development would, therefore, constitute an unacceptable risk of pollution be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

Fiona Fair

Planning Inspector

18.12.2018