



An
Bord
Pleanála

Inspector's Report ABP-301951-18

Development

Construction of a fully serviced dwelling house, garage, new site entrance, bored well, wastewater treatment system, percolation area and all associated site works.

Location

Craan, Kildavin, Co. Carlow.

Planning Authority

Carlow County Council.

Planning Authority Reg. Ref.

17/344.

Applicant

Darren Coleman & Julie Sinnott.

Type of Application

Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party.

Appellant

Darren Coleman & Julie Sinnott.

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 a private lane off the N80 in the rural townland of Craan, c.2.5km north of Kildavin in Co. Carlow. This lane runs along the southern boundary of the site with direct access off the N80. A second lane, located to the west of the site, links to a lane which in turn is accessed off the L60664 which links to the N80 to the south. At present the section of the lane that links the site to the southern section of the lane is not suitable for use by domestic vehicles.
- 1.2 The site has a stated area of c.1.23 hectares. It is bounded to the rear (west) by a dirt track with an unsurfaced lane, derelict house and outbuilding to the west. To the southwest is a forested area. The eastern boundary bounds the N80 and consists of mature trees. To the northeast is Colmans Auto Centre and a dormer dwelling. The first named applicant has indicated that this is the family business and family home. They are separated from the site by mature hedges and accessed directly off the N80.
- 1.3 The site has two access gates, the lower (eastern) gate adjoins the junction of a private unsurfaced lane and the N80. The upper gate, and proposed access point, is located at the top (western corner) of the field. Access at present is via the unsurfaced private lane off the N80. Gates are located along this lane before the upper gate into applicant's landholding (site).
- 1.4 The levels of the site rise from the east (N80) to west, where it is proposed to site the house, set back c.120m from the roadside boundary with the N80. The grounds levels rise by c.19m from the N80 westwards across the site. The site is screened from the N80 by mature trees and vegetation.

2.0 Proposed Development

Permission is sought for a two storey dwelling with a gfa of c. 181sq.m, and a c. 75sq.m detached outbuilding on a site with an overall area of c. 1.23hectares. It also proposed to provide a private well, a proprietary wastewater treatment system and a new entrance.

The application documentation includes a Site Characterisation Form.

Reference has been made to the applicant's compliance with the Council's Rural Housing Policy. No documentation has been submitted to support this.

Reference has been made to a right of way over the lane. No details have been submitted.

3.0 Planning Authority Decision

3.1 Decision

Refused permission for the following reason:

Official policy in relation to development involving access to national roads and development along such roads is set out in the DoECLG "Spatial Planning and National Roads – Guidelines for Planning Authorities" (January 2012). Section 2.5 of the Guidelines states that:

'The policy of the Planning Authority will be to avoid the creation of any additional access points from new development or the generation of increased traffic from existing accesses to the National Roads to which speed limits greater than 60kph apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.'

It is also policy of the Council under section 5.2.2 and 11.19.2 of the Carlow County Development Plan 2015-2021 to avoid the generation of increased traffic from existing accesses to National roads and to prohibit development requiring access onto the National Roads where the maximum speed limit applies. The proposed development, if permitted, would result in the intensification of an existing direct access to a National Road (the N80) at a location where the maximum speed limit of 100kph applies, and would adversely affect the operation and safety of the National Road. This would be contrary to National policy in Ministerial guidance as set out in Section 2.5 of the DoECLG 'Spatial Planning and National Roads – Guidelines for Planning Authorities (January 2012)', would be contrary to the policies of the Council as

set out in section 5.2.2 and 11.19.2 of the Carlow County Development Plan 2015-2021, would set an undesirable precedent for further such development, and would therefore be contrary to the proper planning and sustainable development of the area.

3.2 Planning Authority Reports

3.2.1 Planning Reports (5th February & 7th June 2018)

The planners report formed the basis of the Planning Authority's decision. The main issues of concern related to the means of access to the site. This was the subject of an extensive further information request which included details relating to the access lane, right of way, letters of consent for upgrading, reference to the TII submission and their objections to the proposal.

A detailed response was submitted by the applicant. This was examined and a recommendation to refuse permission issued on the grounds that the proposal would be contrary to national policy relating to accesses onto National Roads.

3.2.2 Other Technical Reports

3.2.2.1 Environmental Section (9th January 2018). No objection subject to conditions.

3.2.2.2 Transportation Section (12th January 2018). Further Information recommended as follows:

The proposed development is on lands accessible by a roadway not taken in charge.

- *Confirmation is required regarding how the applicant will access the public road (note - There will be no access of any description at any time from the N80 to the development).*
- *The applicant will be required to submit confirmation of right of way and details of upgrading works on this right of way to the satisfaction of the Planning Authority prior to the commencement of construction).*

3.2.2.3 Muinebheag Municipal District (8th January 2018). Access is via a private laneway. If permission is granted no surface water from the proposed development site is to be taken on to the public road.

Report relating to the Further Information response (17th May 2018). No further comment to make, except for the sightlines shown are acceptable to the Area Office.

3.2.2.4 Water Services (20th December 2017). No objection. The area is served by public water main but connection to it is not feasible as pressure would not be adequate.

3.2.2.5 CFO (not dated). No objection subject to compliance with fire requirements.

3.3 Prescribed Bodies

3.3.1 Irish Water (25th December 2017). No objection. The area is served by public water main but connection to it is not feasible as pressure would not be adequate.

3.3.2 Transport Infrastructure Ireland (TII) (8th January 2018). The proposal is at variance with official policy in relation to control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidance for Planning Authorities (2012), as the proposed development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network for the following reason(s):

Official policy in relation to development involving access to national roads and development along such roads is set out in the DoECLG Spatial Planning and National Roads Guidance for Planning Authorities (2012). Section 2.5 of the Guidelines states that the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. 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.

Subsequent TII Report following receipt of the Further Information (29th May 2018). This report reiterates the recommendation of the previous report and further notes that the Planning Authority Application (Ref. PL.17/186) and the relevant circumstances do not apply at the subject location of the current site. There is a critical need to protect and maintain the capacity of the N80 in accordance with National guidance.

3.4 Third Party Observations

None.

4.0 Planning History

Planning Authority Reference No. 07/963 refers to a grant of permission to Niall Prunty and Amanda Walsh in 2008 for a house on the site.

The first named applicant has stated that he purchased the site in 2011, permission expired in 2013.

Reference has been made to a house and business (Colman Auto Centre) to the north east of the site being in the family's ownership. The relevant applications are:

Planning Authority Reference CW6479. Grant of permission to Richard Coleman for a house.

Planning Authority Reference CW6640 refers to a grant of permission to Richard Coleman for a house.

Planning Authority Reference CW9362 refers to a grant of permission to Richard Coleman for a workshop.

5.0 Policy Context

5.1 Carlow County Development Plan 2015-2021

The site is in a 'Rural Area under Urban Influence'.

Chapter 2. Development Strategy

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.

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.

Chapter 5. Transportation and Movement.

Section 5.2.2 refers to the **National Road network** and the need to safeguard the capacity of the network by restricting access points to the network. Regarding Lands adjoining National Roads to which speed limits greater than 60kph apply. It will be the policy to avoid the creating of additional access point from new development or the generation of increased access to national roads for all development types.

Chapter 11 Design & Development Standards

Section 11.7 refers to Rural Residential development.

Of particular relevance is section **11.7.1**, this refers to the assimilation of the development into the landscape. It sets out that all permissible buildings should avoid locally obtrusive elevated sites and should be located on minor or lower slopes of rising ground where possible.

Section 11.19.1 refers to vehicular entrances and required sightlines.

Section 11.19.2 refers to National and Regional Roads. Development control shall seek to channel traffic from new development onto existing local roads and in this way use established access points to gain entry onto national roads and shall have regard to the Policy Document, *Spatial Planning and National Roads, Guidelines for Planning Authorities*, (January 2012) published by the DoECLG.

Section 11.19.3 refers to Local Roads. In general, only the minimum interference with existing roadside boundaries and hedges shall be permitted in relation to visibility splays on Local Roads. Visibility splays to be stipulated at

90 metres unless a safety audit is submitted to justify a reduced sight distance. Any works required to obtain visibility, such as trimming hedging, removing hedging, trees, walls or fencing shall be shown clearly on a site layout plan or other suitable drawings with a planning application. 3rd Party consent letters for works not on an applicant's land is also required with the planning application. If a development is up a private laneway, the onus of maintenance of the laneway is on the local residents who own the lane or who have shared right of way on a private laneway.

5.2 Guidelines

Spatial Planning and National Roads Guidance for Planning Authorities (2012), Department of Environment, Community and Local Government.

Section 2.5 sets out the required Development Plan policy on access to National roads.

Section 2.5 of the Guidelines states that the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. 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.

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 Valley SAC (site code 000781) c. 1.5km east 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 principle of a house on site is acceptable. The site previously had permission for a house (P.A. Ref. No. 07/963). The first named applicant bought the site with full planning permission in 2011. Permission lapsed in 2013 as he did not apply for an extension of time.
- Transportation Infrastructure Ireland (TII) recommendation that the proposed development be refused permission as it would be at variance with national policy conflicts with another recent recommendation by the TII for PA Ref. No. 17/186 accessed off the L20248 where no objection was noted.
- Access is not, nor ever was, proposed directly off the N80. It is proposed to access the site via an existing private lane off the L60664 that serves seven existing houses. The applicants have outlined that they have the relevant consents to carry out local improvement works and a right of way over this lane.
- Access via a private lane onto a local road which in turn leads to a national road is not contrary to TII national policy. Notwithstanding communication with the TII, confusion appears to remain regarding how the site is accessed.
- The junction of the L60664 and the N80 has adequate sightlines. There is a right turning lane on the N80, at this point, which provides a safe haven for vehicles to cross the oncoming carriageway and enter the local road. Photographs of the junction have been submitted.
- The proposal would not result in an intensification of traffic movements onto the national road. It would remove the need for the applicant to drive from his rented accommodation at Clonegal to his place of work, the family business adjoining the site.

- The first named applicant owns the parcel of land where he proposes to build, i.e. the field, at present there are two gates into this field off a private lane which he shares with a neighbouring farmer.

6.2 Planning Authority Response

None.

6.3 Observations

None.

7.0 Assessment

The grounds of appeal seek to address the Planning Authority's reasons for refusal which refers to noncompliance with national and local policy relating to accesses off National roads. The issue of appropriate assessment and environmental impact assessment also needs to be addressed.

It is also considered that, although not included by the Planning Authority in the reasons for refusal or raised by the first party in the appeal, other substantive issues arise. I advise the Board that as these are new issues, if the Board agrees with the assessment and recommendation set out hereunder, they may wish to recirculate to the parties for comment prior to the decision as per the requirements set out under section 137 of the Planning and Development Act 2000, as amended.

The issues can be dealt with under the following headings:

- Rural Housing policy - New Issue.
- Traffic - Includes New Issue.
- Design and Siting – New Issue.
- Appropriate Assessment.
- Environmental Impact Assessment.

7.1 Rural Housing Policy – New Issue

- 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 rural under urban influence and is the subject of development pressure due to its proximity to nearby towns.
- 7.1.3 The first named applicant has set out that he grew up adjoining the site, where the family home and business are located. He purchased the site with planning permission for a house in 2011, this expired in 2013. The cover letter submitted with the application refers to the site being purchased 10 years ago. I note that the Planning Authority was satisfied that the applicant complied with the Council's rural housing policy. However, no supporting documentation has been submitted to support the applicant's links to the area. Section 2.7.1.4 of the County Development Plan clearly sets out that documentary proof will be required to be submitted with applications to show compliance with the above policies. Based on the information on file I am not satisfied that the applicants have demonstrated that they comply with section 2.7.1.4 of the County Development Plan.

7.2 Traffic

- 7.2.1 The Planning Authorities reasons for refusal was on the premise that the development would not comply with national and local policies relating to accesses off National Roads. As highlighted by the applicant, the proposed development would not be accessed directly off a National Road nor would it result in an intensification of traffic movements at an existing entrance, therefore, Section 2.5 of the Guidelines, Section 5.2.2 and 11.19.2 of the County Development Plan do not apply.

- 7.2.2 I note that the applicants in their response to the appeal reiterated the information submitted with the Planning Application that they do not propose to access the site directly off the N80. Access is proposed via a private lane that is accessed off the L60664 which in turn is accessed off the N80. I have examined the information on file and I note that the application does not include a direct access off the N80. Nor it is proposed to access the site via the private lane that runs along its southern boundary which is accessed directly off the N80.
- 7.2.3 I consider that, as there is no direct access proposed off the N80 or an intensification of traffic movements at an existing access onto a national road, section 2.5 of the Guidelines and section 5.2.2 and 11.19.2 of the Carlow County Development Plan do not apply in this instance. Therefore the Planning Authority's reasons for refusal should not be upheld.
- 7.2.4 However, I consider that, although not included by the Planning Authority in the reasons for refusal or raised by the first party in the appeal, other substantive issues relating to access to the site arise. These relate, in particular, to sightlines at the junction of the lane and the L60664 and the condition of the lane to access the site.
- 7.2.5 The applicants are of the view that this lane, serving seven houses, has adequate sightlines available in both directions at its junction with the L60664. I note that the Municipal Engineer has no objection to the use of the lane and noted that the sightlines at the junction with the L60664 were considered acceptable.
- 7.2.6 The lane exits onto the L60664 c.62m west of its junction with the N80. I have examined the junction of the L60664 and the private lane. I observed that the presence of existing roadside boundaries obscure sightlines resulting in cars having to edge onto the public road, when exiting the lane, to have a clear view of the road. Furthermore, the applicants have not demonstrated that they have sufficient control of the necessary lands to remove obstructions to achieve adequate sightlines at the junction of the lane with the L60664. I consider, therefore, that the proposed development would endanger public safety, by reason of traffic hazard, because of the additional traffic turning movements the

development would generate on a road at a point where sightlines are currently restricted.

7.2.7 I note condition No. 3 of PL 07/963 related to access via a private lane off the L60664 and that details pertaining to right of way and works to be carried out to upgrade the lane were required by condition. I do not consider that this issue should be dealt with by condition

7.2.8 It is proposed to access the site via an extension of a private lane off the L60664. The site is c.597m from the junction of the lane with the public road. The southern section of the lane is surfaced and serves seven houses. The northern section is unsurfaced and not suitable for domestic use at present. The applicants outlined that they have a right of way over this lane and consent from all the relevant landowners. I have examined the information on file and I note there are generic letters of consent from property owners to use the lane that runs in front of their properties to access the site. There is no reference to consenting to local improvement works nor are there letters from the relevant landowners consenting to the required works to the section of the lane that is not surfaced.

7.2.9 The question of the exercise of any right of way 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*'.

7.2.10 The first named applicant in the grounds of appeal outlined that he owns the parcel of land where he proposes to build. At present there are two gates into this field off a private lane which he shares with a neighbouring farmer and as the top access can also be accessed via the lane off the L60664, he has no objection to permanently closing the lower (eastern) gate and, therefore, remove any need to use the lane that is accessed directly off the N80. The

applicant outlined in the further information submitted to the Planning Authority that he has no right of way over this lane, therefore the closure of the lane is beyond his control.

7.3 Design and Siting

7.3.1 The applicants have outlined that the site was purchased with planning permission for a dwelling, this expired in 2013. No application for extension of duration was made. Permission was granted under P.A Ref, No. 07/963 for a single storey house on the lower, eastern, portion of the site with access via the upper gate in the western corner and via the lane off the L60664.

7.3.2 Notwithstanding, the application before the Board must be assessed in the context of the policies and objectives for the site under the current Carlow County Development Plan 2015-2021. Section 11.7 of the Development Plan refers to Rural Residential development. In particular section 11.7.1 which refers to the need for new buildings to assimilate with the existing landscape.

7.3.3 It is proposed to set back the two storey house c.120m from the N80 on the western, elevated, portion of the site. The level of the N80 along the site frontage is 85.10, the proposed FFL of the house is 104.00 with a maximum ridge height of c. 7.4m.

7.3.4 Having regard to the rural character of the area and the pattern of development in the immediate vicinity. In conjunction with the siting the proposed house at an elevated point on the site which would result in intermittent views of the development from the wider road network. The sloping nature of the site, combined with the scale and height of the dwelling and the extensive groundworks proposed. In my view, the proposed development could not be effectively assimilated into the landscape and would, therefore, form an incongruous and obtrusive feature in this rural area. I do not consider that the proposed dwelling would be compatible with the protection of the rural landscape and its character and would, therefore, be contrary to Section 11.7.1 of the County Development Plan.

7.3.5 In terms of site assessment and the suitability of the proposed effluent treatment system, the proposal should comply with the EPA Code of Practice for Single Houses.

7.4 Appropriate Assessment

7.4.1 There is no evidence of significant surface water conduits within the site. No watercourse were observed within the site or bounding the site. The river Clashavey is c. 324.5m east of the eastern site boundary on the opposite side of the N80. There is no hydrological connection between the site and this river which links into the closest Natura 2000 site is the Slaney River Valley SAC (site code 000781) c.1.5km to the east of the site.

7.4.2 The Slaney River Valley SAC is an extensive site which is spread across three counties (Carlow, Wexford and Wicklow). Conservation Objectives have been prepared for the site.

7.4.3 Given the separation distance to the nearest identified watercourse to the east of the applicant's site, there is no hydrological connection to the designated site referred to in paragraph 7.4.1 above.

7.4.4 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.

7.5 Environmental Impact Assessment

7.5.1 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 applicants have a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicants do 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. Based on the information on file and having regard to the proposal to access the development through an existing entrance from a private right of way to a public road carriageway, the Board considered that the applicants and their assigns have not demonstrated that they have sufficient control of the necessary lands to execute proposals to access the site and carry out

improvement works to the private lane which is an extension of a private lane off the L60664. Furthermore the junction of the L60664 and the private lane has inadequate sightlines due to existing boundary treatment at this junction. The Board therefore considered that the proposed development would endanger public safety, by reason of traffic hazard, because of the additional traffic turning movements the development would generate on a road at a point where sightlines are currently restricted. The proposed development would, therefore, not be in accordance with the proper planning and sustainable development of the area.

3 Having regard to the:

- (a) the elevated nature of the site which is open to intermittent views from the nearby local road network and from the N80 National Secondary Road.
- (c) the scale and height of the proposed dwelling, and
- (d) the extent of the groundworks proposed,

it is considered that the proposed development could not be effectively assimilated into the landscape and would, therefore, form an incongruous and obtrusive feature in this rural area. The proposed development would, therefore, contravene the policy set out in the current Carlow County Development Plan and would seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Dáire McDevitt
Planning Inspector

11th October 2018