



An
Bord
Pleanála

Inspector's Report ABP-302049-18

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| Development | Two-Storey House, Garage and Effluent System and all Ancillary Works at Bracklin Big, Tullamore, County Offaly. |
| Location | Bracklin Big, Tullamore, County Offaly. |
| Planning Authority | Offaly County Council |
| Planning Authority Reg. Ref. | 18/177 |
| Applicant(s) | Karl and Emma Mollen |
| Type of Application | Permission |
| Planning Authority Decision | Refuse Permission |
| Type of Appeal | First Party |
| Appellant(s) | Karl and Emma Mollen |
| Observer(s) | None |
| Date of Site Inspection | 21 st August 2018 |
| Inspector | Ciara Kellett |

1.0 Site Location and Description

- 1.1. The appeal site lies c.6km to the north-east of the centre of Tullamore, Co. Offaly and c.1.2km to the south-east of the Westmeath border, in the townland of Bracklin Big. The site is accessed via a narrow road/laneway off the L1024 Tinnycross Road. The Tinnycross Road meets the N52 national road, c.4.7km to the south-west of the site.
- 1.2. The road/laneway serves a group of houses mostly located on the northern side of the road.
- 1.3. The site itself is stated as being 0.303 hectares in area in the townland of Bracklin Big. The site is to the east of a number of dwellings facing onto the laneway. The laneway ends in a cul-de-sac and there are no other dwellings to the east of the subject site. The site is currently in agricultural use and a dwelling is under construction to the west.
- 1.4. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. Permission is sought for a detached dwelling, garage and effluent treatment system. The dwelling is two storey with a number of roof planes including a projecting front gable as well as a pitched roof. The overall height is 9.263m and the overall area of the dwelling is stated as being 248.68sq.m. The garage is 5.886m in height and 80.56sq.m in area.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for two reasons. In summary the first reason referred to non-compliance with the Local Rural Needs policy and the second reason referred to the design of the house which was considered not to accord with the Offaly County Design Guide and would contravene objective LAO-01 of the Development Plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority's decision. In summary it includes:

- Considered that there was little design change from the previous planning application (Ref.17/386) which was refused permission on grounds of design and compliance with local needs.
- States that the applicants cannot be considered a 'Local Rural Person' as defined in Category 1(a) of SSP-18 of the Plan, and notes that the 'Local Rural Area' is defined in Category 1(b) of SSP-18.
- Considers applicant has not put forward an argument that they work full or part-time in a Rural Area as defined in Category 2 of SSP-18, or that they have exceptional health circumstances as defined in Category 3 in SSP-18.
- As the applicants do not comply, the proposed development would be a material contravention of the County Development Plan.
- Notes house type is almost identical to previous application. Considers that the scale, mass and design with a number of different roof types and unnecessarily fussy fenestration features would be visually incongruous and would not accord with the Offaly County Design Guide 'Designing Houses creating homes', and would militate against the preservation of the rural environment. The proposal would contravene objective LAO-01 which seeks to preserve and enhance the character of the county's landscape.
- Recommends refusal of permission

The decision is in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

- **Area Engineer:** No objection subject to conditions
- **Environment Water Services:** No objection subject to conditions

3.3. Prescribed Bodies

- **Arts Council:** File referred
- **Dept. of Culture, Heritage and the Gaeltacht:** File Referred
- **An Taisce:** File referred
- **The Heritage Council:** File Referred.

3.4. Third Party Observations

None received.

4.0 Planning History

- **Reg. Ref. 17/386:** Permission was refused for a similar house in November 2017 for almost identical reasons as the subject application.

5.0 Policy Context

5.1. National Planning Framework

- 5.1.1. The National Planning Framework includes **Objective 19** relating to rural housing. It states:

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, 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;

In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in

statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Sustainable Rural Housing Guidelines for Planning Authorities

- 5.2.1. The Guidelines refer to persons considered as constituting those with rural generated housing needs being persons who are an intrinsic part of the rural community, or working full-time or part-time in rural areas. The Guidelines refer to persons who are an intrinsic part of the community as having *'spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes'*.

5.3. Offaly County Development Plan 2014 - 2020

- 5.3.1. The site is subject to the policies and objectives of the County Development Plan. Chapter 1 refers to Core Strategy and Settlement Strategy. Chapter 7 refers to Heritage and Landscape.
- 5.3.2. Map 1.2 of Chapter 1 identifies the area as being a Pressure Area as is most of East Offaly, and Map 1.3 identifies it as a rural type under Strong Urban Influence as identified by the Sustainable Rural Housing Guidelines. Rural Housing in the Open Countryside contains policies SSP-17 and SSP-18.

SSP-17 *It is Council policy to encourage and promote quality design, appropriate scale, form, informed siting, quality materials and finishes and to incorporate where possible and practicable, the best principles and mechanisms for sustainability and energy efficiency.*

In addition, it is also Council policy to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations including the following (inter alia)¹:

- *The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing ribbon*

¹ Items of relevance included only

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.

SSP-18 sets out the Local Need Criteria.

SSP-18 *It is Council policy that within areas of the open countryside identified as a pressure area in Map 1.4: a positive presumption will be given towards a new single house for the permanent occupation of an applicant who falls within one or more of the 3 categories below and meets the necessary criteria.*

Category 1 refers to Local Rural Persons and includes reference to three types.

Category 2 refers to Persons Working Fulltime or Part-time in Rural Areas and

Category 3 refers to Exceptional Health Criteria.

Category 1 is of relevance:

The applicant must come within the definition of a 'Local Rural Person' and the proposed site must be situated within their 'Local Rural Area' and the applicant must have a 'Local Rural Housing Need'

- a) A 'Local Rural Person' (applicant) is a person who was born within the local rural area, or who is living or has lived in the local rural area for a minimum of 5 years at any stage prior to making the planning application. It includes returning emigrants seeking a permanent home in their local rural area.*
- b) The 'Local Rural Area' for the purpose of this policy is defined as the area generally within a 8km radius of where the applicant was born, living or has lived. The rural area excludes all urban settlements contained with Tiers 1, 2, 3 and 4 of the settlement hierarchy.*
- c) An applicant who satisfies a 'Local Rural Housing Need' is defined as a person who does not or has not ever owned a house in a rural area and has the need for a permanent dwelling for their own use.*

5.3.3. Section 7.14 of Chapter 7 refers to Landscape and Amenity Objectives.

Objective **LAO-01** states:

It is an objective of the Council to preserve and enhance the character of the county's landscape where, and to the extent that in the opinion of Offaly County Council, the proper planning and sustainable of the area requires it.

5.3.4. The Offaly Rural Design Guidelines 'Designing houses creating homes' provides a guide for applicants on the siting and design of new houses in the countryside.

5.4. **Natural Heritage Designations**

Charleville Wood SAC (Site Code 000571) is c. 7.25km south-west of the site.

Raheenmore Bog SAC (Site Code 000582) is c. 6km north-east of the site.

Clara Bog SAC (Site Code 000572) is c.11km west of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A Consultant on behalf of the First Party has submitted an appeal against the Planning Authority's decision to refuse permission. In summary it states:

- Reason for refusal for non-compliance with policy SSP-18 as they are not directly from the Local Rural Area - refer to EU law and the Local Residency Requirement for Planning Permission Flemish Decree case. Enclosed with the appeal is "L&RS Note, EU Law and Local Residency Requirements for Planning Permission".
- Consider their client has sufficient connection to the area by way of his grandfather owning the land for 34 years, and an uncle prior to that. Letters attached to appeal from neighbours in the local community.
- Client is from the rural area of Agall, Screggan and has never lived anywhere else other than in a rural area. Land is family owned and is being gifted from his grandfather.
- The rural area of Agall is less than 10km from Tullamore town and Bracklin Big is c.7km from Tullamore town. The appellant works as an electrician and

the other appellant has a permanent job teaching in the local school in Tullamore.

- The second reason for refusal is in relation to design. It is considered that the design is in keeping with the houses in the area in terms of design, scale and form.
- By previously granting permission on the cul-de-sac lane for housing of this type, the Council are clearly of the opinion that this type of development is proper planning and sustainable development.
- Clients have no objection to a 7 year clause nor have they any objection to making changes to the design of the house which could be conditioned.
- Letters attached to appeal supporting the applicants and providing information on links with locality.

6.2. Planning Authority Response

The Planning Authority responded stating that they have no further comments and refer the Board to the reports on file.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with Local Needs policy.
- Design of dwelling
- Appropriate Assessment

7.1. Compliance with Local Needs and policy SSP-18

- 7.1.1. The Council's first reason for refusal noted that the site is in a Pressure Area and as such, applicants who are defined in policy SSP-18 will be given a positive

presumption for a rural home. The Council did not consider that the applicants complied with the policy as they are not from a Local Rural Area.

- 7.1.2. I note that Category 1 is the relevant category, as neither of the applicants refer to working fulltime or part-time in the rural area (Category 2), and neither of the applicants have referred to exceptional health circumstances (Category 3).
- 7.1.3. Category 1 identifies 3 criteria which an applicant must comply with. The first is a 'Local Rural Person' who was born within the local rural area or who is living or has lived in the rural area for a minimum of 5 years. I note that one of the applicants states his current home is in Agall which is c.14km from the site. It is stated that the land in Bracklin Big is however family land, and that he has worked in the area assisting family members over the years. Notwithstanding this, I do not consider that the applicant is a 'Local' rural person having regard to distances involved.
- 7.1.4. The second criteria confirms that distances are a material consideration. A 'Local Rural Area' for the purpose of the policy is defined as the area generally within an 8km radius of where the applicant was born, living or has lived. As noted above the applicant is not living within 8km of the site and it appears from the file that the other applicant lived in Tullamore.
- 7.1.5. Finally, the third criteria states that an applicant who satisfies a 'Local Rural Housing Need' is defined as a person who does not, or has never, owned a rural house in a rural area, and has the need for a permanent dwelling for their own use. I am satisfied that the applicants have never owned a rural house, however I am further satisfied that the applicants do not have a genuine need for a house in a rural area.
- 7.1.6. I am satisfied that the applicants do not comply with the criteria outlined in Category 1 and therefore do not have a Local Need.
- 7.1.7. The applicants refer to the EU judgement in the Flemish Decree case. I note that Circular Letter PL2/2017 addressed the Local Needs Criteria in Development Plans and stated that the National Planning Framework (NPF) would further assist in informing the revision of the 2005 Sustainable Rural Housing Guidelines for Planning Authorities, in terms of outlining the overall policy approach for development in Rural Ireland.
- 7.1.8. The NPF contains objectives of relevance to the subject case, in particular Objective 19 (See Section 5.1 above). I am satisfied that the area is under strong urban

influence as indicated on Map 1.3 of the County Development Plan. I am satisfied that the applicants have not demonstrated an economic or social need to live in the rural area, and therefore the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location.

- 7.1.9. In conclusion, I am of the opinion that the applicants do not comply with local housing need and a positive decision would be contrary to the over-arching national policy as well as the County Development Plan.

7.2. **Design of the dwelling**

- 7.2.1. The second reason referred to the design of the dwelling. It was considered to be visually incongruous by reason of its design, scale and form and would militate against the preservation of the rural environment and would materially contravene objective LAO-01 of the Plan. The reason also refers to the Design Guide produced by Offaly County Council.
- 7.2.2. I note from my site visit that the surrounding dwellings are a mix of one and two storey detached dwellings. The two storey detached dwellings are similar in design to that proposed, and therefore I do not consider that it would be visually incongruous. However, I note that this would be the last dwelling on this cul-de-sac laneway and that there is a site between it and the nearest dwelling to the west, which could clearly be argued as being an 'infill' site, should the subject proposal proceed. It is likely, and there is reference to two other sites being considered for housing by the family, that the subject site would result in an undesirable precedent for further development down this laneway. Therefore, I am of the opinion that the proposal would materially contravene objective LAO-01 which seeks to preserve and enhance the character of the county's landscape.

7.3. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, 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.

7.4. Environmental Impact Assessment Screening

- 7.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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 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 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 local need in accordance with the Offaly County Development Plan 2014-2020. 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 documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy, and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the rural character of the area, it is considered that the proposed development would militate against the preservation of the rural environment and would materially contravene objective LAO-01 of the Offaly County Development Plan 2014 – 2020 which seeks to preserve and enhance the character of the county’s landscape. This objective is considered reasonable. The proposed development would set an undesirable precedent for further development along this laneway. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Ciara Kellett
Senior Planning Inspector

24th September 2018