



An
Bord
Pleanála

Inspector's Report ABP-302051-18

Development	Proposed Single Storey Dwelling and all associated works
Location	Blackberry Lane, Newbridge County Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18/461
Applicant(s)	Fionnuala Kelly
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Fionnuala Kelly
Date of Site Inspection	28 th September 2018
Inspector	Colin McBride

1.0 Site Location and Description

1.1 The appeal site is located in Newbridge, Co. Kildare. It is located to the west of the town centre on the fringes of the urban area of Newbridge, on a lane called Blackberry Lane. It is zoned for agricultural purposes and is located within the Newbridge Local Area Plan 2013 – 2019 boundary. The site is stated as measuring 0.2438Ha and is relatively level and is in agricultural use (sheep grazing). The site is part of a larger field and has defined boundaries along its eastern southern side (hedgerow). Adjoining uses include agricultural lands to the west and north, a single-storey dwelling immediately south and a number of existing dwellings on the opposite side of the road to the east.

2.0 Proposed Development

2.1. Permission is sought for a single-storey detached dwelling, foul water to mains sewer, surface water to soakaways, recessed vehicular entrance and all associated site works. The proposed dwelling has a floor area of 252sqm and a ridge height of 5.641m. The dwelling features a pitched roof and external finishes of wet dash plaster on the walls and slate roof.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on two reasons...

1. The subject site is zoned 'I- Agricultural' in the Newbridge Local Area Plan 2013-2019, the zoning objective for which is 'to retain and protect agricultural uses'. ON agriculturally zoned lands, dwellings are 'open for consideration' but only in such instances where the Council is satisfied that the proposed use would not conflict with the general objectives from the zone and the permitted or existing uses as well as being in the interests of the proper planning and sustainable development of the

area. To be considered for development on lands zone 'I- Agricultural'. Applicants must be able to demonstrate a need to live in the agriculture zone. Having regard to the above, and to the location of the applicant's current residence on lands zoned B- Existing/Infill Residential', it is not considered that the applicant demonstrate compliance with the requirements for development on lands zoned 'I- Agricultural'. Therefore, it is considered that the proposed development would be contrary to the zoning objective of the agriculturally zoned lands and as such would be contrary to the proper planning and sustainable development of the area.

2. Policy RH10 of the Planning Authority, as set out in the Kildare County development Plan 2017-2023 is to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. It is considered that the proposed development by reason of its location in proximity to Newbridge town where lands are zoned for residential purposes. To further promote development at the location proposed, having regard to the level of existing development would set for further development in this area, would contribute to the unsustainable development of this rural area and would not be in accordance with the proper planning of the area.

3.2. Planning Authority Reports

3.2.1. Water Services (21/05/18): No objection subject to conditions.

Irish Water (21/05/18): No objection subject to conditions.

Planning Report (15/06/18): It was considered that the applicant did not demonstrate compliance with the requirements for development in the lands zoned 'I – Agricultural'. It was also noted that the applicant did not comply with Rural Housing Policy under the County Development Plan. Refusal was recommended based on the reasons outline above.

3.3. Third Party Observations

None.

4.0 Planning History

None on the appeal site

History of note in the vicinity include

KCC Reg. Ref. 18/90: Permission consequent on outline permission (17/1023) for a dwelling and associated site works on a site 650m north of the appeal site.

PL09.300885: Permission refused for construction of a new house. This site is located to the north of the site further along Blackberry Lane and the applicant is the current appellant's sister. Refused based on two reasons...

1. The proposed development is located in an area zoned 'I- Agricultural' in the Newbridge Local Area Plan 2013 – 2019, for which the objective is to preserve the existing agricultural and equine use of the areas zoned for this purpose and to prevent urban generated development which would interfere with the operation of farming/bloodstock or rural resource based enterprise. This objective is considered reasonable. It is a policy of the planning authority, as set out in the plan, to channel housing into serviced centres and to restrict development in rural areas to that necessary to serve the needs of those engaged in agriculture and other rural activities. The proposed development would contribute to ribbon development in this area, lead to demands for the uneconomic provision of further public services in an area where these are not proposed and would interfere with the rural character and attractiveness of the area. The proposed development would, therefore, contravene materially the development objective, as set out in the Development Plan and be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development is located on lands zoned for agricultural purpose in the Newbridge Local Area Plan, 2013-2019, and in 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, wherein it is the policy to distinguish between urban generated housing need and rural generated housing need. Having regard to the nature and location of the applicant's employment, it is considered that the applicant does not have a rural generated housing need in accordance with these Guidelines which would justify the provision of a house in this rural location zoned for agricultural purposes and the proposed development would, therefore, contravene the Ministerial Guidelines and would be contrary to the proper planning and sustainable development of the area.

KCC Reg. Ref. 17/40: Permission was refused to the applicant by the Council in March 2017 for a dwelling, same site and applicant as PL09.300885. Reasons for refusal were very similar to the subject reasons. The applicant appealed the decision to the Board but the appeal was withdrawn in September 2017.

KCC Reg. Ref. 17/1023: Outline permission for a dwelling was granted in December 2017 for a dwelling on the western side of Blackberry Lane 650m north of the appeal site.

5.0 Policy Context

5.1. Development Plan

5.1.1 Newbridge Local Area Plan 2013-2019

(a) Under the Newbridge Local Area Plan the site is zoned 'I – Agriculture' on Map 7. Part A of the Plan provides an Introduction and Context. Part B refers to the Policies and Objectives and Part C refers to the Land Use Zoning Objectives.

(b) Section 6 of Part A refers to Planning for Residential Expansion. It notes 'The Plan ensures the supply of suitably zoned serviced land to accommodate the future growth of Newbridge in line with its designation in the Regional Planning Guidelines as a Large Growth Town II'.

(c) Section 7.2.3 specifically refers to Housing in the Agricultural Zone. It states 'The primary aim for the agricultural zone in Newbridge is to preserve the existing agricultural and equine use of the areas zoned for this purpose, and to prevent urban generated development which would interfere with the operation of farming/ bloodstock or rural resource based enterprise'. It further states 'Within the agricultural zone in Newbridge, housing will be confined to people with a genuine housing need and who can demonstrate that they comply with the relevant category of local need outlined in the County Development Plan'.

(e) Policy HA1 states:

To manage the provision of one off housing on lands zoned as 'I – Agricultural'. Limited one off housing will be permitted in this zone subject to compliance with the rural housing policy of the CDP 2011 – 2017 or as subsequently amended (Rural Housing Policy Zone 1). Documentary evidence of compliance with this policy must be submitted as part of the planning application, including a separate statement by the applicant on the need to reside in the area.

(f) Table 17 in Part C refers to Land Use Objectives. Zoning Reference 'I – Agricultural' is 'To Retain and Protect Agricultural Uses'. It is noted that:

(g) The purpose of this zoning is to ensure the retention of agricultural uses and protect them from urban sprawl and ribbon development. Uses which are directly associated with agriculture or which would not interfere with this use are open for consideration. This includes limited housing for members of landowners' families/persons who can demonstrate a need to live in the agriculture zone (in accordance with policy RH4 as set out in the Kildare County Development Plan 2011 – 2017, or as amended).

5.1.2 Kildare County Development Plan 2017 - 2023

(a) Chapter 4 refers to Housing. Section 4.12.7 outlines the Rural Housing Policy. Newbridge is located in Rural Housing Policy Zone 1.

(b) The Plan identifies criteria for an applicant to be considered for a one-off dwelling. An applicant must meet one of the following categories: is a member of a farming family or a member of the rural community and meets one of the local need criteria (i) – (iii). Category of applicant 2 refers to members of the rural community and (i) must have grown up and spent substantial periods of their lives (12 years) living in the rural area and who seek to build their home in the rural area on their family landholding or where no land is available in the family ownership, a site within 5km of the original family home, (ii) Grown up and spent substantial periods of their lives (12 years) living in the rural area who have left the area, but now wish to return to reside near to, or to care for immediate family members, (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.

(c) 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.

(d) 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.

5.1.3 Sustainable Rural Housing Guidelines for Planning Authorities, 2005

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'.

5.2. Natural Heritage Designations

Pollardstown Fen SAC (Site Code 000396) is located c. 0.5km to the north west of the site and Mouds Bog SAC (Site Code 002331) is located c.3km to the north.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged by David Mulcahy Planning Consultants Ltd on behalf of Fionnuala Kelly, Blackberry Lane, Newbridge, Co. Kildare.

- In regards to refusal reason no. 1 the appellant notes that the wording of policy under the Newbridge Local Area Plan relating to the 'I' zoning has been misinterpreted. The appellant refers to the wording that states 'this includes limited housing for members of landowners' families/persons who can demonstrate a need to live in the agriculture zone'. The appellant notes that the / indicates that either a family member of a landowner or a person who can demonstrate a local need. It is noted that in relation to the latter the Planners report note the appellant meets the local needs criteria under Category no. 2.

- In relation to refusal no. 2 it is noted that the nature, scale and design of the proposal will have no material impact on the future development potential of the wider landholding. The appellant also refers to a dwelling recently granted 650m to the north of the site (18/90) in which the issues raised in refusal reason no. 2 were not a concern.
- The appellant notes concerns raised in the planning report concerning the roof design and has submitted a revised design to address such concerns.
- The grounds of the appeal note the planning history of the site and in particular highlight an appeal that was withdrawn (PL09.248321) on the current appeal site (Dearbhail Kelly, the current appellant's sister). The appellants refer to the Inspectors report concerning this file (attached with the appeal) and that the Inspector in that case determined that the current applicant's sister complied with the locals needs criteria.
- The appellant notes precedent in the form an outline permission granted under ref no. 17/1023 on Blackberry Lane.
- It is noted that the appellant complies with rural housing policy under the Kildare County Development Plan 2017-2023 and the Newbridge Local Area Plan 2013-2019. The appellant has provided details of how she has a genuine need to live in the area, noting that she was brought up and lived a significant period of time in the area.
- The proximity to Pollardstown Fen SAC is noted. It is noted that the development is small in scale and that there is no direct pathway between the appeal site and the SAC. It is submitted that a Stage II AA is not required.

6.2. Planning Authority Response

Response from Kildare County Council

- It is considered that the applicant does not comply with Council policy regarding one-off dwellings on agriculturally "I" zoned lands. It is noted that the applicant has not demonstrated a rural housing need and the appeal submission refers to the appellant's work as urban based.

- The proposed development would set an undesirable precedent and would be contrary to the proper planning and sustainable development of the area.

7.0 Assessment

7.1 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 Housing Need Policy

Future development of land/pattern and type of development

7.2 Compliance with Local Housing Need Policy/pattern and type of development:

7.2.1 The proposal is for a new dwelling within the boundary of the Newbridge Local Area Plan, but is located on land zone '1 –Agricultural'. On such lands it is noted that 'the primary aim for the agricultural zone in Newbridge is to preserve the existing agricultural and equine use of the areas zoned for this purpose, and to prevent urban generated development which would interfere with the operation of farming/ bloodstock or rural resource based enterprise'. It further states 'Within the agricultural zone in Newbridge, housing will be confined to people with a genuine housing need and who can demonstrate that they comply with the relevant category of local need outlined in the County Development Plan'.

7.2.2 The rural housing policy of Kildare considers that Newbridge is in Zone 1 with respect to rural housing policy. The Kildare County Development Plan states that for a person to be considered for a rural dwelling in Zone 1 they must meet certain criteria. The policy requires that they not only be a member of the rural community, but also meet one of the local need criteria (i) – (iii). I consider that the applicant could be deemed to comply with a category of applicant who is a member of the

local community and with criteria (i): must have grown up and spent substantial periods of their lives (12 years) living in the rural area and who seek to build their home in the rural area on their family landholding or where no land is available in the family ownership, a site within 5km of the original family home.

7.2.3 It is clear from the information submitted that the appellant/applicant is from the area, currently lives in the area and is a member of the local community. The applicant is living in the family home in the vicinity of the site (opposite side of the road) and wishes to live near to where she currently lives, near her family and where she grew up. As noted above the applicant would comply with criteria (i) for development within Zone 1 under the County Development Plan. What is at issue is whether the appellant/applicant has a genuine housing need at this location. I consider that the applicant can be considered to be from the rural area, albeit the built-up area of Newbridge has grown to incorporate part of Blackberry Lane (family home and current residence within the urban zone of Newbridge). I accept that ample evidence has been provided to demonstrate that the applicant has grown up and lived in this area of Newbridge. I therefore consider that the applicant complies with the rural housing need policy.

7.2.4 However, of key importance is whether or not the applicant has a genuine need to live in a rural area. The Newbridge LAP states '*Within the agricultural zone in Newbridge, housing will be confined to people with a genuine housing need and who can demonstrate that they comply with the relevant category of local need outlined in the County Development Plan*'. The LAP clearly states that housing in agricultural zoning will be confined to those with a genuine need to live in this zone. The land is owned by a third party and the applicant/appellant does not have an occupation (teacher in a school in the urban area of Newbridge) that is intrinsically linked to the need for location in a rural area. I do not accept that the applicant has a genuine housing need to live in the agricultural zone of Newbridge. The applicant has submitted a Statement of Need letter – however this does not indicate or demonstrate why the applicant needs to live in agriculture zoned land over and above any other residential zoned area in Newbridge. This is contrary to the requirements of policy HA1 of the Newbridge LAP.

7.3 Future development of lands/pattern and type of development:

7.3.1 Refusal reason 2 notes that 'Policy RH10 of the Planning Authority, as set out in the Kildare County development Plan 2017-2023 is to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. It is considered that the proposed development by reason of its location in proximity to Newbridge town where lands are zoned for residential purposes. To further promote development at the location proposed, having regard to the level of existing development would set for further development in this area, would contribute to the unsustainable development of this rural area and would not be in accordance with the proper planning of the area'.

7.3.2 The site is on land zoned for agricultural use with the refusal reason noting its proximity to residentially zoned lands. The refusal reason raises concerns that the proposal would impact on the future development potential of the wider lands at this location. The proposal is for a single dwelling in keeping with an existing dwelling to the south of the site and other existing one-off dwellings in the vicinity. I would be satisfied that if the proposal were permitted it would not prevent the comprehensive development of lands at this location in the event of such lands being zoned for development in the future.

7.3.3 The overall scale and design of the proposal is satisfactory (revised design of roof profile submitted also satisfactory) and the proposal would not constitute ribbon development under the definition of such in the Sustainable Rural Guidelines (5 dwellings over a distance of 250m) although it would erode the rural character of the area.

7.4 Appropriate Assessment:

7.4.1 There is a section on Appropriate Assessment Screening (AA) in the documents submitted with the application. This indicates a review of Natura 2000 sites within the radius 15km radius of the site was undertaken with the Pollardstown Fen SAC noted

as being 0.5km from the site. It was noted that having regard to the small scale of the development, the lack of any direct pathway to a Natura 2000 site and connection to public mains and distance from such site, there is no need for a Stage II AA.

7.4.2. I follow the staged approach to screening for appropriate assessment as recommended in both EU Guidance and by the Department of Environment, Heritage and Local Government: -

1. Description of the plan or project and local site or plan area characteristics.
2. Identification of relevant Natura 2000 sites and compilation of information on their qualifying interests and conservation objectives.
3. Assessment of likely significant effects-direct, indirect and cumulative, undertaken on the basis of available information.
4. Screening statement with conclusions.

7.4.3 Project Description and Site Characteristics

The proposed development is as described in the report above and in the application documentation.

7.4.4 Relevant Natura 2000 Sites, Qualifying Interest and Conservation Objectives

Site Code, Site Name and Designation	Approx. distance from the site at Blackberry Lane	Qualifying Habitats and Species
00396 Pollardstown Fen SAC	0.5km	Calcareous fens with Cladium mariscus and species of the Caricion davalliance [7210]; Petrifying springs with tufa formation (Cratoneurion) [7220]; and Alkine fens [7230]. Greyer's Whorl Snail

		[1013]; Narrow-mouthed Whorl Snail [1014]; and Desmoulin's Whorl Snail [1016].
002331 Moulds Bog SAC	3km	Active raised bogs [7110]; Degraded raised bogs still capable of natural regeneration [7120]; and Depressions on peat substrates of the <i>Rhynchosporion</i> [7150].

The Natura sites do not have linkages with the proposed site – there are no watercourses on the site.

7.4.5 Conservation Management Plans for the sites have been published.

000396 Pollardstown Fen SAC

To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

002331 Mouds Bog SAC

To restore the favourable conservation condition of Active raised bogs in Mouds Bog SAC, which is defined by a list of attributes and targets stated.

7.4.6 Assessment of likely effects.

The site is not within a designated site, thus there would be no direct impacts from the proposed development. The SACs are water dependent ecosystems, and therefore, any changes to the groundwater regime or surface water quality as a result of the proposal could have adverse effects on the habitats and species for which the Pollardstown Fen SAC and Mouds Bog SAC are designated.

The site is not directly linked with either Natura 2000 site. 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 the Pollardstown Fen SAC, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of an NIS) is not therefore required.

8.0 Recommendation

8.1 I recommend refusal based on the following reasons.

9.0 Reasons and Considerations

I recommend refusal based on the following reasons...

1. The proposed development is located in an area zoned 'I- Agricultural' in the Newbridge Local Area Plan 2013 – 2019, for which the objective is to preserve the existing agricultural and equine use of the areas zoned for this purpose and to prevent urban generated development which would interfere with the operation of farming/bloodstock or rural resource based enterprise. This objective is considered reasonable. It is a policy of the planning authority, as set out in the plan, to channel housing into serviced centres and to restrict development in rural areas to that necessary to serve the needs of those engaged in agriculture and other rural activities. The proposed development would contribute to ribbon development in this area, lead to demands for the uneconomic provision of further public services in an area where these are not proposed and would interfere with the rural character and attractiveness of the area. The proposed development would, therefore, contravene materially the development objective, as set out in the Development Plan and be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development is located on lands zoned for agricultural purpose in the Newbridge Local Area Plan, 2013-2019, and in 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, wherein it is the policy to distinguish between urban

generated housing need and rural generated housing need. Having regard to the nature and location of the applicant's employment, it is considered that the applicant does not have a rural generated housing need in accordance with these Guidelines which would justify the provision of a house in this rural location zoned for agricultural purposes and the proposed development would, therefore, contravene the Ministerial Guidelines and would be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

02nd October 2018