



An
Bord
Pleanála

Inspector's Report ABP-302100-18

Development	A 'Rural Cluster' of 4 no. Dormer-type Houses with Effluent Treatment System and all Associated Site Works
Location	Manley Lane, Tullylost Grange, Tullylost, Ellistown Road, Rathangan County Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18/510
Applicant(s)	Eamonn O'Connor
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Eamonn O'Connor
Observer(s)	None
Date of Site Inspection	21 st September 2018
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Tullylost outside of Rathangan, Co. Kildare. It is c.1.5km due south of Rathangan boundary. It is located off the R414 road which runs between Rathangan and Monasterevin. The area is characterised by one-off dwellings along the R414 and adjacent to the crossroads leading to the site.
- 1.2. The site is off a narrow road which serves Manley Farm. The site proposed for development is to the rear of an existing dwelling, and an access road to the west of this dwelling will serve the proposed development. The site is currently in agricultural use. It is stated as being 0.84 hectares in area.
- 1.3. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. Permission is sought for the development of four detached dwellings, 3 no. 4 bedroom and 1 no.3 bedroom, on individual plots. Permission is also sought for an effluent treatment system and percolation area for each dwelling, removal of existing septic tank and percolation area and connection to public services.
- 2.2. The houses range in area from 185sq.m up to 252sq.m. The design incorporates the use of barrel roofs on two of the dwellings and pitched roofs on the other two. The houses have a mix of finishes.
- 2.3. It is stated that the house plots with planning permission will be available for sale to persons that comply with the 'Local Need' criteria.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for three reasons. In summary: Reason no.1 referred to policy RH2 which seeks to manage the development of one-off housing in conjunction with the Local Need Criteria. Documentary evidence of compliance is required. No evidence has been provided. The proposal would run

counter to the policy, set an undesirable precedent and militate against the aims of the Plan.

Reason no.2 referred to policy RH13 which seeks to facilitate clusters of dwellings subject to siting, design and local needs consideration. In the absence of local needs documentation, the proposal would be contrary to the policy and set an undesirable precedent.

Reason no.3 referred to policy RH14 which requires only family members are to be considered for backland development and such proposals shall have no negative impact on third parties. This proposal is to the rear of a third-party dwelling.

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:

- The site is located outside of the Rathangan town boundary and therefore the Council's Rural Housing policy applies.
- Policy RH2 seeks to manage development of one-off housing. Documentary evidence of compliance with local needs must be submitted.
- Policy RH13 requires such development to be subject to normal planning, siting, design and local need considerations.
- No details of occupants have been supplied nor have rural housing application forms been submitted. Considers that applicant's failure to submit relevant information is a significant issue.
- Considers proposal represents a speculative proposal. The Rural Housing Policy seeks to facilitate the genuine needs of applicants and not speculative development of sites.
- The Council through the development plan process has facilitated the delivery of houses on zoned and serviced lands.
- With respect to design notes houses are proposed to the rear of a house owned by a third party who has made a submission on the file.

- Policy RH14 relates to backland development and seeks to consider family members only and the proposal should have no negative impact on third parties. Only single storey (including attic accommodation) will be allowed in such backland locations to limit visual impact. Considers that existing third party will be negatively impacted.
- Notes there are issues with the existing wastewater system. Issues have been raised by the Area Engineer and Roads Section. Consider it would be difficult for two cars to use the lane.
- Considers issues raised by Engineering sections could be resolved through Further Information, but it is considered that the fundamental principle on which the application is based is flawed and recommends refusal.

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

3.2.2. **Other Technical Reports**

- **Area Engineer:** Seeks Further Information.
- **Environment:** Seeks Further Information
- **Water Services:** No objection subject to conditions
- **Transportation:** Seeks Further Information
- **EHO:** No objection subject to conditions
- **CFO:** No objection

3.3. **Prescribed Bodies**

- **Irish Water:** No report

3.4. **Third Party Observations**

A third-party objection has been received from the occupants of the dwelling facing the road. In summary it includes: Area is not zoned for development; driveway to the existing two-bedroom dwelling would become access for 5 dwellings and a business only 16 foot from their dwelling with unrestricted views into their dwelling; noise

pollution; major concerns with additional percolation areas; devaluation of their property and overlooking.

4.0 Planning History

There is a significant planning history associated with the site. Only the most recent are listed below.

- **Reg. Ref. 17/11:** Extension of Duration of Reg. Ref. 11/786 for 26sq.m office, effluent treatment and public road entrance to stock nursery approved in March 2017.
- **Reg. Ref. 14/551:** Change of use from 3 stables and tackroom to two-bedroom dwelling. Withdrawn.
- **Reg. Ref. 14/332:** Retention permission refused June 2014 for change of use of stables and tackroom to two-bedroom dwelling.
- **Reg. Ref. 12/255:** Retention permission refused in December 2012 for change of use from stables and tackroom to Equine Office.
- **Reg. Ref. 12/143:** Application for dwelling and garage and studio office withdrawn.
- **Reg. Ref. 11/931:** Retention permission application for change of use from stables and tackroom to stable yard staff apartment withdrawn.
- **Reg. Ref. 11/786:** Permission granted in January 2012 for a 26sq.m office, effluent treatment and public road entrance to stock nursery.

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. Kildare County Development Plan 2017 - 2023

- 5.2.1. The site is subject to the policies and objectives of the County Development Plan. It is not located within Rathangan town boundary. Chapter 4 of the Plan refers to Housing and Chapter 17 refers to Development Management Standards.
- 5.2.2. Section 4.12 of Chapter 4 specifically refers to Housing in Rural Areas. Rathangan and its surrounds are located in 'Zone 1' policy zone which has different local need criteria. It is stated that rural generated housing will be managed having regard to the applicant's genuine need together with the protection of key economic, environmental, natural and heritage assets, such as the road network, water quality, important landscapes, habitats and the built heritage. Table 4.3(a) details the category of applicant and the criteria.
- 5.2.3. Section 4.13 lists the policies. The following policies are referred to throughout the documentation on file.

Policy **RH1** states:

Ensure that the planning system guides development to the appropriate locations in rural areas thereby protecting natural and man-made assets in those areas.

Policy **RH2** refers to management of one-off dwellings and states:

Manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

Policy **RH13** refers to clusters of dwellings and states:

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

Policy **RH14** refers to backland development and states:

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

Policy **RH25** refers to Rural Nodes and states:

Facilitate the following types of applications for housing in the rural nodes: (i) Individual one-off houses subject to applicants meeting the local need criteria identified in the Plan (refer to Map 4.4 and Table 4.3). (ii) Small scale clusters of dwellings / serviced sites of not more than 5 housing units for applicants / occupants complying with local need criteria (refer to Map 4.4 and Table 4.3), and subject to the provision of appropriate physical infrastructure.

Policy **RH26** refers to rural nodes and states:

Ensure that all new developments in the rural nodes particularly cluster development, contribute to and integrate successfully with the existing settlement and to promote the development of central brownfield sites, if existing, as appropriate.

5.3. Sustainable Rural Housing Guidelines for Planning Authorities 2005

5.3.1. The Rural Housing Guidelines seek to provide for the housing requirements of people who are part of the rural community 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 their physical surroundings and generally be compatible with the protection of water quality, the provision of a safe means of access in relation to road and public safety, and the conservation of sensitive areas.

5.3.2. 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*'.

5.4. Natural Heritage Designations

The River Barrow and River Nore SAC (Site Code 002162) is c.8km south-west of the site. Pollardstown Fen SAC (Site Code 000396) is c.10km south-east of the site. Mouds Bog SAC (Site Code 002331) is c.11km east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The first party has submitted an appeal against the Planning Authority's decision to refuse permission. The applicant refers to the ABP document 'Guide to Making a Planning Appeal' and references points therein, as well as addressing each reason for refusal. In summary it includes:

- Reference is made to Item 22 of the ABP document with respect to the Board contravening the provisions of the Development Plan. Specific reference is made to point 2 whereby it states that the Board can contravene the Plan where there are conflicting objectives, or the objectives are not clearly stated.
- Response to Reason no.1: Refers to Chapter 4.13.1 Siting and Design, RH13. Considers that policy RH2 does not apply as RH2 applies to housing in 'backland areas' for family relatives. This application is not a one-off housing proposal.
- Policy RH1 applies which guides rural housing towards rural nodes. No reference or consideration has been made to the fact that the site is in the rural node of Ellistown, and the townland of Tullylost is in the rural node of Ellistown. No boundaries have been outlined for rural nodes.
- Policy RH2 conflicts with policy RH13.
- Considers it incorrect to state in Reason no.1 that there is lack of detail pertaining to intended applicants and that it would set an undesirable precedent and militate against aims of the Plan. Of the view that information has been provided under 'Project Details' and clusters are a desirable objective of the Plan.
- Response to Reason no.2: What is written in reason no.2 and what is stated in policy RH13 are not the same literally and in meaning. The application has not been considered correctly in accordance with policy RH13 'Consider applications for the provision of a recessed cluster form of a development'.

- Local need documentation is not the same as ‘local need considerations’. Local need documents are not requested for an application ‘for the provision of a recessed cluster form of development’.
- Incorrect to state that proposal would set an ‘undesirable precedent’. The project is a desirable objective of the Plan policy RH13, RH25(ii) and Chapter 16, Rural Design Aim & 16.2.
- Four houses have been specifically designed to suit the rural environment under the Key Principles of Chapter 16.
- Response to Reason no.3: Incorrect to state that RH14 applies. The application is not for backland development and not for family members. RH13 applies. Application is for a rural cluster designed in accordance with the objectives of the Plan.
- Third party dwelling is beside an existing commercial ‘farm roadway’.
- Response provided to Internal Reports which seek further information including Autotrack analysis, details of wastewater treatment system replacement and other drawings.
- Applicant addresses the Planner’s Report and every paragraph therein. Conditions of planning permission are suggested including that genuine local need documents by the purchaser are required for approval before the sale of a house, and the 7 year residency rule applies.
- Applicant believes the Planning Report is flawed and therefore the Director of Services Order is flawed.
- Requests the Board to overturn the Council’s decision as this will be a very positive step forward for the future of rural housing.

6.2. Planning Authority Response

The Planning Authority responded to the appeal. In summary it includes:

- The site is located c.1.2km south of the designated boundary of Rathangan and is located c.2km north-west of the Rural Node of Ellistown.

- For the purposes of the assessment the site is viewed as a predominantly rural area and not within a Rural Node.
- Section 4.13.8 of the Plan defines nodes as comprising largely unserved areas with limited social and community infrastructure. Rural nodes are designated for limited development at sustainable scale for immediate local need through the development of clusters. The Settlement Strategy encourages appropriate levels of consolidation.
- Policy RH26 seeks to ensure that all new developments contribute and integrate with existing settlements. The subject site does not meet the requirements of policy RH26.
- Requests the Board to examine the Planner's Report. The site is located in a rural area and the provisions of the Rural Housing Policy apply which includes assessment of Local Need.
- Local Need policies and documentary evidence requirements restated. No evidence of supporting local needs documents submitted.

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:

- Planning Authority Reasons for Refusal
- Appropriate Assessment
- Environmental Impact Assessment

7.1. **Planning Authority Reasons for Refusal**

- 7.1.1. The Planning Authority refused permission for 3 reasons which refer to non-compliance with a number of policies relating to rural housing as set out in Section 4.13 of the Development Plan. Specifically identified policies in the reasons include RH2, RH13 and RH14 (see Section 5 above for details).

7.1.2. The applicant is of the opinion that the Planning Authority incorrectly assessed the application with respect to a number of headings. The applicant believes the Planner's Report is flawed and therefore the decision to refuse permission is flawed.

Reason No.1

7.1.3. The applicant states that as detailed on the cover letter of the application, the proposal is for a recessed rural cluster of dwellings and that this is a policy highlighted in Chapter 4.13.1, Siting and Design, RH13. The applicant considers that RH2 does not apply as the application is not for a one-off house, and no consideration was given to the fact that it is in a rural node.

7.1.4. The applicant contends that RH2 applies to housing in 'backland areas' for family relatives. However, reviewing the wording of policy RH2 there is no mention of backland development. Instead policy RH2 seeks to ensure that applicants provide documentary evidence of compliance with rural housing policy.

7.1.5. I accept that the development is for four dwellings and not just one dwelling but having regard to their location outside of a settlement boundary with limited access to public services, the same requirements apply. The Development Plan states that rural generated housing will be managed having regard to '*the applicant's genuine local need, together with the protection of key economic, environmental, natural and heritage assets, such as the road network, water quality, important landscapes, habitats and the built heritage*'¹. I do not accept that just because there are four houses proposed rather than one, that the rural housing policies with respect to local needs criteria do not apply.

7.1.6. The applicant considers RH1 applies because it is considered that this policy guides rural housing towards rural nodes. RH1 seeks to ensure the planning system guides development to the appropriate location in rural areas but does not specifically mention rural nodes.

7.1.7. The applicant contends that the location is within the rural node of Ellistown. There are no boundaries identified for rural nodes. The Planning Authority in their response to the appeal, state that the site is located c.2km north-west of the rural node of Ellistown.

¹ Section 4.12.7 of the County Development Plan

- 7.1.8. Volume 2 of the County Development Plan includes a County Settlement Strategy Map. Ellistown rural node is identified, however it is difficult to fully discern if the site is within the node or not. Reviewing the administrative boundaries, the site is located within the townland of Tullylost, and indeed the application address as noted on the application form is Tullylost, Ellistown Road, Rathangan. Ellistown is located to the south-east of Tullylost. Hence, I am satisfied that the site is not located within the rural node of Ellistown and is not subject to policies relating to rural nodes (i.e. policy RH25 or RH26).
- 7.1.9. Regardless, policy RH25 seeks to facilitate small scale clusters of dwellings complying with local needs criteria and subject to provision of appropriate physical infrastructure. No local needs criteria has been provided by the applicant and I note that the dwellings are not being connected to public wastewater systems but relying on 4 separate wastewater treatment systems.

Reason No.2

- 7.1.10. Reason no.2 referred to policy RH13. Policy RH13 seeks to facilitate the provision of a recessed cluster of dwellings, subject to normal planning considerations and local need considerations. The reason goes on to state that in the absence of local need documentation, the proposal would set an undesirable precedent and be contrary to proper planning. The applicant contends that local need 'considerations' is not the same as 'documentation'.
- 7.1.11. I accept that local needs documentation is not specifically stated in RH13, but local needs considerations is. I am of the view that the meaning of local needs consideration is to require applicants to demonstrate compliance with local needs criteria. Regardless of the word used, the applicant has not provided any information in relation to who will occupy the dwellings, nor has there been any assessment of overall local needs in the area provided as part of the application. The applicant suggests that a condition could be appended by the Board to require that any future buyer must demonstrate local needs compliance. However, as the applicant has not provided any information to demonstrate that there is a local need for the development, I consider that the development is contrary to the requirements of policy RH13 and the issue of conditions does not arise.

7.1.12. Furthermore, the National Planning Framework states as objective 19 that in rural areas under urban influence, the provision of single housing in the countryside is to be based on the core consideration of demonstrable economic or social need to live in a rural area. While this application is for four dwellings, they are all effectively standalone one-off dwellings in a rural area under urban influence. As no information has been provided about possible occupiers, no information has been forthcoming about the occupiers economic or social need to live in a rural area. I am of the view that in the absence of this information the proposal is contrary to objective 19 of the National Planning Framework, as well as policy RH13 of the County Development Plan.

7.1.13. The applicant addresses the use of the term 'undesirable precedent' in reason no.2. The applicant considers that the proposal is a desirable objective with respect to policy RH13, RH25(ii) & Chapter 16 Rural Design. I consider the design of the dwellings to be acceptable, however as noted above, I do not consider the principle of development to comply with policy RH25(ii) because it is not located within a rural node, nor is it in compliance with Policy RH13 due to the absence of local needs consideration. Thus, I am of the opinion that it would set an undesirable precedent for similar development of this nature in rural locations.

Reason No.3

7.1.14. Reason no.3 refers to policy RH14. Policy RH14 requires that only family members be considered for backland development and that such development shall have no negative impact on third parties. The applicant does not consider the development to be backland development or for family members. The applicant considers that RH13 with respect to cluster of dwellings is the applicable policy.

7.1.15. As noted above, I am of the opinion that the proposal does not comply with policy RH13 in the first instance due to lack of adequate information addressing local needs considerations. Having regard to the layout and location of the proposal I am of the view that policy RH14 should be addressed. The proposal is accessed via a laneway that currently serves a farmyard. The proposal includes four dwellings, of which two are to the rear of the third party who objected at Planning Authority stage.

7.1.16. It could be argued that the proposal is a backland type of development having regard to the access to the development being located between two dwellings and the

proposed dwellings being located to the rear of a third party. I note that planning permission for the stock nursery Reg. Ref. 11/786 (and as extended) included permission for an alternative entrance to the east which clearly avoids the laneway between the two dwellings.

- 7.1.17. Notwithstanding this, I am satisfied that the residential amenities of third parties will not be seriously negatively impacted having regard to the distances between dwellings and the proposed design of the dwellings, albeit there would be additional traffic along the laneway.

Conclusion

- 7.1.18. To conclude, I am satisfied that the proposal is not in compliance with policies relating to rural housing. Fundamentally the issue relates to local housing need and compliance with the local needs criteria outlined in the Development Plan, as well as having regard to the National Planning Framework Objective 19. I consider the design to be of a high quality and setting aside concerns with the proposed entrance, I consider that the proposal could be seen as a rural cluster of dwellings. However, policy RH13 clearly requires that rural clusters will be subject to local needs considerations and this information is not forthcoming. Therefore, I am of the opinion that the proposal is contrary to the policies of the Development Plan and would set an undesirable precedent.

7.2. 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.

7.3. Environmental Impact Assessment Screening

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 a “Stronger Rural Area” 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 Kildare County Development Plan 2017-2023. 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 lack of documentation submitted with the application and appeal, the Board is not satisfied that the applicant has demonstrated that future occupants have an economic or social need to live in this rural area. It is considered, therefore, that the applicant has not satisfied the housing need criteria as set out in the Guidelines and in national policy for houses 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. Policy RH13 of the Kildare County Development Plan 2017 – 2023 seeks to facilitate the provision of a recessed cluster of dwellings, subject to normal planning, siting, design and local need considerations. In the absence of documentation demonstrating compliance with local needs considerations, the proposal would be contrary to the provisions of the aforementioned policy, would set an undesirable precedent for similar development of this nature in rural locations and would therefore be contrary to the proper planning and sustainable development of the area.

Ciara Kellett
Senior Planning Inspector
24th September 2018