



An  
Bord  
Pleanála

## Inspector's Report ABP.302103-18

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<b>Development</b>	Construction of a dwelling, garage, septic tank, well, proposed new entrance, together with ancillary site works.
<b>Location</b>	Rutland, Palatine, Co. Carlow
<b>Planning Authority</b>	Carlow County Council
<b>Planning Authority Reg. Ref.</b>	18/158
<b>Applicant(s)</b>	Stewart & Daphne Handcock
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	As above
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 October 2018
<b>Inspector</b>	Kenneth Moloney

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## **1.0 Site Location and Description**

- 1.1. The subject site is located in a rural area situated approximately 4.5km (as the crow flies) north-east of Carlow town centre.
- 1.2. The predominate land use locally is agriculture.
- 1.3. The size of the appeal site is approximately 0.41 ha (1 acre) and shape of the appeal site is irregular.
- 1.4. The local topography generally slopes upwards from the west to the east in direction. As such the appeal site adjoining the public road is slightly higher than the public road. The appeal site is situated on higher land than the neighbouring fields on the opposite side of the public road.
- 1.5. There is an established hedgerow along the front of the subject site adjoining the public road and behind the hedgerow there is a collection of mature trees which add to the character of the local area.

## **2.0 Proposed Development**

- 2.1. The proposed development is for the construction of a single storey house, garage, septic tank, vehicular entrance and well.
- 2.2. The proposed house is single storey in height and the floor area of the proposed dwelling is 185.8 sq. m. The proposed floor plan comprises of living space and four bedrooms at ground floor level.
- 2.3. The front elevation is generally finished in plaster however there is a natural stone finish around the front door.
- 2.4. The maximum height of the proposed house is 5.2 metres above ground level.
- 2.5. The floor area of the proposed garage is 51.1 sq. metres and the maximum height of the garage is 4.5 metres above ground level.
- 2.6. The sightline provision for the proposed vehicular entrance is 120m in either direction.

### 3.0 Planning Authority Decision

3.1. Carlow County Council decided to refuse planning permission for the following reasons;

1. The proposed site is located in a rural area where it is the policy of the Planning Authority that residential development be restricted to the current housing needs of the local population, other restricted categories of person, and to those with a genuine housing need to live in the area, while protecting the area from overdevelopment arising from the random development of such housing. It is considered that, the applicants have not demonstrated a genuine housing need having indicated ownership of other residential properties in the area and having previously been granted permission pursuant to permission reference 02/635. The proposed development, would, therefore, if permitted, conflict with current County Development Plan Policy in particular Section 2.7.5 and 2.7.1.7 which seeks to control subsequent one-off dwellings in the rural area, would give rise to further encroachment of random rural development in this area and would therefore be contrary to the proper planning and development of the area.
2. The proposed development of a 5.4m high dwelling house, detached garage, new entrance and driveway would by reason of its location on an elevated site, seriously injure the amenities of this scenic rural area, lead to the destruction of woodland trees and hedging of significant amenity value and impact on setting of protected structures which it is the policy as stated in the Carlow County Development Plan to protect and preserve. Furthermore, it is considered that the site is located in an area which does not have sufficient capacity to absorb a development of this nature, would result in a detrimental impact to the rural character of the area, would be contrary to the provisions of the Carlow County Development Plan and would therefore be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

3.2.1. The main issues raised in the planner's report are as follows;

#### Area Planner

- The proposal would lead to the destruction and have a detrimental impact on the character of this rural area.
- The proposal will impact negatively on the protected structure.
- No details are submitted in relation to the impact of the proposal on existing trees.
- The proposal would result in the destruction of woodland and trees of amenity value.
- The applicant's housing need in this rural area is already met.

### 3.3. Internal Reports;

- Water Services; - No objections subject to condition.
- Transportation Dept.; - Sightline provision is acceptable. No objections from roads perspective subject to conditions.
- Chief Fire Officer; - No objections subject to conditions.
- Environment; - Grant recommended subject to conditions.

### 3.4. Submission

There is a submission from Irish Water who have no objections. The Department of Culture, Heritage and Gaeltacht made a submission which stated that they have no objections to proposed development subject to a condition requiring a landscape plan.

## 4.0 Planning History

- There is no recent relevant planning history on the appeal site.

### 4.1. Development Plan

The operational Development Plan is the Carlow County Development Plan, 2015 – 2021.

In accordance with the County Development Plan Map 2.3 'Core Strategy Map' the subject site is designated 'Area Under Urban Influence'.

The County Development Plan provides guidance in relation to the following categories that would be eligible for a rural house.

- Persons who are an intrinsic part of the rural community
- Persons wishing to downsize for his/her own use and not as speculation in the rural area in which they currently reside
- Persons Residing in Bordering Counties
- Persons working full time or part time in rural areas
- Persons who are fulltime farmers or employed fulltime in other rural based activity such as horticulture, forestry, bloodstock, farming, agri-tourism or other rural based activity
- Social/Community, Medical and Personal Circumstances

Policy Objective Heritage – Objective 2 states the following:

- Protect and manage existing woodlands, trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character, and ensure that proper provision is made for their protection and management when undertaking, approving or authorising development

- Ensure, where required, that applications for development include proposals for planting and/or leave a suitable ecological buffer zone between the development works and areas/features of ecological importance
- Encourage the retention of hedgerows and other distinctive natural boundary in rural areas. In the event that such boundary removal is unavoidable, the same type of boundary of equal or greater length will be required
- Discourage the felling of mature trees to facilitate development and to encourage tree surgery rather than tree felling where possible. To protect and preserve existing hedgerows in new developments and seek their replacement with new hedgerows with native species indigenous to the area, where their removal is necessary during road works or other works
- Adhere to the provisions of the Wildlife Act 1976 to 2010 in prohibiting hedge cutting during the bird nesting season from March 1st to August 31<sup>st</sup>

## 4.2. National Guidelines

### 4.2.1. Sustainable Rural Housing Guidelines

The subject site is located within an 'Area under Strong Urban Influence' as identified in Map 1: Indicative Outline of the NSS rural areas types in the DOEHLG Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines note that in these areas the objective should be on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

## 5.0 The Appeal

5.1. The following is the summary of a first-party appeal submitted by the applicant;

- The applicant owns a house for which permission was granted under L.A. Ref. 02/635. However, the applicant is not the owner of land which the house was built on and the owner now wishes to use the land as their own.
- There is a second dwelling owned by the applicant. The applicant owns Rutland House however the current tenant living in this house has the right to stay in the house during the duration of their life.
- The applicant works on the adjoining lands as a farmer and needs to be nearby at all times. The appeal site is the only land with adequate road frontage.
- The appeal site is the furthest point of the applicant's land away from the protected structure.
- The dwelling constructed at this location would not have a negative impact on the protected structure.
- The applicant is proposing to remove the timber structure house that he currently lives in.
- It is submitted that given that the proposed house is located further away from the curtilage of the protected structure and the demolition of the existing house the overall outcome will have a positive effect.
- The removal of trees and hedgerows will have regard to the existing landscape. The applicant will engage the services of a landscape architect.
- The applicant has a dairy farm and needs to live in the area due to the nature of his work.
- With the removal of the existing dwelling the land would revert to agriculture.
- The existing residential population will not increase.



## 5.2. **Second Party Response**

The Local Authority submitted a response stating that they had no further comments.

## 6.0 **Assessment**

- Principle of Development
- Visual / Landscape Impact
- Vehicular Access
- EIAR
- Appropriate Assessment

### 6.1. **Principle of Development**

- 6.1.1. A key consideration in this appeal relates to the applicant's rural housing need in this area and as such whether this housing need complies with the provisions of the Carlow County Development Plan, 2015 – 2021, and the Sustainable Rural Housing Guidelines, 2005.
- 6.1.2. It would appear evident from the application details and the also considering that the applicant obtained planning permission for a rural house in 2003 (L.A. Ref. 02/635) that the applicant is an intrinsic part of the rural community. In accordance with the application details, although there is no documentary evidence, the applicant is a dairy farmer and farms 100 ha locally. The applicant has been residing locally since 2007 and has been farming for 20 years. The applicant's background would normally merit a rural housing need however one rural house is normally only permitted per applicant. This is a County Development Plan objective in accordance with paragraph 2.7.5 of the Carlow County Development Plan, 2015 - 2021. Paragraph 2.7.5 states that applicants will be required to demonstrate that the dwelling is for their own occupation and that they have not previously been granted permission for a rural dwelling and subsequently sold the dwelling or site to an unrelated third party.

6.1.3. The applicant is currently living in the house which obtained planning permission in 2003 however some legal issues have arisen regarding a recent inheritance. The land in which the applicant's current house occupies has been bequeathed to another and although the applicant has inherited Rutland House (i.e. the protected structure located approximately 200m south east of the appeal site) the tenant currently living in Rutland House has the right to remain there during the term of their life. As such the applicant feels he has no option but to build his own house on his land as although he owns two houses he does not have full legal access to them.

6.1.4. I would note therefore that should the applicant construct his own house, based on this current application, he would then own 3 no. houses. This would effectively amount to;

- a. Rutland House which will be occupied by a third-party tenant until the term of their life, and
- b. the applicant's current house which is situated on a third party's land, and
- c. the current proposed house before the Board.

It is my view, having regard to paragraph 2.7.5 of the County Development Plan, that the applicant would need to regularise their housing situation to satisfy paragraph 2.7.5 of the County Development Plan and in this regard, would need to provide documentary proof that they are the owners of no other house. The applicant has failed to satisfy this requirement.

6.1.5. Therefore, I would consider that the applicant fails to comply with the rural housing need policies and provisions of the Carlow County Development, 2016 – 2022, and as such I would recommend a refusal to the Board.

## 6.2. **Visual / Landscape Impact**

6.2.1. Appendix 6 of the County Development Plan sets out the Landscape Character Assessment for the county. In accordance with this landscape character assessment the appeal site is located in an area designated 'central lowlands' and this area is deemed moderately sensitive to development. The County Development Plan states

in relation to central lowlands that *'although the area is deemed to have a medium potential capacity to absorb rural housing and urban expansion, such developments must demonstrate an ability to be integrated with their surroundings'*. Figure 2 of the Landscape Character Assessment sets out protected views and prospects for the county and the appeal site is not afforded any protection.

- 6.2.2. The appeal site is in a rural area where the local topography undulates. As referred to in Section 1.0 of this report above the appeal site is located some 4.5km from Carlow town. The lands adjoining the appeal site and all lands in the immediate area are in agricultural use. The appeal site is in close proximity to a protected structure, i.e. Rutland House. The local landscape is defined by a collection of mature trees some of which are located on the appeal site. The mature trees located on the appeal site are situated adjacent to the public road.
- 6.2.3. The local topography generally slopes upwards from west to east in direction and as such the appeal site is situated on higher ground relative to the fields on the opposite side of the public road and further fields beyond to the east. I noted from a visual observation of the local area that the landscape is generally unspoilt.
- 6.2.4. The design of the proposed house is single storey in height with a maximum height of 5.2 metres above ground level. The proposed house is set back from the public road to the rear of the site and this will therefore result in the retention of the mature trees located to the front of the site and adjacent to the public road.
- 6.2.5. I noted from a visual observation from the appeal site that the Rutland House (protected structure) was not visible from the appeal site due to the local topography which undulates, the set back distance and having regard to mature trees that would block the view of the protected structure from the appeal site. On this basis I would not concur with the Local Authority that the proposed development would impact on the setting of the protected structure. I would consider having regard to the single storey design and given the retention of the established mature trees that the proposed development would not seriously injure the amenities of this rural area or

adversely impact on the setting of the protected structure. Furthermore, and having regard to the landscape designation afforded to the appeal site, i.e. the central lowlands, I would not concur with the Local Authority's second refusal reason.

### 6.3. **Access**

- 6.3.1. The public road adjacent to the appeal site is a tertiary rural road and I noted during my site inspection, that the road was lightly trafficked. I would consider, based on a visual observation of the area, the primary traffic on the public road is local access traffic.
- 6.3.2. The proposed development includes a vehicular access with a sightline provision of 120m in either direction. I note that there is no objection to this sightline provision in the planner's report and that the report from the Transportation Department, dated 28<sup>th</sup> May 2018, has no objection to the proposed development.
- 6.3.3. Overall, I would consider, given the class of road, that the proposed sightline provision would be acceptable and would not give rise to a traffic hazard. I would consider that the proposed vehicular entrance is acceptable in terms of public safety.

### 6.4. **EIA Screening**

- 6.4.1. Based on the information on the file, which I consider adequate to issue a screening determination, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.

### 6.5. **Appropriate Assessment**

- 6.5.1. Having regard to the nature and scale of the development proposed, to the nature of the receiving environment and the likely effluents arising from the proposed development I recommend that no appropriate assessment issues arise.

## 7.0 Recommendation

- 7.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be refused for the reason set out below.

## 8.0 Reasons and Considerations

1. The proposed development would constitute random residential development in a rural area which is under strong development pressure, and which is lacking in certain public services and community facilities. It is the policy of the planning authority, as expressed in the current Carlow County Development Plan, 2016 – 2022, to restrict development in rural areas to serve the needs of certain defined categories of person engaged in agriculture or with strong ties to the area and to restrict rural the granting of permission for a rural house to one applicant. It is considered that the applicant currently owns a house already and therefore does not come within the scope of the housing need criteria in the development plan or as set out in the document ‘Sustainable Rural Housing Guidelines for Planning Authorities’ issued by the Department of the Environment, Heritage and Local Government in April 2005. The proposed development would conflict with Section 2.7.5 of the Carlow County Development Plan, 2016 – 2022, would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Kenneth Moloney  
Planning Inspector  
24<sup>th</sup> October 2018