



An
Bord
Pleanála

Inspector's Report ABP-302198-18

Development	(a) 3 bedroom bungalow; (b) Garage/fuel store for domestic use; (c) The installation of septic tank and treatment system; (d) All associated site works
Location	Mucklon, Enfield County Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18547
Applicant(s)	Bridget Danagher and Michael Nolan.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Bridget Danagher and Michael Nolan.
Observer(s)	Noel and Bridget Ryan.
Date of Site Inspection	19 th of November 2018
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. Mucklon, is a rural area located in north Kildare, in an area where there is a considerable number of rural houses. It is located in close proximity to the M4 motorway and just south of Enfield town which is on the Kildare/ Meath border. The townland is located approximately 5km south of Enfield, and approximately 12 km west of Clane.
- 1.2. The site is located at the end of an access lane off the main road. The access lane is partially surfaced and currently serves two existing dwellings, and an agricultural field.
- 1.3. The level site is 0.4ha, and it currently fenced off from a large agricultural field to the east. There is a mature hedgerow along the northern site boundary, a dwelling house to the immediate west, and the site has a narrow frontage onto the access lane. The access lane to the site is unsurfaced and is 2.5metres in width.
- 1.4. The laneway and the topography rise from the level of the road to the site. There are views to the west towards existing dwellings from the top of the lane and the site.

2.0 Proposed Development

- 2.1. The proposed development is a four-bedroomed bungalow, with a detached garage, septic tank and percolation area. There is a new well proposed, and the site will be landscaped along the site boundaries. Access to the dwelling is via an existing lane serving the adjoining field to the east and two dwellings to the west.

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council refused the proposed development for 2No. reasons:

1. Policy RH9 of the development plan is to ensure compliance with local needs criteria. In conjunction with the level of existing development in the area, it is considered the proposed dwelling would exacerbate an excessive density of development in a rural area lacking in certain public services and community facilities and would contravene policy H9 of the development plan.

2. The development constitutes haphazard backland development situated at the rear of existing buildings along a laneway which is deficient in surface conditions. The backland development is contrary to policy RH14 of the development plan where only family members can be considered for backland development in a rural area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The applicant complies with Section 4.12.7 Rural Housing Policy
- The house design is in accordance with the development plan.
- The area is under significant development pressure, all road frontage is developed eroding the rural nature of the area. The development is the 4th house along a narrow laneway and the applicants have no family along the laneway.
- The area is significantly overdeveloped.
- Haphazard backland development.

3.2.2. Other Technical Reports

Engineer Report: The section of private/ shared road is substandard in terms of design, construction, finish and drainage. Improvement proposals required.

Water Services: No objection subject to conditions

Roads Design: No objection

Environmental Health Officer: No objection

3.3. Third Party Observations

A third-party submission had the following concerns:

- This is the fourth planning application on the site in the past 18 months. The 3 previous applications were refused as they constituted backland and ribbon development.

- The proposed dwelling directly to the rear of their house will significantly reduce the rural setting and further urbanise the area around their house
- There are currently 7No. dwellings within 200metres of their property, and the proposal could set a precedent for more dwellings in the field.
- The site is elevated and will impact on the privacy of their home.

4.0 Planning History

17859

Permission refused for the erection of a bungalow on the subject for the same two reasons as the current proposal.

17131

Permission refused for the erection of a bungalow on the subject for the same two reasons as the current proposal.

161173

Permission refused for 3No. reasons similar to current reasons for refusal and the design of the dwelling.

5.0 Policy Context

5.1. Development Plan

Kildare County Development Plan 2017-2023

Chapter 4 refers to Housing. Section 4.12.7 outlines the Rural Housing Policy

Table 4.3(a)

Rural Housing Policy Zone 1

(i) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in

the area. Where no land is available in the family ownership, a site within 5km of the original family home may be considered.

(ii) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community who have left the area but now wish to return to reside near to, or to care for immediate family members, seeking to build their home in the rural area on the family landholding or on a site within 5km of the original family home.

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.

RH 2 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.

RH 3 Require applicants to demonstrate that they are seeking to build their home in the rural area in Kildare for their own full-time occupation. Applicants will be required to demonstrate that they do not own or have not been previously granted permissions for a one off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances.

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

RH14 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.

5.3 National Policy

Sustainable Rural Housing Guidelines for Planning Authorities, 2005

- 5.4 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'.

5.5 National Planning Framework published in February 2018.

With reference to the development of rural areas, National Policy Objective 15 seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

National Policy Objective 19 seeks to 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, it is policy 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 and 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. Natural Heritage Designations

Designated Natura Sites within a 15Km radius

Ballynafagh Lake SAC	001387	7.31 Km south east of site
Ballynafagh Bog SAC	000391	7.96 Km south east of site
The Derries, Edenderry SAC	000925	12km south west of site
R. Boyne and R. Blackwater SAC	002299	14.63km north of site
R. Boyne and R. Blackwater SPA	004232	13.2Km west of site

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the ground of the appeal presented by David Mulcahy Planning Consultants on behalf of the applicants.

6.2 First Reason for Refusal

The Council has not provided any empirical evidence to support its view the area is overcrowded. Under the requirements of *Sustainable Rural Housing Guidelines 2005*, 'People who are part of the rural community should be facilitated by the planning system in all rural areas, including those under strong urban-based pressures.'

There was a dwelling granted planning permission for a dwelling in the vicinity under reference 16/532 despite the fact it had previously been refused on the absorption capacity of the area.

The Board is referred to Figure 3 which identifies the number of dwellings within a 1km radius of the site. There are 30 dwellings within 310 hectares which equates to less than one dwelling per hectare. This is empirical evidence that the density of dwellings in the area is low, and one additional dwelling will not be material.

There are multiple instances where the Council has granted planning permission for dwellings along laneways which has been indicated on a map Appendix B.

The applicants currently live in the area therefore the proposed dwelling will have a neutral impact on services.

The applicants have prepared a cost analysis for buying a dwelling in the area. A self-build house is the only viable option open to them

6.3 Second Reason for Refusal

The Planner's Report on the first planning application (16/1173) did not raise the issue of backland development. The Executive Planner's report under the second refusal (17/131) did state it 'could' be backland development which raises a certain level of ambiguity, which is supported in the third planning application (17/859).

There is no clear planning definition of backland development. It is submitted that the normal and traditional meaning of backland development is a dwelling to the rear of an existing dwelling usually accessed via the existing dwellings. Thus it would explain Policy RH14 that a backland dwelling is for family members only, and to avoid negative impact it should be single storey only.

The current proposal is for a dwelling to the side of an existing dwelling. There are three dwellings in a row to the west, 2 of which front onto the existing lane as permitted by the Council. The proposed dwelling will form the third dwelling onto the lane.

The description of the proposed development as backland is extremely harsh and represents a new departure from the traditional understanding of backland i.e. to the rear.

The laneway has been in situ since 1939, it should be treated in the same manner as the local road to the west. In this regard, the precedent at Burtown Big, Athy (12/0897) should be considered, as it states a dwelling with an independent access to a public road does not constitute backland development.

Prior to the lodgement of the application, the Transportation Department, was satisfied with the proposal subject to the final section of the road been upgraded. The proposed upgrading of the road for 200metres would represent a significant upgrade and planning gain given the existing condition of the laneway.

The subject site forms part of a larger agricultural field. However, it is the only site the applicants could purchase within 5km of the family home. The Kildare CDP specifically caters for such circumstances where land is not available at the family home. There would be no additional or future dwellings along the lane. The topography drops to the east and it would not be suitable for additional dwellings

6.4 Additional

A local historian states the laneway was in situ as part of the Bord Na Mona camp. The entrance to the camp is the same as that of the laneway today. The laneway is in private ownership and the applicant has the consent of the landowner to upgrade the lane.

6.5 Conclusion

One of the applicants meets with the local housing needs policy and has been brought up in the community which has been accepted by the local authority. The house design is acceptable and there are no technical issues arising from the development.

The applicants are infuriated by the inconsistencies in terms of the approach taken to their planning application compared to the 2016 planning application. In the event of a refusal the applicants will have to continue to live with their parents which is unsustainable and unreasonable. They have a young child.

Porter & Anon – V- An Bord Pleanala, is a sister of the applicant who qualified for a house in a rural area. As her sibling, the applicant is entitled to live in a rural area also.

6.2. Planning Authority Response

Kildare Co. Co. had no further comment to make and requested the Board to refer to the planner's report on the current and history files relating to the subject site.

6.3. Observations

Noel and Bridget Ryan made an observation on appeal.

- This is the fourth planning application on the site in the past 18 months. The 3 previous applications were refused as they constituted backland and ribbon development.
- The proposed dwelling directly to the rear of their house will significantly reduce the rural setting and further urbanise the area around their house
- There are currently 7 No. dwellings within 200 metres of their property, and the proposal could set a precedent for more dwellings in the field.
- The site is elevated and will impact on the privacy of their home.
- The laneway does not extend back to 1939, it has simply been extended with the erection of the houses along it.
- The site should have been purchased subject to planning which is standard practice in these circumstances.
- The applicants' reference to 16/532 relates to an applicant building on family land. There is no family link to the subject site.
- There are plenty of properties for sale on a 5/10 km radius including sites.
- There are 18 No. houses along a 500 metres stretch of rural road, this is high density.

7.0 Assessment

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

- Compliance with Rural Housing Policy
- Piecemeal Development (Policy RH9)
- Backland Development (Policy RH14)
- Appropriate Assessment

7.2 Compliance with Rural Housing Policy

The appeal site is located in an area designated as Rural Housing Policy Zone 1, as identified on Map 4.4 of the development plan. Table 4.3 of the plan identifies the categories of housing need criteria which are deemed to meet eligibility for a one-off rural house in this area. The Rural Housing Needs Assessment is based on **Category 2 of Table 4.3.**

Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community who have left the area but now wish to return to reside near to, or to care for immediate family members, seeking to build their home in the rural area on the family landholding or on a site within 5km of the original family home.

The applicants own the site and bought it outright in 2016. They currently reside 2.6km from the site at the family home of applicant Bridget Danagher, and they had been renting in the area before moving in with her parents. The applicant has provided evidence she has resided in the area for more than twelve years, and her sister received planning permission for a dwelling house beside the family home in Derryvarouge under reference 15/483.

The applicants have applied for planning permission twice previously on the subject site, under planning references 16/1173 and 17/131. On each occasion, including the current proposal, the planning authority deemed the applicant complied with the local needs policy of the development plan as required under Table 4.3 in Rural Housing Policy Area 1. The applicant was born and reared in the area, she still has family living within 5km of the site, and she has her son enrolled in the same national school she attended as a child.

I have examined the documentation on file, and considered the points made in terms of national policy as set out in the **DoEHLG Sustainable Rural Housing Guidelines for Planning Authorities** and the rural housing policies of the development plan. Having regard to the information submitted with the planning application and the appeal, I am satisfied the applicants comply with the provisions of Policy H23. The

applicant does comply with local needs criteria of the current development plan, and national policy on this issue.

7.3 **Piecemeal Development (Policy RH9)**

The first reason for refusal states that although the applicants comply with the local needs policy, it is considered the proposed dwelling would exacerbate an excessive density of development in a rural area lacking in public services and community facilities and would be contrary to Policy RH 9 of the development plan policies.

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

The applicant states on appeal that the planning authority has provided no empirical evidence to support its view. That the planning system should be more flexible towards a person who meets the local needs criteria and the Ministerial Guidelines. It is submitted that there are 30 No. dwellings within a 1 Km radius of the site. i.e. 30 No. houses within 310hectares which equates to one dwelling per hectare. The applicant submits this is a low density.

Having inspected the site, and examined the level of housing in Mucklon, one has to examine the level of housing and density based on rural housing principles and not urban housing design principles. To simply use a crude tool such as a 1Km radius from the site and calculate the density per hectare as it submitted by the applicant does not reflect the impacts or the physical conditions of the receiving environment. Mucklon is a rural area. There are 21No. dwellings within a 400metres stretch of rural road in Mucklon. There is very little road frontage left undeveloped within the 400 metre stretch adjacent to the subject site, the density of linear development

within this pocket of rural housing at Mucklon is so high, that development pressure has overflowed onto the side lanes which provide access to agricultural fields. The subject site is an example of such pressure. There are 3No. dwellings accessing off the lane which is narrow and poorly surfaced. I note the Roads Design office did not object to an additional house along the lane, however, this form of development is unsustainable in rural areas and will lead to demands for road surfacing, and for the laneway to be maintained by the local authority. At the access to the subject site, the laneway currently serves a large field and it is only 2.5metres in width. The applicant has a right of way over the lane and consent from the landowner to upgrade the lane. Third party lands will be impacted upon in order to widen the lane, and it is unclear if this has been fully consented to.

In addition, the houses within this pocket of rural houses have individual sewage treatment systems. The proposed development and the adjoining site to the west are served by private boreholes. The site and proposed percolation area is positioned uphill of a number of existing boreholes and I would be concerned this could potentially impact on the water quality of the existing wells. There is a very high concentration of individual sewage treatment systems within a small area at Mucklon.

The proposed development represents a haphazard and progression of further piecemeal development is clearly in conflict with Policy RH9 section (iv) of the development plan.

The issue that the applicant bought the site without the benefit of planning permission and now owns the site is not relevant to the appeal, it was a choice made by the applicant. This issue cannot influence the outcome of the appeal. The relevant issues include the existing pattern of development in the area, the development plan policies and the planning history of the subject site.

The applicant has also cited a legal case, Porter & Anon – V- An Bord Pleanala, citing the applicant's sister obtained planning permission for a house in the area, therefore, the applicant is entitled to a dwelling on this basis. I note the case, and the circumstances were different to the current case. In addition, the Board does not dispute, the applicant meets within the local needs criteria similar to her sister.

7.4 **Backland Development (Policy RH14)**

The second reason for refusal states the proposed development constitutes backland development and is therefore contrary to Policy RH14 of the development plan.

Policy RH14

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.

I refer to the **GLOSSARY OF TERMS** at the end of the Kildare County Development Plan 2017-2023, which states:

Backland Development: *Development, which takes place to the rear of existing structures fronting a street or roadway.*

The public roadway to the west of the subject site, and there is one dwelling fronting the roadway which runs perpendicular to the laneway providing access to the subject site. There are two existing dwellings accessed off the laneway positioned to the rear of the dwelling fronting the roadway, which in my opinion, are backland development in accordance with the glossary of terms in the development plan. The planning authority's description of the development as backland development is, therefore, correct. The applicant owns the site and is not a family member to the house fronting the roadway or the houses along the laneway. In addition, the subject site is elevated above the adjoining sites, and as stated there may be negative impacts in terms of the existing wells, and the proposed percolation area. Therefore, I conclude the proposed development is contrary to Policy RH14.

7.5 Appropriate Assessment

Designated Natura Sites within a 15Km radius

Ballynafagh Lake SAC	001387	7.31 Km south east of site
Ballynafagh Bog	000391	7.96 Km south east

SAC		of site
The Derries, Edenderry SAC	000925	12km south west of site
R. Boyne and R. Blackwater SAC	002299	14.63km north of site
R. Boyne and R. Blackwater SPA	004232	13.2Km west of site

The planning authority carried a screening for Appropriate Assessment and concluded a Stage 2 Appropriate Assessment was not required. Having regard to the nature and scale of the development, the relative distance < 7 Km from an SPA and SAC sites, and the lack of direct pathway to the Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. The proposed development represents a fourth dwelling along a narrow substandard laneway in a rural area where there is a high concentration of one off houses. The road frontage along the roadway is practically fully developed for a 400metre stretch, pushing the linear developments down laneways, and creating an ad hoc pattern of rural development all serviced by boreholes and individual sewage treatment systems, which is not a sustainable form of development. A fourth dwelling along the laneway is an inappropriate form of rural housing and will create a highly undesirable precedent for future developments in Kildare.
- 8.2. I am satisfied that both reasons for refusal should be upheld by the Board.

9.0 Reasons and Considerations

1. It is the policy of the planning authority as set out in the Kildare County Development Plan 2017-2023, as set out under Policy RH9, to control piecemeal and haphazard development. This policy is considered to be reasonable. The proposed development would be in conflict with this policy because, when taken in conjunction with existing and proposed development in the vicinity of the site, it would consolidate and contribute to the build-up of ad hoc development in an open rural area. This would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development constitutes haphazard backland development, being situated to the rear of dwellings positioned along a public roadway and accessed from a laneway substandard in width and surface specifications. The proposed development being backland development, would be contrary to policy RH14 of the Kildare County Development Plan 2017-2023, whereby only family members can be considered for backland development in rural areas would therefore be contrary to the proper planning and sustainable development of the area.

Note: The Board has concerns in terms of public health regarding the location of the proposed percolation area uphill of existing domestic boreholes. As this is a new issue raised on appeal it does not form part of the reasons for refusal.

Caryn Coogan
Planning Inspector

22nd of November 2018