



An  
Bord  
Pleanála

## Inspector's Report ABP – 302613 - 18

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<b>Development</b>	Construction of single storey house including 5 no. roof lights to the rear.
<b>Location</b>	Oughterard, Straffan, Co. Kildare.
<b>Planning Authority</b>	Kildare Co. Council.
<b>Planning Authority Reg. Ref.</b>	18796
<b>Applicant</b>	Niall Donnelly
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party v Decision
<b>Appellant</b>	Niall Donnelly
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	15 <sup>th</sup> , November 2018
<b>Inspector</b>	Paddy Keogh

## 1.0 Site Location and Description

The site of the proposed development which has a stated area of 1.525 hectares is situated in the townland of Oughterard c. 4 km. to the east of the village of Kill. Access to the site is via local road L6018. The site consists of a field currently used for agriculture. The site is defined along its northern (public road) and eastern boundaries by mature hedgerows and along its southern and western boundaries by a wire fence.

There is an existing agricultural field entrance located in the north-eastern corner of the site.

Levels across the site fall away in a south-easterly direction.

A 110KV power line traverses the front portion of the site.

The site is a relatively short distance and easily accessible (c.5 minute drive) to the N7 dual carriageway.

## 2.0 Proposed Development

- 2.1. The proposed development involves the construction of bungalow to be located on the rear and lower portion of the site. The proposed bungalow has a stated floor area of 172 sq.m.. The design of the bungalow consists of two intersecting sections – one containing bedroom accommodation, the other containing living accommodation. The design incorporates five rooflights and provision for a solar panel (if required).
- 2.2. It is proposed to close the existing agricultural field entrance to the site and to create a new vehicular entrance from the L6018 to serve the proposed bungalow. This entrance will be situated further west along the road frontage to the site than the existing field entrance and at a point offering significantly improved sightlines in both directions.

## 3.0 Planning Authority Decision

### 3.1. Decision

Notification of a decision to refuse planning permission for the proposed development issued was issued by the Planning Authority per Order dated 27<sup>th</sup>, August 2018.

Two reasons for refusal were stated by the Planning Authority. Briefly, these were:

- (1) The site is located along a scenic route as designated in the Kildare County Development Plan 2017-2023. The proposed development would conflict Development Plan policy in relation to the preservation of scenic routes and the prevention of random rural development and would set an undesirable precedent for similar development. Furthermore, no exceptional circumstances have been presented to justify the location of a rural house within 300m of a ridge line as required pursuant to Development Plan policy.
- (2) The applicant lives at a location on the outskirts of Straffan which is urban in its nature and character. The applicant has not satisfactorily demonstrated compliance with the local need criteria for a dwelling at this location in accordance with rural housing policy as set out in the Development Plan. The proposed development would materially contravene the Development Plan.

### 3.2. Planning Authority Reports

#### Planning Report

A report from the Area Planner dated 27<sup>th</sup>, August 2018 notes that the site is

- located within 300m of a ridgeline which is designated as a 'Principle Landscape Sensitivity Factor' in the Kildare County Development Plan 2017-2023.

- located along a designated Scenic Route – L6018
- located within the ‘Eastern Transition Landscape Character Area’ and characterised as a ‘Class 2 ‘Medium Sensitivity’ landscape.
- A rural dwelling is compatible only in exceptional circumstances within 300m of ridgelines (per Table 14.6 of the Kildare County Development Plan 2017-2023).

The Area Planner acknowledges that the design of the proposed bungalow and its siting of the proposed dwelling on the lower section of the site constitutes an effort to better integrate (than in previous proposals) the development within the sensitive landscape. In this regard, it is considered that the proposal is broadly successful and is a more acceptable design solution than previous proposals.

It is accepted that significant effort has been made in the proposed landscaping scheme to mitigate the impact of the proposed development on the sensitive landscape. However, it is considered that the level of mitigation required demonstrates the potential negative visual impact of the proposal. Furthermore, the extensive amount of landscaping being proposed constitutes an intrusion into the open character of the site.

The Area Planner concludes that the applicant has failed to provide compelling exceptional circumstances to justify the proposed development within 300m of a ridgeline.

The information submitted on the Rural Housing Planning Application Form submitted to the planning authority has been reviewed by the Area Planner who has determined that the applicant does not satisfy the local need criteria for a dwelling in a rural area as set out in Chapter 4 of the Kildare County Development Plan 2017-2023.

The decision of the planning authority to refuse planning permission for the proposed development is in accordance with the Area Planner’s recommendation.

An Appropriate Assessment Screening Report completed by the planning authority concludes that there are no potential significant affects on any European site arising from the proposed development and that Appropriate Assessment is not required.

#### Other Technical Reports

- **Water Services** – No objection subject to conditions.
- **Transportation** – No objection subject to conditions.
- **Environment** – No objection subject to conditions.

### 3.3. Prescribed Bodies

Irish Water – No objection subject to conditions.

## 4.0 Planning History

### Application Site (Applicant)

#### 17/1109

The current applicant was refused planning permission for a bungalow and associated works by the planning authority per Order dated 30<sup>th</sup>, November 2017. The single reason for refusal given by the planning authority related to the visual impact of the proposed development from a designated scenic route. The wording was similar to Reason No. 1 given by the planning authority in the current application.

#### 17/540

The current applicant was refused planning permission for the construction of a split-level bungalow and associated works by the planning authority per Order dated 6<sup>th</sup>, July 2017. The single reason for refusal given by the planning authority was the same as that given in Reg. Ref. 17/1109.

### Application Site (Mr. Seamus Quinlan)

#### 09/1093

Planning permission for a bungalow and associated works was refused by the planning authority per Order dated 12<sup>th</sup>, March 2010. The applicant in this case was Mr. Seamus Quinlan. Two reasons for refusal were given by the planning authority. Briefly, these related to (1) impact on views from a designated scenic route and (2) non-compliance with the Council's rural housing policy.

### Other Sites (in the vicinity)

The report from the planning authority Area Planner refers to a planning history of refusals of planning permission by the planning authority for a dwelling, stables, tack room etc. for Alex and Deirdre Casey on an immediately adjoining site to the west of the subject site. (Reg. Ref. 09/886; Reg. Ref. 04/1506; 04/2624; 05/0348; 07/1129).

## 5.0 Policy Context

### 5.1. Development Plan

The proposed development falls for assessment under the Kildare County Development Plan 2017-2023.

Map 4.4 of the Development Plan identifies two separate rural housing zones based on landscape sensitivity and population density. The subject site is located in 'Zone 1'. This zone relates to more populated areas with higher levels of environmental sensitivity and significant development pressure.

The Rural Housing Policy (as set out in Section 4.12.7 of the Development Plan) identifies two separate classes of applicant (a) persons actively engaged in agriculture and (b) members of the established rural community. An applicant must comply with at least one of these criteria. Criteria for compliance in respect of (b) members of the local community are set out in Table 4.3(b). These criteria include:

- (i) *Persons who have grown up and spend a substantial period 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 or who currently live in the area. Where no land is available in the family ownership, a site within 5 km of the original family home may be considered.*

Policy RH9 seeks to 'Ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other siting and design considerations including....

- iii) *The protection of features that contribute to local attractiveness including; .....ridges, skylines....and important views and prospects.*

The L6018 forms part of a designated scenic route in the Development Plan (Route No. 11 Table 14.5 of the Kildare County Development Plan 2017-2023 refers)

Policy SR1 seeks to 'Protect views from designated scenic routes by avoiding any development that could disrupt the vistas or disproportionately impact on the landscape character of the area, thereby affecting the scenic and amenity value of the views'.

The site lies within an area designated as the 'Eastern Transition Landscape Character Area' in the Development Plan (Chapter 14 refers). This landscape is characterised as a 'Medium Sensitivity' landscape as is indicated as having 'the capacity to accommodate a range of uses without significant adverse effects on the appearance or character of the landscape having regard to localised sensitivity factors'.

Table 14.4 of the Development Plan indicates that the siting of a rural dwelling within 300m of a ridgeline will be considered to be acceptable only in exceptional circumstances.

## 5.2. **National Policy**

### *Sustainable Rural Housing Guidelines, 2005*

The site of the proposed development is located within an area designated as being under strong urban influence.

### *National Planning Framework*

National Policy Objective No. 19 states

*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.*

### 5.3. **Natural Heritage Designations**

The site is located c. 16km from **Mouds Bog SAC (Site Code 002331)**.

The designated qualifying interests is stated as Active raised bog; Degraded raised bog still capable of regeneration and Depressions on peat substrate of the Rhynchosporion.

## 6.0 **The Appeal**

- A Visual Impact Assessment accompanied the planning application submitted to the planning authority.
- The design of dwelling now being proposed has been substantially modified from the designs previously refused planning permission on this site. The current proposal which is well setback onto the lower portion of the site scales to a ridge height of 5m only, will be sunken into the site and will be well screened from public view by significant landscaping.
- The only negative comment expressed by the Area Planner in relation to the design and visual impact of the proposed development relates to the impact of the proposed visual mitigation measures (screening and shelter belt planting). Otherwise the comments of the Area Planner were generally positive in relation to the design of the proposed dwelling and proposed measures to mitigate its visual impact.
- Any issue in respect of the appropriate nature and quantum of landscaping could be addressed by way of the attachment by the Board of an appropriate condition to a grant of planning permission.



- It is contended that the normal concern about building houses on ridgelines in rural areas relates to a concern to prevent such houses being built on or near the highest points of the ridgelines. The proposed dwelling will be built below a ridgeline and setback 101m. from the public road.
- The Kildare County Development Plan 2017-2023 stipulates an 'exceptional; circumstances' test for the purposes of permitting houses within 300m of a ridgeline. However, the Development Plan offers no guidance as to what constitutes exceptional circumstances. It is submitted that the extensive landscaping being proposed in the current instance should be regarded as meeting the threshold for the exceptional circumstances test.
- The applicant has previously been refused planning permission by the planning authority for a dwelling on the site (Reg. Ref. 17/5450 and Reg. Ref. 17/1109). The planning authority Senior Planner previously overruled a recommendation by a more junior planner that non-compliance with the planning authority rural housing policy be cited as a reason for refusal. These previous refusals cited visual impact from a scenic route as the only reason for refusal.
- The applicant lives in a rural area that does not fall within a designated development boundary and considers himself to be an intrinsic part of the rural community. The applicant has lived in the rural area since the age of three. Supporting documentation in relation to the applicant having attended local schools etc. accompanied the application lodged with the planning authority
- The planning authority cite material contravention of the Development Plan in their second reason for refusal. The applicant notes the limited circumstances (as outlined in S. 37 (2)(b) of the *Planning and Development Act, 2000* in which the Board can overturn a refusal where material contravention of the Development Plan has been cited by the planning authority. Notwithstanding these limitations the applicant considers that the proposed development cannot reasonably be regarded as constituting a material contravention of the

Development Plan. In any event, there are conflicting objectives or, at least, objectives that are not clearly stated in the Development Plan viz. nothing to state that it is an objective that people living in built up rural areas should not be regarded as part of the rural community. The *Sustainable Rural Housing Guidelines, 2005* stipulate that the needs of members of the rural community should be facilitated.

- There were no technical difficulties with the proposed development. Internal Department reports recommended a grant of planning permission subject to conditions.

### 6.1. **Planning Authority Response**

The planning authority have confirmed per letter dated 8<sup>th</sup>, October 2018 that they have no further observations to make in respect of the submitted appeal.

## 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 issues of appropriate assessment and environmental impact assessment also need to be addressed. The issues can be dealt with under the following headings

- Visual Impact
- Rural Housing Policy
- Technical Considerations
- Appropriate Assessment
- Environmental Impact Assessment

### 7.2. **Visual Impact**

The application lodged with the planning authority was accompanied by a detailed Visual Impact Assessment. This document indicates a range of measures that will

be employed in order to reduce the visual impact of the proposed development on the receiving landscape in the vicinity of the site. These include restricting the ridge height of the proposed bungalow to a maximum of 5m., setting the structure back significantly from the public road, sinking the structure into the site and extensive landscaping.

I acknowledge that a serious effort has been made to limit the visual impact of the proposed development and to overcome the reason for refusal cited in previous planning authority decisions. Nonetheless, the fact remains that the site is relatively open in character, adjoins a designated scenic route and lies within 300m of a ridgeline.

It is policy as set out in Kildare Co. Council Development Plan to only permit dwellings within 300m of a ridgeline in exceptional circumstances. The appellant submits that the extensive landscaping proposals detailed in the submitted application constitute exceptional circumstances. I do not agree. I would interpret the exceptional circumstances clause as referring to a very limited range of cases where a person cannot reasonably be expected to have their accommodation needs met at any other more suitable location. Examples of such exceptional circumstances might include the specific health needs of the applicant or a need to be available on a fulltime basis to attend to the welfare of cattle or other livestock etc.

On balance, despite the measures being proposed by the appellant, I consider that the appellant has not managed to satisfactorily address the reasonable concerns cited by the planning authority in their previous reason for refusal in respect of the adverse visual impact of the proposed development on the receiving environment. Furthermore, I consider measures proposed in the current application (viz. the setting back of the proposed dwelling on site necessitating the provision of an exceptionally long access driveway to connect the dwelling with the public road) will have the potential to visually scar the landscape in their own right.

### 7.3. **Rural Housing Policy**

The appellant has highlighted the fact that non-compliance with rural housing policy was not cited as a reason for refusal in the case of two recent decisions by the planning authority to refuse planning permission for a dwelling on the subject site.

However, I note that this matter has not previously been before the Board for consideration.

The appellant currently lives in a housing development at Newtown on the fringe of Cedlbridge, Co. Kildare. Houses at this location occupy unzoned land outside the development boundary of the town. The appellant has lived at this location since he was 3 years old. The appellant has submitted documentary evidence of having attended school etc. locally. This forms the main basis of the appellants claim for compliance with the planning authority rural housing policy as set out in Category(b), Table 4.3(b) of the Development Plan.

Notwithstanding the fact that the appellant lives at an address that is technically outside the development boundary of the town of Celbridge, I consider that this location has a strong functional relationship with the town. It has a significantly weaker functional relationship with the immediate rural hinterland and surrounding rural area.

The appellant is currently employed with ESB International in their offices located at Dublin Airport. The appellant's employment does not touch or concern the land and rural area in any particular way.

In the circumstances outlined I consider that the appellant does not comply with the rural housing policy as set out in the Kildare County Development Plan. Furthermore, the site of the proposed development is located c. 8 km (by road *measured on Google Maps*) from the appellant's current residence. This does not meet the criteria set out under Table 4.3(b)(i) of the Development Plan which stipulates (in relation to dwellings in rural areas to serve the needs of members of the rural community) that where no land is available in the family ownership, a site within 5 km of the original family home may be considered.

Furtthermore, I consider that the proposed development does not comply with national policy in relation to single dwellings in the countryside as set out in the *Sustainable Rural Housing Guidelines, 2005* or as set out in National Policy Objective No. 19 of the National Planning Framework.

Finally, in circumstances where a grant of planning permission is not being recommended I consider that it is not necessary to address the issues raised by the

appellant concerning material contravention of the Development Plan and the provisions pursuant to S. 37(2)(b) of the *Planning and Development Act, 2000*.

#### 7.4 **Technical Considerations**

Effluent disposal from the proposed development will be by means of a packaged wastewater treatment system and polishing filter. Neither the Planning Authority Executive Engineer (Environment Section) nor the Environmental Health Officer have any objection to the proposed wastewater treatment arrangements subject to compliance with the EPA Code of Practice – Wastewater Disposal Systems Serving Single Houses (2009).

It is proposed to remove 3.5 m of hedgerow to facilitate the creation of the proposed vehicular access to the site. Sightlines in excess of 90m in each direction will be provided at the access. The planning authority Transportation Section have indicated no objection to the proposed development.

I consider that the proposed effluent disposal and site access arrangements are acceptable and that there is no need for the Board to revisit these matters in the context of the current appeal.

#### 7.5 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development, and the distance to the nearest European site, no Appropriate Assessment issues arise and it is considered that the proposed development would be unlikely to have a significant effect, either individually or in combination with other plans or projects, on any European site.

#### 7.6 **EIA 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

- 8.1. I recommend that planning permission for the proposed development 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 along a designed scenic route in the Kildare County Development Plan 2017-2023 (Route No. 11 Table 14.5 refers). The is also proximate to a ridgeline within a relatively open and visually exposed landscape. Notwithstanding the extensive landscaping schedule included as part of the proposed development, it is considered that the proposed development by reason of its nature and scale would constitute a visually obtrusive feature in the landscape and would seriously injure the visual amenities of the area, would be contrary to Development Plan policy on the preservation of Scenic Routes and would, therefore, be contrary to the proper planning and sustainable development of the area.
- (2) The Having regard to the location of the site within an "Area Under Strong Urban Influence" as identified 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, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contravene housing policy as set out in in Section 4.12.7 of the Development Plan and in the national Guidelines, contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of

public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

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Paddy Keogh  
Planning Inspector

5<sup>th</sup>, December 2018