



An  
Bord  
Pleanála

## Inspector's Report ABP-302810-18.

<b>Development</b>	Planning permission to construct new dwelling house, domestic garage, wastewater treatment system with polishing filter, man-made lake/ pond for work purposes and new site entrance.
<b>Location</b>	Graigavern, Ballybrittas, Co. Laois.
<b>Planning Authority</b>	Laois County Council.
<b>Planning Authority Reg. Ref.</b>	18/463.
<b>Applicant(s)</b>	David & Riona Graham.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	David & Riona Graham.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	06/12/2018.
<b>Inspector</b>	A. Considine.

## **1.0 Site Location and Description**

- 1.1. The subject site is located approximately 1km to the east of the village of Ballybrittas in Co. Laois. Access to the site is via the local secondary road, L7174 and the site is located within a rural and sparsely populated area. Graigueaverne House is located to the east of the proposed development site and the subject site currently comprises part of the lands associated with the House.
- 1.2. The site has a stated area of 0.96 hectares and is set back from the public road, to be accessed via a driveway which will be approximately 260m in length. The existing site boundaries comprise mature trees and hedges. The access road, the L7174 is located to the north of the site while the old N7 (R445) road is located to the south. The M7 motorway is located further south.

## **2.0 Proposed Development**

- 2.1. Permission to construct new dwelling house, domestic garage, wastewater treatment system with polishing filter, man-made lake/ pond for work purposes and new site entrance, all at Graigavern, Ballybrittas, Co. Laois.
- 2.2. The submitted application includes a number of documents and reports including a planning statement. The applicant has submitted information in order to address compliance with the housing strategy and the rural housing need. It is submitted that the applicants are engaged in rural activities and have strong family connections with the area.
- 2.3. It is proposed to construct a Georgian style two storey, five bay house with a full hipped roof on the site which the applicants consider to be the most appropriate style and best suited to the surrounding area. It is proposed that the house will rise to 9m in height and will have a plaster finish. The house will have a stated floor area of 437m<sup>2</sup> with a detached four bay garage of 87m<sup>2</sup>, also with a full hipped roof. The house provides for 5 double bedrooms at first floor level with kitchen and utility, dining room, family room and drawing room at ground floor level.
- 2.4. The house is to be served with water via a public supply and an on-site waste water treatment system and polishing filter.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to refuse permission for the proposed development for the following reasons:

1. The subject site is located in open countryside within an area of the County that is designated as an Area Under Strong Urban Influence on Figure 7 of the Laois County Development Plan 2017-2023. In such areas it is an objective of the Council only to permit single houses to facilitate those with a local rural housing need. An applicant who satisfies a 'Local Rural Housing Need' is defined as a person who does not or has never owned a house in the 'local rural area' and has the need for a permanent dwelling for their own use in the rural area. The Council considers that the applicants do not meet this description and accordingly the proposed development would materially contravene the Laois County Development Plan 2017-2023 and would be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed development, by reason of its scale, siting and design, would fail to integrate into the rural landscape, would seriously injure the amenities of the area, would conflict with the provisions of the current Laois County Development Plan 2017-2023 for the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning Officer considered the application and information submitted and considered that the applicant did not meet the criteria as set out in the CDP in terms of compliance with the local rural housing need. The report further considered that the scale of the proposed house would have an unacceptable visual impact when viewed from remote locations. The report formed the basis of the decision of Laois County Council to refuse permission for the proposed development. The report also includes AA screening.

### 3.2.2. Other Technical Reports:

Area Engineer: Notes that the site notice was in position at the time of inspection. There is no objection to the proposed development subject to compliance with conditions.

Executive Technician: A report on site suitability assessment was carried out and no objections are noted to the proposed waste water treatment system to be used on site.

### 3.2.3. Third Party Submissions:

None noted.

### 3.2.4. Representations:

There are two representations noted on the Planning Authority file supporting the applicants in their application. These representations are from Cllr. Tom Mulhall and Minister Charlie Flanagan, TD.

## 4.0 Planning History

There is no planning history pertaining to the subject site.

It is noted that a pre-planning consultation was held in relation to the proposed development prior to the lodging of the application with Laois County Council.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The Laois County Development Plan, 2017-2023 is the relevant policy document pertaining to the subject site. The site is located in a rural area which is designated as being Under Strong Urban Influence and it is an objective of the Council, to recognise the individual housing needs of people intrinsic to the rural areas located within such areas. Such needs may be accommodated on lands within the rural area under strong urban influence, subject to the availability of a suitable site and normal proper planning and sustainable development criteria.

It is an objective of the Council only to permit single houses in the area under strong urban influence to facilitate those with a local rural housing need<sup>1</sup> in the area, in particular those that have lived in a rural area.

In order to demonstrate a genuine rural housing need, any of the following criteria shall be met:

- a) the application is being made by a long term landowner or his/her son or daughter seeking to build their first home on the family lands; or
- b) the applicant is engaged in working the family farm and the house is for that persons own use; or
- c) the applicant is working in rural activities<sup>2</sup> and for this reason needs to be accommodated near their place of work; or
- d) the application is being made by a local rural person(s) who have spent a substantial period of their life living in the local rural area, and, who for family and/or work reasons need to live in the rural area.

## **5.2. Natural Heritage Designations**

The subject site is not located within or adjacent to a designated site. The closest European site is The River Barrow and River Nore SAC, Site Code 002162, which is located approximately 2.5km to the north of the proposed development site.

## **5.3. Environmental Impact Assessment**

Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed

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1 An applicant who satisfies a 'Local Rural Housing Need' is defined as a person who does not or has never owned a house in the 'local rural area' and has the need for a permanent dwelling for their own use in the rural area.

2 Such rural activities will normally encompass persons involved in full time farming, forestry, in land waterways or related occupation s as well as part time occupations where the predominant occupation is farming/ natural resource related. Such circumstances could also encompass persons whose work is intrinsically linked to rural areas such as teachers in rural schools or other persons whose work predominantly takes place in rural areas.

development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

This is a first party appeal against the decision of Laois County Council to refuse permission for the dwelling house. The grounds of appeal are summarised as follows:

- The applicants are astounded that the Laois County Council consider that they did not demonstrate the 'need for a permanent dwelling for their own use in the rural area'. It was considered that the application gave sufficient information on the requirements.
- Mr. Graham is involved in rural activities with respect to in-land waterways, being a director of Aquatic Harvesting Ireland Ltd., a company which provides weed cutting solutions / aquatic weed harvesting services in the midlands and Leinster region.
- There is a need for further research in the area of aquatic weed management to develop the most efficient and environmentally friendly method of controlling aquatic weeds in the long term/
- The proposed development includes the construction of a c100m<sup>2</sup> self-made lake / pond where the research will take place. The applicants work has very specific requirements, all of which are met at the subject site, and nowhere else.
- It is hoped to expand the company and the above mentioned research is critical to the success of the company and the livelihoods of the family.
- There are inconsistencies in the decisions of the Council as permission was granted for a house where no local need was obvious.
- Mr. Grahams parents have very strong family connections to the area.

- In terms of the design, the appellant disagrees with the planning authority. The house design was given detailed thought and consideration to the historic context of the site and the environs to ensure that the design complimented the location.
- The development would not overlook any existing property and it is intended to plant further trees to enhance the landscape.
- The house as proposed is similar in scale to both Graigueverne House and Glenmalire House.
- It is hoped that the house will also be home to Mr. Grahams parents as their current home is becoming unsuitable for their needs.

It is requested that permission be granted for the proposed development.

## **6.2. Planning Authority Response**

The Planning Authority has not responded to this appeal.

## **7.0 Assessment**

Having regard to the information available in respect of this proposed development, together with the relevant reports from the Planning Authority and departments within Laois County Council, I consider it appropriate to consider the proposed development under the following headings:

1. Compliance with the Laois County Development Plan
2. House Design
3. Other Issues
4. Appropriate Assessment

### **7.1. Compliance with the Laois County Development Plan.**

- 7.1.1. The Laois County Development Plan, 2019-2023 is the relevant policy document pertaining to the subject site. The proposed development seeks the construction of a house in the rural area which is designated as being Under Strong Urban Influence. The plan seeks to facilitate people intrinsic to the rural areas located within such

areas, subject to the availability of a suitable site and normal proper planning and sustainable development criteria. Section 2.6.1 of the County Development Plan deals with Rural Area Types where it is stated that ‘the Council recognises the needs of local rural people who wish to live or work in the area in which they grew up. The following three criteria arise in assessing applicants under this category:

- The applicant must come within the definition of a ‘Local Rural Person’
- The proposed site must be situated within their ‘Local Rural Area’
- The applicant must have a ‘Local Rural Housing Need’

7.1.2. Table 6 of the Plan provides details of Rural Area Designations, providing a definition for each area as well as the relevant criteria against which all applications for housing must be considered. It is an objective of the Council only to permit single houses in the area under strong urban influence to facilitate those with a local rural housing need in the area, in particular those that have lived in a rural area. An applicant who satisfies a ‘Local Rural Housing Need’ is defined as a person who does not or has never owned a house in the ‘local rural area’ and has the need for a permanent dwelling for their own use in the rural area. While it is not specifically stated in the planning application form, or the information submitted, it appears that the applicants have not owned a house in the local rural area.

7.1.3. In addition to the above, it is required to establish the need for a permanent dwelling in the rural area. In order to demonstrate a genuine rural housing need, the County Development Plan provides that any of the following criteria must be met:

- a) the application is being made by a long term landowner or his/her son or daughter seeking to build their first home on the family lands;

The applicant does not comply in terms of this criteria. The land is being purchased from a third party to build the house subject to planning permission.

- b) the applicant is engaged in working the family farm and the house is for that persons own use;

This criteria does not apply in this instance as there is no family farm noted, either local to the site or anywhere else in County Laois.



- c) the applicant is working in rural activities and for this reason needs to be accommodated near their place of work;

The applicant / appellant submits that they comply with this criteria in demonstrating a genuine housing need for development at the subject location. The plan stipulates that 'such rural activities will normally encompass persons involved in full time farming, forestry, in land waterways or related occupation s as well as part time occupations where the predominant occupation is farming/ natural resource related. Such circumstances could also encompass persons whose work is intrinsically linked to rural areas such as teachers in rural schools or other persons whose work predominantly takes place in rural areas.'

In this regard, the applicant has submitted details of their work and it is noted that Mr. Graham works in an industry which supports in-land waterways.

- d) the application is being made by a local rural person(s) who have spent a substantial period of their life living in the local rural area, and, who for family and/or work reasons need to live in the rural area.

The applicant has submitted information relating to his parents connections with the local area. While I acknowledge the information submitted, noting that Mr. Grahams parents lived in Ballybrittas in the 1970s, I note that central to the applicants compliance claim, is the fact that they have a very specific reason to live in the rural area. Mr. Grahams company hopes to carry out research in the area of aquatic weed management to develop the most efficient and environmentally friendly method of controlling aquatic weeds in the long term.

In order to carry out this research, the development includes proposals to build a 100m<sup>2</sup> lake within the house site. It is submitted that the nature of the research will require the lake to be in a controlled environment and accessible for monitoring and record reading both day and night. In addition to the above, it is submitted that given their primary area of work in the Midlands and Leinster, and the potential for

the lake to develop naturally and to benefit from the wildlife living in the estate woodland adjacent.

- 7.1.4. In terms of compliance with the above criteria, I am generally satisfied that the applicant can be appropriately considered as a person who has a functional need to live in a rural area. The applicant is engaged in full time rural activities relating to in-land waterways and in my opinion, has provided sufficient evidence in relation to the need to build in the rural area. I am satisfied that this is acceptable in principle.

## **7.2. House Design**

- 7.2.1. The Board will note that the Planning Authority refused permission for the proposed development in relation to the scale, siting and design of the proposed house. The development proposes the construction of a large Georgian style, 2 storey, 5 bay house with a full hipped roof. In support of the proposed development, the applicant submitted photographs of other homes of similar design in the area. While I acknowledge the scale of the proposed house, I would also note the scale of the site it is proposed to construct it on. I am generally satisfied that the scale of the house can be accommodated on a site of 0.96ha.
- 7.2.2. In terms of potential visual impact, the house is to be accessed from the local road to the north of the site and over a proposed driveway of 260m in length. The site layout plan clearly indicates the intention to retain existing trees and hedgerows as well as plans to plant additional trees on the site. The southern and western boundaries are also to be planted. While I accept that these new boundaries will take time to establish and minimise any visual impacts from the south of the site, I would also note the existence of other roadside boundaries which will offer a level of screening from the south.
- 7.2.3. In light of the above, I would have no objection to the proposed house design as presented.

## **7.3. Other Issues:**

In terms of other issues, I consider it appropriate to deal with site suitability issues as follows:

#### 7.3.1. Water Supply

The proposed development is to connect to the public water mains in the vicinity. I note no objection from Laois County Council in this regard. I also note that Irish Water has not commented on the proposed development. In this instance, I am satisfied that the proposed development is acceptable in this regard.

#### 7.3.2. Waste Water

In terms of dealing with waste water arising from the development, the Board will note that the development proposes the installation of a proprietary waste water treatment system and sand polishing filter. In support of the proposed development, the applicant submitted a Site Suitability Assessment. The assessment recorded a \*T value of 17.42 and notes that the site is located within a Locally Important aquifer which has a moderate vulnerability. It is noted that the water table was recorded at 1.4m below ground level. There is no public or group water scheme supply within 1km of the site and the Groundwater Protection Scheme for the area indicates a Protection Response of R1. This response advises that the proposed development is acceptable, subject to normal good practice.

The development seeks to install a proprietary treatment system with discharge via a sand polishing filter to ground water. The base of the proposed sand polishing filter will be 0.7m below ground level and the assessment proposes that the area of the sand filter will be 17.5m<sup>2</sup> with a depth of 900mm. The assessment calculates for a PE of 7 on the basis of 2 double bedrooms and 3 single bedrooms. Should the Board be minded to grant permission in this instance, I would consider it appropriate that the sand polishing filter be sized appropriately for a PE of 10 given the size of the proposed dwelling and that the drawings clearly provide for 5 double bedrooms, regardless of occupancy. I have no objections to the proposed development in this regard subject to conditions.

#### 7.3.3. Roads & Traffic

The proposed development will access / egress onto a local road. I am satisfied that adequate sight distances are available at the proposed entrance such that a grant of permission will be acceptable in terms of road and traffic safety.

#### 7.3.4. Business issues

The Board will note the intention of the applicant to construct a lake to undertake research at the site. I consider it reasonable that a condition be attached to any grant of planning permission precluding any other business or commercial activity occurring on the site, including the storage of machinery associated with the applicants business, without the benefit of a further planning permission. My assessment above is restricted to a domestic development, with the lake to facilitate the applicant alone in his research. No assessment of potential impacts associated with the operation of a business from the site has been carried out.

#### 7.4. **Appropriate Assessment**

The site is not located within or adjacent to any Natura 2000 site. Having regard to the location of the subject site, together with the nature and scale of the proposed development on zoned lands, I am satisfied that there is no potential for impact on any Natura 2000 site, warranting AA.

### 8.0 **Recommendation**

- 8.1. It is recommended that permission be granted for the proposed development for the stated reasons and considerations and subject to compliance with the following conditions.

### 9.0 **Reasons and Considerations**

Having regard to the provisions of the current Laois County Development Plan, 2017-2023, and to the information submitted as part of the planning application together with the information submitted in the appeal, the Board is satisfied that the proposed development, generally accords with the policy requirements of the Development Plan, in particular as it relates to the provision of rural housing. It is further considered that the design, scale and finish of the proposed house, would not seriously injure the general, visual or residential amenities of the area, would not represent a traffic hazard and would therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 1<sup>st</sup> day of August, 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.  
  
(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The house and garage shall be occupied as a single residential unit and shall not be used for any commercial or business purposes associated with the applicants business, including the storage of any machinery, and other than

the intended research associated with the lake, without a prior grant of permission.

**Reason:** To ensure a full and complete assessment of such proposals is undertaken in the interests of proper planning and the sustainable development of the area.

4. The existing front roadside boundary shall be retained in full save for the provision of the access to the site shall be in accordance with the details submitted.

**Reason:** In the interest of visual amenity.

5. The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

**Reason:** In the interest of visual amenity.

6. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

7. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

8. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 1<sup>st</sup> day of August, 2018, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority. The sand polishing filter shall be sized for a PE of 10 given the 5 double bedroom house proposed.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwelling house and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

9. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) the establishment of a hedgerow along all boundaries of the site, and along the boundary of the proposed access road from the public road.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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A. Considine  
Planning Inspector  
24<sup>th</sup> January, 2019