



An
Bord
Pleanála

Inspector's Report ABP-302985-18

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| Development | Construction of a storey and a half house, garage and proprietary wastewater treatment system with percolation area and all ancillary works. |
| Location | Foygh, Ballymahon, Co. Longford. |
| Planning Authority | Longford County Council. |
| Planning Authority Reg. Ref. | 18185. |
| Applicant | Gerry O'Hara. |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse. |
| Type of Appeal | First Party. |
| Appellant | Gerry O'Hara. |
| Observers | None. |
| Date of Site Inspection | 19 th February 2019. |
| Inspector | Daire McDevitt. |

1.0 Site Location and Description

- 1.1 The appeal site is located along the eastern side of a local county road, accessed off the R392, in the rural townland of Foygh, c.3.5km northwest of Ballymahon village. To the north of the site are three two storey detached rural houses. The Royal Canal and its towpath are c.10m from the southern boundary of the site.
- 1.2 The site, with a stated area of c.2.2hectares, is triangular in shape and is taken from a larger plot. A derelict structure and associated strip of land bounds the application site to the south along the towpath. A stream forms the northern boundary of the site. An entrance has been opened off the public road and the remnants of a hardcore access through the site was noted leading to a single storey metal structure.
- 1.3 The roadside boundary consists of mature vegetation with intermittent views into the site. The site is relatively level vis a vis the public road. There are limited short views into the site due to the current vegetation along the roadside boundary. The site is within the Royal Canal broadzone.

2.0 Proposed Development

The proposed development consists of a storey and a half storey dwelling with a gfa of c. 273sq.m and a c. 89.73sq.m detached garage on a site with an overall area of c. 2.24 hectares. A proprietary wastewater treatment system and percolation area is proposed and connection to the water mains.

- 2.1 The application includes a Site Characterisation Form dated 2013.

3.0 Planning Authority Decision

3.1 Decision

Refuse permission for the following **4** reasons:

- 1. The proposed development site, situated adjacent to the Royal Canal, and is located within the Broad Zone of the canal as identified in Section*

6.2.2.7 Inland Lakes and Waterways and specifically under Policy ILW 8 Policy ILW9 of the Longford County Development Plan 2015-2021 as being of high amenity and landscape quality in relation to their setting and, as such, required to be protected from inappropriate development, i.e development which adversely affects high amenity and landscape quality in relation to their setting. The development proposed would, if permitted, either by itself or the precedent it would set for other similar developments in the area, materially contravene these objectives and policies and, as such, would be contrary to the proper planning and sustainable development of the area.

- 2. The proposed development site is completely within 100m to the north of the Royal Canal with proposed dwelling house located less than 70m from the Royal Canal. Section 6.2.2.7 Policy ILW 12 states “The Council shall take whatever measures it considers necessary in order to protect, enhance and preserve the built and natural heritage of the Royal Canal and its associated structures including the maintenance of the broad zone at 100m either side of the Canal. This shall include setting of the canal and its views and prospects”. It is considered that the proposed development would not protect, enhance or preserve the built and natural heritage of the Royal Canal and as such would be contrary to ILW12 of the Longford County Development Plan 2015-2021.*
- 3. It is the policy of the Council as set out in Section 3.2.2.1 HOU RUR3 of the Longford County Development Plan 2015-2021 to protect agricultural land and prevent unsustainable speculative urban commuter generated and ribbon development in the rural area. It is considered that the applicant has not demonstrated a rurally generated housing need at this sensitive location and where the proposed development has the potential to impact adversely on the area. As such, the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

4. *On the basis of the information received, the proposed development does not fulfil a specific rural generated housing need in accordance with Section 2.1.6.5 policy CS12 of the Longford County Development Plan 2015-2021 and is therefore contrary to HOU 3 and CS12 of the Longford County Development Plan 2015-2021, which aims to prevent over proliferation of urban generated one0off housing in the rural area. The development, would therefore, if permitted, by itself or the precedent it would set for similar developments in the vicinity, contravene these objectives, and, as such, would be contrary to the proper planning and sustainable development of the ea.*

3.2 Planning Authority Reports

3.2.1 Planning Reports

Planning Report (not dated)

The focus of the Planners report was compliance with the Councils' adopted rural housing policy and the protection of the Royal Canal from inappropriate development. The main issues raised are reflected in the reasons for refusal.

3.2.2 Other Technical Reports

None.

3.3 Prescribed Bodies

None.

3.4 Third Party Observations

None.

4.0 Planning History

There are a number of previous applications by the applicants on the appeal site. This is the first appeal.

Planning Authority Reference No. 13/155 refers to a 2013 Extension of Duration of permission granted under **Planning Authority Reference No. 08/53**. Permission extended to 31st July 2018.

Planning Authority Reference No. 08/53 refers to a 2008 grant of permission for a house subject to 17 conditions.

Planning Authority Reference No. 06/403 refers to a 2006 decision to **refuse** permission for a dwelling for three reasons. 1) Location of the site within the broad zone for the Royal Canal and contrary to section 5.2.3.6 and 5.2.3.7 which strictly seeks to control development in the vicinity of the inland waterways, 2) Speculative development and contrary to Objective 3.2.2, 3.3.3.1 and 3.3.3.4 and 3) public health and contrary to section 4.6.2.12 and 5.2.2.7.

5.0 Policy & Context

5.1 Longford County Development Plan 2015-2021

Core Strategy

CS 1:

The Council shall continue to support the strengthening of the urban and village network throughout the County in accordance with the hierarchy outlined in the following sections and supported by the Regional Planning Guidelines, Sustainable Rural Housing Guidelines and Sustainable Residential Development in Urban Areas, issued by the DECLG ..

CS 12:

- a) The following categories of applicant shall be considered for the development of housing in the rural area with a view towards sustaining rural communities:
- Members of farm families, seeking to build on the family farm.
 - Landowners with reasonably sized farm holdings who wish to live on their land.
 - Members of the rural community in the immediate area, this includes returning emigrants or their children with remaining substantial family or community ties, who wish to permanently settle in the area.

- Persons whose primary full or part-time employment is locally based or who are providing a service to the local community.
- b) Speculative and unsustainable urban-generated housing development will be discouraged in the rural area.
- c) Occupancy Conditions may be attached in accordance with Ministerial Guidelines to protect the policy application and integrity.

Rural Housing

Policies include:

HOU RUR 3:

Outside designated settlements and development envelopes, there shall be a presumption against extensive urban generated commuter development, ribbon development, development by persons who do not intend to use the dwelling as their primary residence and unsustainable, speculator driven residential units. In this respect, applicants for permission for residential development in non-designated areas shall be required to submit a statement indicating the sustainability of the proposal, which shall form part of the assessment of the application for planning permission and in which shall be outlined:

- a)** The reason for the location of the proposed dwelling in a particular locality.
- b)** The connection or close relationship between the applicant and/or proposed resident and the locality in which the proposed dwelling is to be situated and the criteria outlined in CS 12.
- c)** The place of employment of the applicant and/or proposed resident where relevant.
- d)** A demonstration of the ability of the applicant and/or proposed resident to provide, at their own expense, the services required to sustain the proposed development without detrimental impact on road safety, water quality, public health, views and prospects, landscape, environmental integrity and amenity.

6. Environment, Heritage and Amenities

Section 6.2.2.1 refers to the (proposed) Natural Heritage Areas (NHA).

These areas although protected with lesser statutory protection than NHAs are still considered important areas within the County and include **pNHA code no. 002103 Royal Canal.**

Section 6.2.2.7 Inland Lakes and Waterways.

Policies

ILW1 refers to the need to preserve, protect and enhance the County's rivers and lakes.

ILW8 sets out that development will be strictly controlled in the vicinity of the inland waterways of the County and will not normally be permitted. Application for such development shall be assessed, in addition to normal planning criteria, in terms of its potential impact on the visual, recreational, ecological and environmental integrity of the area.

ILW9 refers to the broad zones of the lakes, rivers, canals and deciduous woodlands shall be protected from inappropriate development (see Appendix 10), i.e. development which adversely affects high amenity and landscape quality in relation to their setting.

ILW12 The Council shall take whatever measures it considers necessary in order to protect, enhance and preserve the built and natural heritage of the Royal Canal and its associated structures including the maintenance of the broadzone at 100m either side of the Canal. This shall include the natural setting of the canal and its views and prospects.

ILW13 Development in the broad zones of the major rivers and lakes of the County, as illustrated in Appendix 10, will not normally be permitted and shall be restricted to extensions of existing dwellings, which shall be sensitively designed in terms of the individual site and materials. Intensive agricultural developments shall not normally be permitted in these areas.

Annex 3 Rural Design Guidelines

Annex 4 Landscape Character Areas

Landscape Character Area 4: Central Corridor.

5.2 Guidelines

National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government (2018)

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence i.e commute catchment of cities and large towns and centres of employment. This will be subject to siting and design considerations.

In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

Sustainable Rural Housing Guidelines (2005):

The overarching aim of the Guidelines is to ensure that people who are part of rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures.

To ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated.

5.3 Natural Heritage Designations

There are no European designated sites within the immediate vicinity of the site.

The site adjoin pNHA Royal Canal (site code **002103**)

5.4 Environmental Impact Assessment Screening

Having regard to the nature and scale the development which consists of single house in a rural location, 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.

6.0 The Appeal

6.1 Grounds of Appeal

The first party appeal seeks to address the Planning Authority's reason for refusal and can be summarised as follows:

Regarding reason for Refusal 1 & 2:

- The applicant obtained permission to build a house on the site in 2008, an extension of duration was granted in 2013 which extended the permission to the 31st of July 2018.
- The applicant is of the view that the Planning Authority's reasons for refusal should not be upheld as a house was granted on the site in 2008. The current application mirrors the 2008 one. The only issue raised by the Planning Authority in 2013 (extension of duration application) related to compliance with the EPA code of Practice for effluent treatment systems. This was addressed to the satisfaction of the Planning Authority at the time.
- The applicant is willing to accept an occupancy condition.
- No objection to submitting a landscaping plan and the implementation of this plan.

Regarding Reason for refusal 3 & 4:

- The applicant has referred to a solicitors letter, submitted with the 2008 application, which confirms he owns the application site and adjoining land.

- A copy of a letter submitted with the 2008 application, outlining of the first named applicant's links to the area and his reasons for requiring a house at this location.
- The applicant's agent is of the view that his client clearly complies with Section 3.2.2.1 HOU RUR 3 of the Longford County Development Plan 2015-2021.

6.2 Planning Authority Response

None.

6.3 Observations

None.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal which seek to address the Planning Authority's reasons for refusal. The issue of appropriate assessment also needs to be addressed

The issues can be dealt with under the following headings:

- Rural Housing policy.
- Impact on Royal Canal.
- Appropriate Assessment-

7.1 Rural Housing Policy

- 7.1.1 The applicant has set out in the grounds of appeal that he was granted permission for a house on the application site in 2008, an extension of duration granted in 2013 extended the life of the permission to July 2018. Notwithstanding, the application before the Board must be assessed in the

context of the rural housing policies and objectives for the site under the current Longford County Development Plan 2015-2021.

- 7.1.2 The site is located in an area identified as a Stronger Rural Area. Clear policy is set out at both a national and local level regarding rural housing need. The Sustainable Rural Housing Guidelines require planning authorities in addressing demand for rural housing to distinguish between rural generated housing need and urban generated housing need. Rural generated housing needs should, generally, arise from demonstrable connections to the site, to rural based occupations and/or relationship with the landowners. National Policy Objective 19 of the National Planning Framework refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence.
- 7.1.3 Furthermore, under the current County Development Plan, policy CS12 restricts rural dwellings to those with a housing, social or economic need to live in the countryside. In addition under policy HOU RUR 3 it is clearly stated that Outside designated settlements and development envelopes, there shall be a presumption against extensive urban generated commuter development, ribbon development, development by persons who do not intend to use the dwelling as their primary residence and unsustainable, speculator driven residential units. Therefore, in my view, the applicants need to demonstrate a social or economic need to live in this area, in accordance with the requirements set out in Policy HOU RUR 3 and CS12 of the current Plan.
- 7.1.4 The applicant is of the view that, based on the planning history of the site, the information submitted under Planning Authority Reference No. 08/53 outlining his links to the area and his ownership of the site that he qualifies for a house at this location. No supporting documentation has been submitted with the application to support the applicant's links to the area. I note that the applicant was granted permission for a dwelling at this location 10 years ago (P.A Ref. 08/53). There is no information on file to support the applicant's social, economic or familial ties to the area. The applicants have provided no information as to why they require to reside at the location proposed. What is known and relevant to the planning merits of this case is that the applicants have reside in Blackrock, Co. Dublin for in excess of 40 years.

7.1.5 Having regard to Policies CS1, CS12 and HOU RUR 3 of the current Longford County Development Plan, it is evident that the applicants are not members of farming families seeking to build on the family farm, they are not landowners with a farm holding who wish to live on their land, nor are they persons whose primary full or part-time employment is locally based or who are providing a service to the local community. It is, therefore, reasonable to conclude that the proposed development is at best speculative and is urban generated housing development which runs directly contrary to the provisions under Policies CS12 and HOU RUR 3, as such development is to be discouraged in rural areas in accordance with the Plan. Such development is clearly not supportive of Policy CS 1.

7.1.6 Therefore I consider, based on the information on file, the applicant has not demonstrated compliance with the requirements set out under Policy CS12 or HOU RUR3 for a house in the countryside. The applicant, therefore, do not have a defined social or economic need to live in this area of strong urban influence and thus the development would be contrary to Objective 19 of the National Planning Framework, would be contrary to the guidance set out in the Sustainable Rural Housing Guidelines and contrary to HOU RUR 3 and CS12 of the Longford County Development Plan 2015-2021.

7.2 Impact on Royal Canal

- 7.2.1 The Planning Authority's first two reasons for refusal were on the premise that the proposed development would have a detrimental impact on the Royal Canal. It also noted that the proposed dwelling is clearly located in an area that is identified in the current County Development Plan as adjoining watercourses adjoining watercourses and where it is policy to restrict development that would impact on the amenity and landscape quality of such areas. The Planning Authority's first two reasons for refusal reference to the fact that the proposed dwelling is located within this area, called the Broad Zone in the current County Development Plan.
- 7.2.2 The applicant has argued in the grounds of appeal that the current proposal is justified on the basis that there was a previous grant of permission for the construction of a dwelling at the same point on the site which lapsed in July 2018. The access road is partially constructed. Therefore the principle of a dwelling is acceptable at this location.
- 7.2.3 Notwithstanding the planning history associated with the applicant and the site. The current proposal before the Board must be assessed in the context of the policies and objective of the current Longford County Development Plan (2015-2021).
- 7.2.4 In terms of visual impact, the area is characterised by a number of two storey dwellings to the north of the site however, in my opinion, this does not mean that the area does not have a visual character and quality that needs to be considered in any application. The application site is located within 100m of the Royal Canal with the proposed house sited c.70m from the canal. And while I accept that the appeal site and any dwelling constructed on the site would be the subject of intermittent views from the canal, the site is currently clearly visible from the western section of the canal towpath.
- 7.2.5 The proposed development would therefore have a negative impact on the visual character and amenities of this significant recreational amenity and to permit development that would erode the amenity of the canal and the character of the area would, in my opinion be contrary to a number of

development plan policies that seek to protect the amenity and visual character of the canal including Policies ILW 8, 9 and 12.

7.2.6 The Site Suitability Assessment submitted with the application sets out the conditions on the site and concludes that the site is suitable for the treatment and disposal of effluent. The test results of a t- value of 40.7 and a p-value of 26.50, water ingress was noted at 1m in a 2.5m deep trial hole. Proposed to connect to the public water mains. The Site Characterisation Form noted that there is infiltration from the canal which is at a higher level. But this could be intercepted with a head-drain overfilled with broken stone. Based on the site contours and surrounding topography, it would also appear likely that ground water flow is towards the southeast.

7.2.7 With regard to the potential impact on ecology, it is noted that the Royal Canal is not part of the Natura 2000 network. The site is part of the pNHA network and the delay in implementing these designations should not be used as a defence by the competent authority to avoid ensuring such sites are protected. I am not satisfied, based on the information on file, that the applicant has fully assessed the potential impact on water quality and ecology.

7.2.8 I consider that the proposed development, located within a Broad Zone, which has been identified in Sections 6.2.2.7 (Policy Refs. ILW 1, IWL 8., IWL9) of the Longford County Development Plan, 2009-2015 as being a recreational resource of high amenity value to be preserved, enhanced and protected from inappropriate development. The proposed development would, if permitted, either by itself or by the precedent it would set for other similar development in the area, contravene the abovementioned policies and would be materially contrary to Policy ILW 12 which seeks to protect the natural setting of the canal.

7.3 Appropriate Assessment

7.3.1 Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a

screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on a European Site.

8.0 Recommendation

I recommend that permission be refused for the reasons and consideration set out below,

9.0 Reasons and Considerations

1. The site of the proposed development is located within a stronger rural area as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005 and in an area where housing is restricted to persons demonstrating social and economic local need in accordance with the Longford County Development Plan 2015-2021. Having regard to the proximity of existing settlements to the subject site and having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy, notwithstanding the provisions of the current Longford County Development Plan, and would, be contrary to the proper planning and sustainable development of the area.
2. The proposed development is located within a Broad Zone, which has been identified in Sections 6.2.2.7 (Policy Refs. ILW 1, IWL 8., IWL9) of the Longford County Development Plan, 2009-2015 as being a recreational resource of high amenity value to be preserved, enhanced and protected from inappropriate development. The proposed development would, if permitted, either by itself or by the precedent it would set for other similar

development in the area, contravene the abovementioned policies and would be materially contrary to Policy ILW 12 which seeks to protect the setting of the canal, its views and prospects. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Dáire McDevitt
Planning Inspector

20th February 2019