

Inspector's Report ABP-303487-19

Construction of a house, wastewater treatment system and percolation area. Elverstown Great, Ballymore Eustace,
Co. Kildare.
Kildare County Council.
181301.
Peter and Sara Fisher.
Permission.
Refuse Permission.
First Party V. Decision.
Peter and Sara Fisher.
None.
25 th March 2019.
Susan McHugh

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1.0 Site Location and Description

- 1.1. The subject site is located in a rural area in the townland of Elverstown Great, c.2.8km west of the settlement boundary of Blessington, and 2.7km north of Ballymore Eustace, Co. Kildare.
- 1.2. The appeal site is located on the southern side of Local Road L-6050. Elverstown House is located to the north east of the subject site, with a number of one off bungalows and farm buildings located to the south of the L-6050. The adjoining houses to the east and west are occupied by three of the applicant's siblings.
- 1.3. Access to the site is via an existing shared driveway serving two existing dwellings, and at a point where there is a bend on the road.
- 1.4. The site is located at a lower level than the L-6050 from which there are open views of the wider landscape to the south. It is currently in use for sheep grazing.
- 1.5. The site which is irregular in shape has a stated area 0.261ha.

2.0 **Proposed Development**

- 2.1. Permission is sought for:
 - Construction of new four-bedroom single storey type dwelling. The stated area of the house is 185.6sqm. and has a ridge height of 6.725m. Finishes include a nap plaster, and concrete roof tiles.
 - Wastewater treatment system and percolation area.
 - Access to the site will be provided via the existing entrance.
- 2.2. The application was accompanied by the following;
 - Rural Housing Application Form and associated documents.
 - Site Characterisation Form and details of proposed waste water treatment system from O'Reilly Oakstown Environmental.
 - Visual Assessment Report by Landmark Designs Ltd.
 - Cover letter from AH Architects and applicants brother.

3.0 **Planning Authority Decision**

3.1. Decision

The Planning Authority decided to **refuse** planning permission for the above described development for two no. reasons:

- 1. 'The proposed development on a site with expansive views over the adjoining rural area, is located within a designated Class 3 High Sensitivity landscape in the Kildare County Development Plan 2017-2023 where such areas have a reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape. Policy RH9 of the Kildare County Development Plan 2017-2023 seeks to ensure compliance will all siting and design considerations including the capacity of the area to absorb further development having regard to the extent of existing development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single landholding. The proposed development taken in conjunction with the level of one-off residential development in the immediate vicinity of the subject site and the potential for the creation of further infill sites, would exacerbate an excessive density of development in the area and would seriously injure the visual and rural amenities of this highly sensitive landscape. Accordingly, the proposed development would contravene Policy RH9 of the Kildare County Development Plan for 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.
- 2. Having regard to the location of the site in an Area under Strong Urban Influence as identified in the Kildare County Development Plan 2017-2023, and to National Policy Objective 19 of the National Planning Framework (February, 2018) which, for rural areas under urban influence, seeks 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, having regard to the viability of smaller towns and rural settlements, it is considered that the applicant does not comply with National Policy Objective 19. The proposed development, in the absence of any identified locally based

need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the provision of public services and infrastructure. The proposed development would contravene the provisions of the National Planning Framework and would, therefore, be contrary to the proper planning and sustainable development of the area.'

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 19/12/2019)

The Planners Report is the basis for the Planning Authority decision. In summary it states;

- Applicant has used an out of date Rural Housing Application Form.
- Proposal was considered against the policy provisions of Rural Housing Policy and Table 4.3(b) as indicated in the Kildare County Development Plan 2017-2023. Based on the information submitted the applicant does not demonstrate an economic or social need to live in the rural area of Elverstown Great.
- Site is located in an Area under Strong Urban Influence as identified in the Kildare County Development Plan.
- Serious concerns regarding the overall level of development in a linear fashion at this location is excessive, and by virtue of the precedent that the development of this site would set, could lead to a total of eight dwellings and a family farm in a row in an environment with a high sensitivity.
- The previous reason for refusal has not been overcome.
- Recommends a refusal.

3.2.2. Other Technical Reports

- Water Services: No objections subject to conditions.
- Area Engineer: No objections subject to conditions.
- Transportation: No objections subject to conditions.

- Environment: No objections subject to conditions.
- Environmental Health Officer: No objections subject to requirements.

3.3. Prescribed Bodies

• Irish Water: Report

3.4. Third Party Observations

None.

4.0 **Planning History**

Appeal Site

P.A. Reg. Ref. 18/206 Permission **refused** June 2018 for (a) Construction of a new four-bedroom single storey type dwelling; (b) New Oakstown BAF wastewater treatment system and percolation area. Access to the site will be provided through the existing road entrance. Along with all facilitating and associated site development works for Peter and Sara Fisher. The reason for refusal related to noncompliance with Policy RH9 of the Kildare County Development Plan for 2017-2023.

5.0 Policy and Context

5.1. Kildare County Development Plan 2017-2023

- 5.1.1. **Map 4.4** of the plan identifies 2 no. rural housing zones based on landscape sensitivity and population density. The subject site is located in a more populated area with higher levels of environmental sensitivity and significant development pressure, identified as '*Rural Housing Policy Zone 1*'.
- 5.1.2. Policy for housing in rural areas is set out in Chapter 4, Section 4.12 and 4.13. *Table 4.3* of the plan sets out local need criteria for each zone.
- 5.1.3. According to rural housing policy RH2, applicants must demonstrate that they comply with one of the categories outlined in Table 4.3. The requirement for a

demonstration of 'need' with regard to single houses is in line with the Sustainable Rural Housing Guidelines 2005 and the National Planning Framework 2018.

5.1.4. **Policy RH2** seeks to:

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.

5.1.5. **Policy RH9** seeks to:

'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:

(i) The location and design of a new dwelling shall take account of and integrate appropriately with its physical surroundings and the natural and cultural heritage of the area and respect the character of the area. Development shall have regard to Chapter 16 Rural Design Guidelines (and any subsequent changes to these guidelines) and Chapter 17 Development Management Standards.

(ii) Appropriate landscaping of proposed development using predominantly native species as per Table 17.2 of this Plan.

(iii) The protection of features that contribute to local attractiveness including; landscape features, hedgerows, trees, historic and archaeological landscapes, water bodies, ridges, skylines, topographical features, geological features and important views and prospects.

(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 ability to provide safe vehicular access to the site without the necessity to remove extensive stretches of native hedgerow and trees. The need for the removal of extensive roadside hedgerow may indicate that the site is unsuitable for development.

(vi) The ability of a site in an unserviced area to accommodate an on-site waste water disposal system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses (2009), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period.

(vii) The ability of a site in an unserviced area to accommodate an appropriate onsite surface water management system in accordance with the policies of the Greater Dublin Strategic Drainage Study (2005), in particular those of Sustainable urban Drainage Systems (SuDS);

(viii) The need to comply with the requirements of The Planning System and Flood Risk Management Guidelines for Planning Authorities, DEHLG (2009).'

5.1.6. Policy RH12 seeks to:

[•]Discourage ribbon development (defined as five or more houses alongside 250 metres of road frontage). The Council will assess whether a given proposal will exacerbate such ribbon development, having regard to the following:

(i) The type of rural area and circumstances of the applicant;

(ii) The degree to which the proposal might be considered infill development;

(iii) The degree to which existing ribbon development would coalesce as a result of the proposed development;

(iv) Local circumstances, including the planning history of the area and development pressures.

(v) Notwithstanding the above, special regard will be given to the circumstances of immediate family members of a landowner on single infill sites in a line of existing dwellings with 5 or more houses along a 250 metres of road frontage.'

5.1.7. **Chapter 14** Landscape Recreation and Amenity

The site is located in the Eastern Uplands. This is characterised as a Class 3 High Sensitivity to which the following description is attributed;

'Areas with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors'.

5.2. National Policy

5.2.1. National Planning Framework – Project Ireland 2040, DoHP&LG 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. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations.

5.2.2. Sustainable Rural Housing Development Guidelines

The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'. The subject site is located in a rural area under strong urban influence.

5.3. Natural Heritage Designations

There are no European sites located in the vicinity of the site. However, the following are located within approx.15km:

Description	Site Code	Designation	Distance
Poulaphouca Reservoir	004063	SPA	2.6 km E
Red Bog	000397	SAC	5.2km NE
Wicklow Mountains	002122	SAC	6.7km E
Wicklow Mountains	004040	SPA	6.7km E

5.4. EIA Screening

5.4.1. Having regard to the nature the proposed development, which consists of a single rural dwelling, the nature of the receiving environment, and proximity to the nearest sensitive 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 submitted by David Higgins, DH Architects, on behalf of the applicant, may be summarised as follows;

- Planning History Current proposal similar to previous application under P.A. Reg. Ref. 18/206 refused by KCC, and is only site on the overall landholding available to the applicants.
- Sale of Plots Dispute reference in planners report to sites having been sold from the original landholding, as each family member were gifted their sites.

Reason for Refusal No. 1

- Infill Development Disagrees with reference in planners report that the proposed development would result in other infill sites.
- Ribbon Development Proposed development would not constitute ribbon development as defined by the County Development Plan and refers to R12 of 4.13.1 which gives special consideration to immediate family members of a landowner wishing to build on an infill site allowing for five existing dwellings. Visual assessment demonstrates that the adjoining houses are not visible due to the curve in the road and existing mature planting.
- Landscape and Visual Impact Asserts that the proposed house which is modest in scale and in height, is cited below the level of the road, the gradient of the road, in addition to existing planting and proposed landscaping and planting will mitigate against any perceived impact on the landscape.

- Foul Drainage Site is suitable for a wastewater treatment system as designed.
- Access Proposed development relies on an existing vehicle entrance, therefore not removing any current road side hedging.

Reason for Refusal No. 2

- Economic and Social Need Applicant and his family have always lived on these lands and have been fully involved in the local rural community. He is the youngest in his family, has lived his entire life in Elverstown and wishes to continue to do so, and to be close to his aging parents.
- Rural Housing Policy Applicant complies fully with the criteria set out in the current development plan. Applicants and their two children currently live in a 44sqm temporary cabin structure, which is located to the rear of his parents' house.
- Housing Need Contend that the applicants have an urgent housing and economic need. The cost of constructing the house is more favourable than purchasing a house and would be located a minimum of 10-15km from the rural community in which they currently live, as there are no housing options available in the greater Ballymore Eustace area.
- Assessment by Kildare County Council Have not given this application a full and proper consideration and have placed more emphasis on Objective 19 of the National Development Plan over the stated requirements for one off rural housing contained in the development plan which is unfair and perhaps unlawful.
- Public Services No additional strain on existing rural road network or infrastructure, as applicants already reside with his parents.

6.2. Planning Authority Response

A response to the first party appeal was received from the Planning Authority, which reiterates the issues raised in the planners report and reasons for refusal.

6.3. Observations

None.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and it is considered that no other substantive issues arise. Appropriate Assessment and wastewater treatment also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with Rural Housing Policy
- Haphazard/Ribbon Development
- Landscape and Visual Impact
- Traffic Safety
- Wastewater Treatment
- Appropriate Assessment

This is the second application on the subject site by the applicants, both of which were refused by Kildare County Council. The subject application is identical to the recent application under P.A. Reg. Ref. 18/206, but there was no appeal to the Board. The single reason for refusal in the recent application related to contravention of Policy RH9 of the Kildare County Development Plan for 2017-2023. This is similar to the first reason for refusal in the current appeal.

7.1. Compliance with Rural Housing Policy

- 7.1.1. Reason for refusal No. 2 relates to the applicants housing need.
- 7.1.2. The appeal site is located within an area designated as Rural Housing Policy Zone 1, as identified in 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 zone. I will base my assessment of the applicants housing need on Zone 1 item (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.'

7.1.3. The applicants submit that they comply with housing need item (i) above. The documentation on file provides the following information about their local housing need:

• Letter from the applicant confirming family circumstances, that they are currently living with his parents, that he has lived in this location his entire life, that their first born is attending pre-school in Ballymore Eustace National School, and that they intend sending both children to that school, applicants occupation as a Quality Control Chemical Analyst, Pfizer, Grangecastle, Clondalkin, Dublin 12 and his wife's occupation as a Nurse in Tallaght Hospital, Dublin 24.

• Land Registry Folio details

• Letter from the applicants' brother outlining that the site has been transferred to the applicant and his wife.

- Utility bill dated February 2018.
- Correspondence from Revenue confirming applicants' wife's address in 2016.

• Correspondence confirming applicants' educational background/attainment and local address in June 2014, and attendance at local secondary school between 1996 and 2003, and primary school between 1989 and 1997.

- A copy of the applicants and one of their children's birth certificates.
- Letter from the Local Parish in Ballymore Eustace confirming applicants' baptism
- 7.1.4. I have examined the documentation on file and carefully considered the application for the proposed dwelling with regard to both national policy as set out in the NPF, the DoEHLG Sustainable Rural Housing Guidelines for Planning Authorities and the rural housing policies of the Kildare County Development Plan 2017-2023. These policies seek to direct housing need in areas under urban influence towards towns and villages as more sustainable locations.

- 7.1.5. In this regard, while I note the reference by the applicant stating that they currently reside in a temporary structure to the rear of his parents' home, I also note that the applicant's employment is located approximately 30km in Dublin. The nature of the applicants' work does not require residency at this location. I consider therefore, that the applicant has failed to demonstrate a defined economic or social need to reside in this location.
- 7.1.6. I am not satisfied therefore, current proposal complies with Objective 19 of the NPF, and the guidance set out in the Sustainable Rural Housing Guidelines.
- 7.1.7. I recommend, therefore, that reason for refusal No. 2 be upheld as it relates to housing policy.

7.2. Haphazard/Ribbon Development

- 7.2.1. Reason for refusal No. 1 relates in part to non-compliance with Policy RH9 of the County Development Plan.
- 7.2.2. I noted from a visual inspection of the area there is a high concentration of rural houses in the immediate area of the appeal site. I would therefore, strongly disagree with the applicant's assertion that on the basis of recent planning applications in the vicinity that the area has not been subject of development pressure in recent years and particular ribbon development.
- 7.2.3. The Sustainable Rural Housing Guidelines, 2005, recommend against the creation of ribbon development due to road safety, future demands for provision of public infrastructure as well as visual impacts. The guidelines state that ribbon development is referred to as that which is '*located on the edges of cities and towns and will exhibit characteristics such as high density of almost continuous road frontage type development, where 5 or more houses exist on any side of a given 250 metres of road frontage'.* The Guidelines further state that whether a given proposal will exacerbate such ribbon development will depend on (a) the type of rural area and the circumstances of the applicant, (b) the degree to which the proposal might be considered infill, (c) the degree to which existing ribbon development would be extended or whether distinct areas of ribbon development would coalesce as a result of the development.

- 7.2.4. Should the proposed development be permitted it would result in 6 houses within a 320m stretch of public road on either side. However, the proposed development, which I am satisfied can be considered infill development, would further contribute to the excessive concentration of houses in the area. As such I consider it would be contrary to Policy RH9 of the Kildare County Development Plan.
- 7.2.5. I would consider that, given the existing concentration of housing in the area, the proposed development would constitute random residential development in a rural area under strong development pressure and essentially detract from the character of the area. The proposed development, in conjunction with existing development, would exacerbate an undesirable pattern of development.
- 7.2.6. I recommend, therefore, that reason for refusal No. 1 also be upheld in relation to this matter.

7.3. Landscape and Visual Impact

- 7.3.1. Reason for refusal No. 1 refers to the visual and rural amenities of this highly sensitive landscape within which the proposed development is located.
- 7.3.2. The site is identified as being within the 'Eastern Uplands' zone (essentially, the Wicklow Mountains western foothills) in Map 14.2 (Landscape Character Areas) in the development plan. This area is considered as 'High Sensitivity'. The road is not on the list of scenic routes.
- 7.3.3. The overall landscape is attractive, with open views to the south of the wider rural landscape. The landscape is considered the Development Plan to have reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors, and I would consider this to be a reasonably accurate assessment. The area is not a core tourism area, but the villages of Ballymore Eustace and Blessington are an attraction. The road is not a designated scenic route and is not on any lists for tourism trails for walking or cycling, although it would have some potential for both given its quiet nature away from the main roads.
- 7.3.4. The Development Plan sets out quite detailed design guidance for new dwellings in Chapter 16 of the CDP. These Guidelines focus on both site selection, location within the site, and the scale, form and proportion of the design. The focus is on

choosing the least obtrusive site, blending the house with the topography, avoiding prominent hillside locations, and using simple forms.

- 7.3.5. The proposed development is a single storey dwelling house of relatively simple design and modest proportions and is located below the level of the road. The applicants contend that the proposed single storey house which is set well back in the centre of the site, would have a negligible impact on the landscape. They also note that very little hedgerow needs to be removed to achieve sightlines at the proposed entrance and that the existing roadside stone walls will be repaired and reinstated where appropriate.
- 7.3.6. The question, in regard to the location of a dwelling, I would consider is whether the design is appropriate in line with CDP guidelines and whether the overall location within the landholding the most suitable. This is of course quite a subjective judgement.
- 7.3.7. The applicant has submitted a Visual Assessment prepared by Landmark Designs Ltd. dated August 2018. The report notes that the subject site is not visible from the public road network in the vicinity with the only open view towards the site from the local road at the existing entrance. It is argued that the site of the proposed development has a degree of capacity to accommodate rural housing provided the design, type and location of the development are given appropriate consideration.
- 7.3.8. In this regard it notes that the proposed dwelling is simple in form and proportionate, access to the site is provided by an existing driveway and therefore all existing roadside vegetation will remain. It notes that the proposed dwelling will be located 1.5m below the level of the road reducing site works and cut and fill operations, existing soil is to be utilised on site in the formation of low level berms to the south and south west boundaries, with new boundaries to be planted with native hedgerows and trees. It concludes that the visual impact of the proposed development can be categorised as 'No Change' following mitigation measures.
- 7.3.9. I would note that although the landscape does not have a specific designation and is subject to agriculture, the overall quality is high, and it has a significant cultural value. I would consider the choice of site, while understandable in relation to maximising the use of the existing shared family entrance, is not the best one within the landholding, as it is very visible.

- 7.3.10. I therefore concur with the general conclusion of the planning authority that the design of the proposed dwelling does not integrate appropriately and would seriously injure the visual amenity of the area.
- 7.3.11. I recommend, therefore, that reason for refusal No. 1 also be upheld in relation to this matter.

7.4. Traffic Safety

- 7.4.1. Permission is sought for a vehicular access via the existing shared access driveway from the Local Road L-6050. This driveway already provides access to the adjoining houses to the east and west which are both in family ownership.
- 7.4.2. Notwithstanding the fact that the existing access is located on a bend there are adequate sightlines in both directions, and on the day of my inspection I noted that the road was very lightly trafficked. The Transportation section of the planning authority raised no concerns.
- 7.4.3. I am satisfied therefore, that turning movements associated with entrance would not give rise to a significant traffic hazard.

7.5. Wastewater Treatment

- 7.5.1. Permission is sought for a proposed wastewater treatment system and percolation area.
- 7.5.2. A site characterisation form and details of the proposed waste water treatment system and raised percolation bed were submitted from O'Reilly Oakstown Environmental dated February 2018. The proposed system is the same as the previous application on the site, which was considered acceptable by the planning authority.
- 7.5.3. Distances to site boundaries existing wells, etc., are in accordance with the recommendations provided in the EPA *Code of Practice Wastewater Treatment and Disposal Systems serving Single Houses* (EPA 2009). The wastewater treatment system and percolation area are downslope from the proposed house and the proposed well is locate uphill.

- 7.5.4. No concerns were raised by the Environmental Health Officer or the Environment Section of the planning authority and recommended no objection subject to standard conditions and requirements. I can also confirm from my site inspection that the trial holes on site were open for inspection and the water table was not encountered at a depth of 2.2m below ground level.
- 7.5.5. Having regard to the foregoing, I am satisfied that sufficient information has been provided by the applicant to determine that the development would have no adverse impact on public health.

7.6. Appropriate Assessment.

7.6.1. There are no designated European sites in the vicinity. The nearest watercourse is located several hundred metres to the south. With regard to the nature and scale of the development, the intervening distances and to the lack of hydrological connections, it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or project on a European site.

8.0 **Recommendation**

8.1. I recommend that the Board uphold the decision of the planning authority to **refuse** planning permission for the dwelling for the reasons and considerations set out in the schedule below.

9.0 Reasons and Considerations

1. Having regard to the location of the site of the proposed development within an area designated within the current Kildare County Development Plan as an Area Under Strong Urban Influence, and in the absence of sufficient evidence of a genuine and justifiable need for housing in an area designated as being under urban pressure, in compliance with the relevant rural housing policy and criteria set out in the Kildare County Development Plan 2017-2023, National Policy Objective 19 of the National Planning Framework (2018) and the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April 2005, it is considered that the proposed development would 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 not, therefore, be in accordance with the proper planning and sustainable development of the area.

2. The proposed development, which would be located in an unzoned, unserviced rural area would constitute random residential development in a rural area that is under strong development pressure, and which already has an excessive density of housing development. It is the policy of the planning authority, as set out in the Kildare County Development Plan, to channel housing into suitably zoned land in areas where the appropriate social, community and physical infrastructure either exists or is planned, and to restrict development in rural areas. It is considered that the proposed development would exacerbate the haphazard and unplanned form of development in this rural area, would intensify urban sprawl on the road, would exacerbate ribbon development, would militate against the preservation of the rural environment, and would represent an undesirable precedent for further such development in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Susan McHugh Planning Inspectorate

29th March 2019