



An
Bord
Pleanála

Inspector's Report

ABP-303982-19

Development	Construction of a dwelling on two floors with integrated garage, on-site waste water treatment system and all associated site works
Location	Walterstown, Nurney County Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	181540
Applicant(s)	Monica Dempsey
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Vs Decision
Appellant(s)	Monica Dempsey.
Observer(s)	Richard Fahey Peter McAuley
Date of Site Inspection	19 th of June 2019
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is located in a rural area in Co. Kildare, south of the M7 junction 13. It is accessed from a laneway (cul-de-sac) off the R415 leading from the M7 to Nurney village.
- 1.2. The site is level and is currently a grassed field. It is located at the end of the laneway/ cul de sac. The cul de sac serves a multitude of one-off houses and it is less than 3metres in width and poorly surfaced.
- 1.3. The site has a mature hedgerow along its northern and eastern site boundaries, which the western and southern site boundaries being open. There is a large two storey dwelling immediately to the east of the site.

2.0 Proposed Development

- 2.1. The proposed development is a single dwelling in a rural area of Co. Kildare.
 - The subject dwelling is a contemporary design, part single and part two storey design (305sqm.), on a 1.0664 Ha site
 - The existing field entrance will be used as access to the development from the lane;
 - An individual sewage treatment system is proposed to serve the development with a sand polishing filter.
 - Public water mains serve the area

3.0 Planning Authority Decision

3.1. Decision

Kildare Co. Co. refused the proposed development for 4No. reasons.

1. The proposal would materially contravene a condition attached to a previous permission P98/751 and P98/829 which required lands relating to an earlier permission for a dwelling house be sterilised.
2. The site is located in an area under Strong Urban Influence, and National policy requires applicants economic or social need to live in this area. Objective 19 would be contravened.

3. Policy of Kildare County Development Plan to restrict development where there has been a history of speculative development, Policy RH4.
4. The proposal represents an undesirable ribbon development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report forms the basis for the planning authority's decision to refuse permission for the development citing:

- Excessive density
- Ribbon development, it is the 6th house in a row
- The applicant does not present a genuine need to live in the area
- Sterilisation order on the subject site

3.2.2. Other Technical Reports

No objections to the proposed development from the internal reports.

3.3. Third Party Observations

A number of residents along the lane expressed their concern regarding the capacity of the private lane, lack of water supply, and the fact the applicant's brother never lived in his house before it was sold.

4.0 Planning History

In 2017 the current applicant, Monica Dempsey was refused planning permission for a dwelling under planning reference number 17/ 769.

In 1998 a E. Waters was granted planning permission for a dormer bungalow and stables along the lane serving the subject site. A condition attached to the permission which included a sterilisation agreement which is relevant to Reason No. 1 of the refusal.

5.0 Policy Context

5.1. National policy

National Planning Framework

National Policy Objective 19 states as follows:

‘Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, 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;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on the siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.’

Sustainable Rural Housing Guidelines for Planning Authorities, April 2005

The appeal site is located in an area that is identified as an area under strong urban influence under the provisions of the guidelines. Within such areas, Chapter 3 sets out how development plans should distinguish between urban and rural generated housing demand, that demand for rural generated housing should be accommodated where it arises. Chapter 4 of the guidelines relates to rural housing and planning applications and states that in areas under significant urban influence, applicants should outline how their proposals are consistent with the rural settlement policy in the development plan.

5.2. Development Plan

The plan applicable to the appeal site is the *Kildare County Development Plan, 2017-2023*. The provisions of the rural housing policy are applicable to proposals for the construction of a dwelling in this location.

The rural housing policy is set out at **Chapter 4** of the development plan. The following policies are specifically noted:

Policy RH2 states that it is policy 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 with the application.

A copy of Table 4.3 is attached with this report.

Policy RH9 requires that notwithstanding compliance with RH2, an applicant must comply with all other normal siting and design considerations. This includes sub paragraph (iv) which requires that the area must have capacity for additional development in terms of existing development, ribbon development and the degree of existing haphazard or piecemeal development in the area.

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.'

5.3. **Natural Heritage Designations**

The site is not located in or close to any European site.

5.4. EIA Screening

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

6.1.1 Ribbon Development

In terms of section 9.2 of the Sustainable Rural Housing – Guidelines for Planning Authorities, Appendix 3 states the development plan objectives should facilitate housing needs of the rural community. The guidelines also state that housing requirements of persons with roots or links in rural areas are to be facilitated. Appendix 4 deals with Ribbon Development which is defined as 5 or more houses on any one side of a given 250metres stretch of road frontage.

Policy RH12 of the County development refers to the 4th reason for refusal. The definition in the development plan refers to public roads and not private lanes. Based on the facts and not opinion, the proposed development does not form ribbon development, and by the definition of the Sustainable Housing Guidelines this would account of 4No. dwellings along a 250metre road frontage.

Despite pointing out clearly the circumstances of ribbon development, the planning still refused the development on this basis as it did under the previous planning application in 2017. Local roads are not 'main roads' and therefore ribbon development policy does not apply to roads.

6.1.2 Speculative Development, Sterilisation and Local Needs

In terms of policy RH4 restrict does not mean preclude or refuse entirely but instead means set/ impose limits on, keep within bounds, keep under control, regulate and control. There is scope within RH4 for facilitate development on lands where a person complies with the rural housing policy.

The Planning reports outlines that the applicants father received planning permission to build the family home on the landholding 37years ago (planning ref. 81/1310) while the applicant's brother Michael, received planning permission to build a home for himself in 2001. Her father has passed away and her mother lives in the family home along the lane. Two other permissions are referenced on the land holding and the sites were sold out of economic necessity and supporting the education needs of the family as opposed to speculative means for which the planning officer has no means to supports their statement. The speculative developer will not sell two sites to third parties while at the same time sterilising up to 10 acres of land from never been developed in the future. The sale of the sites resulted in a reduced overall area of land available to farm and therefore reducing the income potential of the landholding. A loss was suffered by selling the sites.

Under planning application 15/1089 for a house at Roseberry, Newbridge, the planning officer recommended refusal on a landholding with a history of speculative sites, but this recommendation was overruled by Director's Order having regard to the particular circumstances relating to the case.

The Sterilisation Conditions imposed on the Dempsey landholding were on two permissions:

Planning registration **98/751** did not specify the land to be sterilised

Planning registration **98/829** specified that the land should be sterilised within the overall landholding owned by the Dempsey family.

Notwithstanding the fact the lands have been deemed sterilised in accordance with the 1998 grants of permission, the applicant's brother was granted planning permission in April 2001 for a house on a portion of the sterilised lands. At the time a recommendation to refuse was made by the reporting planning officer, however, the County Manager stated the development should be granted. Therefore, the planning authority nullified the Sterilisation Agreement. It also confirms that the development of land does not constitute a material contravention of a planning condition. It is also not necessary to refer to the removal of the sterilisation agreement in the public notices.

The sterilisation agreements referred to in the first reason for refusal are not recorded on the online register. Further research into sterilisation agreements and conditions in Kildare has revealed inconsistencies in the approach taken, a case in Athy is cited,

where the sterilisation of land was unsuccessful in controlling excessive development of the surrounding lands.

Most of the houses in the vicinity of Ms Dempsey's site were built over a decade ago, therefore the area cannot be described as an area under development pressure.

6.1.3 Local Need

The applicant was born and reared in the area. Evidence was submitted to demonstrate this. She currently works in Neagh, Co. Tipperary and this is why she is deemed to have no need to live in the area. She is not a farmer but she does intend to move back to the area to teach. She may initially travel to and from Neagh which is an hour's commute. People residing in the urban areas of Kildare commute the same distance to Dublin on a daily basis, and this is regarded as sustainable. In another reason for refusal it is stated the applicant does comply with local needs. There is a blatant contradiction between the reasons of refusal and Monica Dempsey's compliance with local needs policy.

6.1.4 Excessive Density of Development

The fourth reason for refusal relates to excessive density. There are 36No. houses within 1km of the site representing a density of 11.46ha per squared Km. This is not an excessive density.

6.2. Planning Authority Response

There is no further comment from the planning authority.

6.3. Observations

Mr. Richard Fahey and Peter Mc Auley who reside along the lane giving access to the subject site have made the following observations on appeal:

- The lane is not in charge of by the local authority. The water main was brought down the lane privately, and it is at its limit for supply. There is no availability for water supply to the site without digging up the lane which was paid for by the local residents.
- Three houses have been built along the lane by the Dempseys. The last one was built by Michael Jnr, rented out and then sold.
- The lane is too narrow for two cars to pass and extra traffic

- At 3000sq feet, the dwelling is much bigger than any dwelling in the locality
- Mr McAuley purchased the applicant's brother's house in 2005, and there is no ambiguity regarding the sterilisation orders associated with the land holding, this was established at the time of their purchased, letter attached.

7.0 **Assessment**

7.1. Having inspected the site and considered the appeal file associated with this proposal I consider the following points are the salient issues arising:

- National Policy and County Development Plan Policy
- Pattern of Development in the area
- Planning History/ Sterilisation Agreement

7.2 **National Policy and Development Plan Policy**

The site is located in a rural area of Kildare, south of Junction 13 of the M7 motorway. It is positioned at the end of a private lane which serves a number of one-off housing. The laneway is accessed from the R415 leading to Nurney. In my opinion, the site is located within a high cluster of rural housing. I noted a number of roads/ lanes in the general vicinity had pockets of ribbon development just off the R415. In my opinion, the subject laneway is densely populated with one off houses over a relatively short distance from the junction with the R415 to the access of the proposed site.

The National Planning Framework (objective 19), seeks to ensure that in rural areas under urban influence, the provision of single housing in the countryside will be based on the core consideration of demonstratable economic or social need to live in a rural area. The general area is under considerable urban influence given its proximity to the wider Dublin commuting belt and the M7. According to the evidence presented on file the applicant, Monica Dempsey is from the locality. Her family home is located along the same lane as the subject site. There is sufficient evidence presented to accept the applicant was born and reared in the area and is a local to the area. However, she currently works as a teacher in Co. Tipperary, 77km from the site. The information and evidence on the appeal file would appear to suggest that she still lives at home and commutes to work on a daily basis. It is her intention to relocate back to the area to teach.

On appeal, the applicant argues that Kildare is within the commuter belt for Dublin, and that commuters going the opposite way should be given the same positive

encouragement to live in the area, and that living on your family land is more cost effective than urban housing. I do not necessarily agree with the cost effective element of the argument, as people living in rural areas want the same level of services, which are not cost effective in terms of public expenditure catering for rural communities at the same level as their urban counter parts. In addition, in assessing rural houses in Kildare, commuting to Dublin is considered to be unsuitable form of rural housing and discouraged, the only commuting in this are is within the larger towns where public transport links are provided.

Having regard to the content of Objective 19 of the National Planning Framework, *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.* The applicant has not demonstrated a robust reason to construct a dwelling 77km from her work or a social need to construct another dwelling at this location.

In terms of Kildare County Development Plan, the applicant is not a farmer or engaged in farming, therefore they must comply with certain criteria outlined in the development plan to be considered a local needs case. This is outlined in **Table 4.3 (b)** which relates to an applicant that is *A member of the rural community.*

The applicant must demonstrate a genuine local need to reside close to their family home by reason of immediate family ties or their active and direct involvement in a rural based enterprise.

In my opinion, based on the information presented on the file, the applicant has easily established that she grew up and lived in the area for more than 12 years but it is not established why the applicant needs a new dwelling at this rural location given that she works in Tipperary, and currently lives at home along the lane with her mother. In my opinion, the applicant does not comply any of the three criteria listed in Table 4.3 (b).

Section 4.13 of the Kildare County Development Plan outlines Rural Housing Policies. Of note is **RH4** to restrict residential development on a landholding, where there is a

history of development through the speculative sale or development of sites, notwithstanding the applicant's compliance with the local need criteria. On the family small landholding the Dempseys built their own home. The family got planning permission for and sold two sites during the 1990s, and the applicants brother obtained planning permission for a dwelling in 2001, which was subsequently sold in 2005. Having regard to the small size of the landholding, no farming activities associated with it, and the sterilisation agreements which formed conditions on previous planning applications associated with the landholding, I do consider there is a speculative planning history associated with the landholding. The argument that the sites were sold to assist with the family's financial matters is not a relevant planning issue but a personal matter. The applicant does not comply with Policy RH4.

7.3 Pattern of Development in the Area

The planning authority also refused the proposal due to the excessive density of development in the area and the fact it constituted further ribbon development along the laneway. There are five existing dwellings along the road frontage of the lane and the new dwelling represents a sixth house. The short rural cul de sac currently serves 14No. one off houses. The applicant has argued that the definition of ribbon development is five dwellings along a road frontage of 250metres and this is not a public road but a private lane. In addition, given the long length of the proposed roadside boundary, the proposal does not equate to 5No. dwellings along 250metres.

I noted during my inspection and examination of aerial photography of the area, a high concentration of one-off houses to the east and west of the Regional Road at this location. The laneway serving the site is narrow, and substandard to serve a multitude of dwellings, which is currently does. There was also another planning proposal for a dwelling house on the opposite side of the lane to the subject site refused by Kildare Co. Co. in March 2019, under planning reference 19/53. The general pattern of development is ad hoc piecemeal one-off housing. It is clear to me from a site inspection and mapping, the general pattern of development is linear one off houses addressing the laneway. The fact it is a private laneway and not a public road is not relevant because, the laneway is much narrower than a public road and only enables one car to pass due to its 3metres width. In my opinion, the laneway has exceeded its carrying capacity in terms of residential development. The Board should note the laneway is approximately 650metres long and 3metres in width, serving 14No. dwellings. There is currently a plot for sale along the laneway, and permission was

recently refused for a dwelling along the laneway adjacent to the subject site. This laneway represents an excessive concentration of one-off houses almost suburban like in character, located in a rural area. It would be contrary to proper planning to permit an additional dwelling along the lane. I recommend the planning authority's reason for refusal on this issue should be upheld by the Board.

7.4 **Planning History/ Sterilisation Agreement**

This issue formed the prominent reason for refusal out of the four reasons cited by Kildare County Council. In 1998, the applicants father obtained planning permission for 2 sites, planning references 98/829 and 98/751. Lands were to be sterilised by the applicant as per conditions of each permission. Subsequently, the applicant's brother was granted planning permission for a dwelling house on the portion of the sterilised lands under planning reference 00/1584. The applicant contends the subsequent grant of permission nullifies the sterilisation agreement, which was not registered in the planning register. The Board has also received an observation from the owner of the dwelling permitted under planning reference 00/1584, which was sold to him by the applicant's brother in 2005. The submission indicates the sterilisation agreement formed part of the sale of the dwelling, and that the sterilisation agreement is still in effect.

The applicant has not denied the sterilisation agreements formed part of the planning histories for sites during the 1990s. The subject site of this appeal is located on a portion of the lands the subject of the sterilisation agreement. The applicant contends the agreements were not enforced and were nullified by a grant of permission for a dwelling on another portion in 2000. In my opinion, this issue is an enforcement issue between the applicant and the planning authority. The planning authority is clear the agreements are still in place, and that the current proposal materially contravenes conditions of the previous permissions. The clarification of this issue is beyond the remit of the Board, and would require a more in-depth legal approach, and clarification from the local authority on the legal standing of the agreement and the compliance with the conditions given the timeframe since the conditions were attached. Based on the evidence on the appeal file, it would appear to me, the Board is not in a position to dismiss the sterilisation agreement relevant to the two planning histories associated with the landholding in order to permit a dwelling house on the subject lands.

7.5. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

- 8.1. I recommend the planning authority's decision to refuse the proposed development be upheld.

9.0 **Reasons and Considerations**

1. Having regard to the location of the site within a rural area under urban influence, 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 has not demonstrated an economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements and, therefore, the proposed development does not comply with National Policy Objective 19. The proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would contravene the provisions of the National Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the pattern of development in the area, which is characterised by significant numbers of individual dwellings in close proximity to the subject site served by a substandard laneway, it is considered that the proposed development would constitute random housing development in a rural area lacking certain public services and community facilities and served by a poor road network. The proposed development would, therefore, give rise to demands for the provision of further public

services and community facilities and accordingly would be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

04/07/2019