



Development

(A) Erection of single storey type house, (B) garage / fuel store for domestic use, (C) the installation of an Oakstown BAF wastewater treatment plant with polishing filter percolation area, and (D) construction of vehicular recessed entrance and all associated site works.

Location

Ballybrack, Carbury, County Kildare.

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

19132

Applicant(s)

Conor Moore

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Conor Moore

Observer(s)

None

Date of Site Inspection

12th July 2019

Inspector

Ciara Kellett

1.0 Site Location and Description

- 1.1. The site is located in the rural townland of Ballybrack, to the south of Carbury in Co. Kildare. It is located off the R403 road at Lullymore Cross just to the north of the Grand Canal. It is c.11.5km south of the M4 motorway, c.5km north-west of Allenwood, c.9km to the south-east of Edenderry and c.3.5km south of Derrinturn. The Lullymore Heritage Park is c.5km to the south-west and the Bord Na Mona Drehid Waste Management Facility lies to the east.
- 1.2. The general area is characterised by one-off dwellings along the R403 as well as off the Grand Canal towpath further south of the site. The Bord Na Mona Lullymore facility is in the immediate vicinity to the west of the site with access via a private bridge and laneway over the canal. This facility would not appear to be in active use and access to the bridge was prohibited by a locked gate during my site visit.
- 1.3. The site itself is 0.3836 Ha, relatively flat, currently in agricultural use and is generally triangular in shape. It is bounded to the north-west by the aforementioned lane leading to the Bord Na Mona facility. The canal forms the southern boundary. The remainder of the field in which the site lies forms the eastern boundary. There is no clear demarcation of the boundary with the rest of the field, with the exception of a low fence. The site bounds the local road to the north where access is proposed.
- 1.4. The Long Derries Edenderry SAC is the closest Designated Site at c.5km to the west and Ballynafagh Lake SAC is c.8.4km east of the site. The Carbury Bog NHA is c.8km north and the site bounds the Grand Canal pNHA.
- 1.5. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. It is proposed to construct a single storey 4-bedroomed dwelling of 223sq.m in area. The design is traditional with three pitched roofs, albeit it reads as one roof from the front of the dwelling. The maximum ridge height is 6.2m and materials proposed include roof slates and a nap plaster finish with triple glazed windows. The windows have a vertical emphasis and a simple pitched roof stone clad front porch is proposed.

- 2.2. The garage can accommodate two cars and is 5.42m in height and 45sq.m in area with a similar material palette. In addition, it is proposed to install an Oakstown BAF wastewater treatment plant and construct a recessed vehicular entrance.
- 2.3. As well as drawings, the applicant has submitted a Rural Housing Application form & supporting documents, land registry folios and a letter of consent from the land owner. In addition, an Ecological Impact Statement, a Site Characterisation Report and a wastewater treatment plant details have also been supplied.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to refuse permission for four reasons. In summary they include:

Reason no.1

The applicant has not demonstrated that he has resided in the local area for a 12 year period and has not demonstrated a genuine need to reside in this rural area having regard to his occupation and place of work. Proposed development would be contrary to RH2 of the County Development Plan (CDP).

Reason no.2

Proposal would contravene policies RH9 and RH10 of the CDP, would exacerbate an excessive density of development in the rural area, and lead to increasing suburbanisation of the area.

Reason no.3

Contrary to policy RH4 of the CDP. Site would be third site to be sold from original landholding each to unrelated third parties. Proposal would set an undesirable precedent for future speculative sale of sites.

Reason no.4

Located in Grand Canal Area of High Amenity. Policy of Council is to control development in vulnerable high amenity areas. Proposal would be seriously injurious to the amenities and would set an undesirable precedent.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority's decision. It can be summarised as follows:

- The Planner includes a map with the historical applications on the landowner's landholding.
- Notes site is located in Zone 1 as set out in Map 4.4 of the County Development Plan (CDP) and notes applicant must comply with the Rural Housing Policy of the CDP.
- Considers that the applicant has not demonstrated compliance with local need or demonstrated a genuine housing need to live in this rural area.
- References policy RH4 which seeks to restrict development where there is a history of development through speculative sale or development of sites.
- Notes concern regarding the extent of development and sale of sites was previously raised by case officers dealing with case files 03/1769, 03/1835 and 18/694.
- Considers it clear that there is history of sites being sold to third parties since 2003 and to permit the subject proposal would contravene policy RH4.
- Notes site is located north of Killina which is a designated Rural Node. Notes the CDP seeks to facilitate an appropriate level of development within Rural Nodes and considers applicant would be more appropriately facilitated within the Rural Node.
- Considers proposal would result in an excessive level of one-off housing in an area where there are insufficient public services and would result in piecemeal development and would contravene policies RH9, RH10 and RH25.
- Reference made to Objective 19 of the National Planning Framework. Considers the applicant has not proven a core consideration of demonstrable economic or social need to live in the open countryside.
- Notes that applicant has submitted an Ecological Assessment to address a previous reason for refusal. Report concludes that development will not have a negative impact on flora and fauna. Heritage Officer seeks Further Information regarding the visual impact on the canal. Due to location bounding

the canal it is considered that the development would contravene section 14.5 of the CDP where development is to be controlled to ensure no negative impact on this high amenity area.

- Concludes that applicant's situation has not changed to warrant a reversal of the previous refusal recommendation of Reg. Ref. 18/1694. The applicant has not demonstrated a genuine economic or social need to live in a rural area and therefore does not comply with Policy Objective 19 of the NPF and RH2 of the CDP. Refers to policy RH2, RH9 and RH10 as well as location near the canal.
- Recommends refusal of permission and the decision is in accordance with this recommendation.

3.2.2. Other Technical Reports

- **Area Engineer:** No objection subject to conditions
- **Water Services:** No objection subject to conditions
- **Transportation:** No objection subject to conditions
- **Environment:** Further Information requested
- **Heritage Officer:** Further Information requested with respect to the canal.

3.3. Prescribed Bodies

- **Irish Water:** No objection
- **Heritage Council:** No report
- **Waterways Ireland:** No report
- **Fáilte Ireland:** No report
- **Dept. AHRRGA:** Conditions recommended
- **An Taisce:** No report
- **The Arts Council:** No report.

3.4. Third Party Observations

A submission was received requesting that a roadside drain be left open but no objection to proposed development.

4.0 Planning History

There is significant planning history on the site and surrounds.

- **Reg. Ref. 18/694:** Permission was refused to the applicant on the same site in August 2018 for 4 similar reasons. Reason no.3 included a reference to the fact that an Ecological Impact Assessment had not been submitted which would contravene NH7 and NH9 of the CDP.
- **Reg. Ref. 18/897:** Permission for development of a two-storey dwelling on land to the east of the subject site was sought by another party. The application was withdrawn.
- **Reg. Ref. 06/1821:** Permission was granted in May 2007 for development to the north of the subject site for a bungalow.
- **Reg. Ref. 03/1835:** Permission granted in April 2004 for a one and half storey dwelling to the north of the subject site.
- **Reg. Ref. 03/1769:** Permission granted in April 2004 for a one and half storey dwelling on lands to the north.

5.0 Policy Context

5.1. National Planning Framework

- 5.1.1. The National Planning Framework includes **Objective 19** relating to rural housing. It states:

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 siting and design criteria for rural housing in

statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Kildare County Development Plan 2017 – 2023

5.2.1. Chapter 4 refers to Housing, Chapter 10 to Rural Development, Chapter 14 to Landscape, Recreation & Amenity and Chapter 16 to Rural Design.

Map V1-4.4 of chapter 4 indicates that the area is located in 'Rural Housing Policy Zone 1'.

5.2.2. The Plan identifies criteria for an applicant to be considered for a one-off dwelling. An applicant must meet one of the following categories: A) is a member of a farming family actively engaged in farming the family land (Category 1), or a member of the rural community (Category 2), and B) meets one of the local need criteria set out in Table 4.3(a) and (b).

Category 2 of applicant in Zone 1:

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.

Local Need Criteria in Rural Housing Policy Zone 1 for Category 2 is:

- (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.*
- (ii) 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 who have left the area but now wish to return to reside near to, or to care for immediate family members, seeking to build their home in the rural area on the family landholding or on a site within 5km of the original family home.*
- (iii) Persons who can satisfy the Planning Authority of their commitment to operate a full time business from their proposed home in the rural area where they have existing links to that rural area and that the business will contribute to and enhance the rural community and that the nature of such enterprise is location dependent and intrinsically linked to a rural location.*

A note is provided below Table 4.3(b). It states:

Applications for rural one off dwellings will be considered, subject to the policies and objectives set out in the County Development Plan, where it is demonstrated that the development would not prejudice the environment and the rural character of the area. In this regard factors such as the sensitivity of the receiving environment, the nature and extent of existing development and the extent of development on the original landholding will be considered.

- 5.2.3. **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*’.
- 5.2.4. **Policy RH4** seeks 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*’.
- 5.2.5. **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 (inter alia):*
- (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.*
- 5.2.6. **Policy RH10** seeks to ‘*Control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:*
- (i) *The orderly and efficient development of newly developing areas on the edges of towns and villages;*
 - (ii) *The future provision of infrastructure such as roads and electricity lines; and*
 - (iii) *The potential to undermine the viability of urban public transport due to low density development.*

- 5.2.7. Section 14.5 of Chapter 14 identifies areas of High Amenity and notes they are classified because of their outstanding natural beauty and/or unique interest value

and are generally sensitive to the impacts of development. The Grand Canal corridor is one such area. It is noted that canal corridors allow vistas over long distances without disruption, where the canal flows in a straight-line direction. Consequently, development can have a disproportionate visual impact along the water corridor and it can prove difficult for the existing topography to visually absorb development. It is noted that planting can have a shielding quality.

5.2.8. **Policy WC3** seeks to '*Control development that will adversely affect the visual integrity of distinctive linear sections of water corridors and river valleys and open floodplains*'.

5.2.9. **Policy WV3** seeks to '*Prevent inappropriate development along canal and river banks and to preserve these areas in the interests of biodiversity, built and natural heritage and amenity by creating or maintaining buffer zones, where development should be avoided.*'

5.3. **Sustainable Rural Housing Guidelines for Planning Authorities 2005**

5.3.1. The Rural Housing Guidelines seek to provide for the housing requirements of people who are part of the rural community in all rural areas, including those under strong urban based pressures. Map 1 identifies the subject area as being an area under strong urban influence.

5.3.2. The principles set out in the Guidelines require that new houses in rural areas be sited and designed to integrate well with their physical surroundings and generally be compatible with the protection of water quality, the provision of a safe means of access in relation to road and public safety, and the conservation of sensitive areas.

5.4. **Natural Heritage Designations**

- The Long Derries SAC (Site Code 000925) is c.5km to the west
- Ballynafagh Lake SAC (Site Code 001387) is c.8.4km to the east.

5.5. **EIA Screening**

Notwithstanding the proximity of the proposed development to the Grand Canal pNHA the nature and scale of the development would not result in a real likelihood of significant effects on the environment. 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

A First Party appeal against the Planning Authority's decision to refuse permission has been lodged. In summary it includes:

- Applicant complies fully with the Local Needs policy. It is considered unreasonable that the applicant was not provided an opportunity to clarify the deficiency of the documentation. Further detail about applicant's personal situation is provided.
- Siting and design of the house are deemed to be acceptable. Notes Council state it is outside the rural node of Killina but there are no boundaries indicated on the Council maps. Consider that a site 760m from Killina school is considered to be within the rural node. How can Council determine it is outside node when there are no boundaries indicated?
- There is no other site available closer to applicant's homeplace.
- A detailed breakdown of the disposal of the sites was submitted with the application and is enclosed within the appeal documents.
- An Ecological Impact Assessment was submitted with the application. There will be no significant impact on flora and fauna and conditions recommended by Heritage Officer and Dept. are noted.
- Concludes that there is no technical reason for the refusal of the application.
- A personal letter explaining the applicant's circumstances is appended to the appeal.

6.2. Planning Authority Response

The Council responded to the appeal. In summary it includes:

- Information and documentation provided within the applicant's appeal do not satisfactorily demonstrate the applicant complies with local need and has a genuine need to reside in a rural area.

- Applicant's occupation is not related to the rural countryside.
- Applicant's need could be facilitated within the Killina Rural Node or nearby towns and villages.
- Significant level of one-off housing in the area and there is no further capacity.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings which broadly relate to each of the four reasons for the Planning Authority's refusal of permission:

- Compliance with RH2 Local Need Policy
- Compliance with policies RH9 and RH10
- Compliance with policy RH4
- Impact on Amenities of the area
- Appropriate Assessment

7.2. Compliance with RH2 – Local Needs Policy

7.2.1. According to Map 1 of the Sustainable Rural Housing Development Guidelines, issued by the Department of the Environment, Heritage and Local Government in April 2005, the area is located in an Area under Strong Urban Influence. In terms of the County Development Plan it is located in Zone 1, as identified in the CDP Map 4.4, which is in an area under strong urban influence and is within commuting distance of some of the largest urban centres in Kildare, including Kilcock, Maynooth, Leixlip, Clane and Naas. The Council considers that the applicant has not demonstrated that he has resided in the area for a period of 12 years or demonstrated a genuine need to build a home in the countryside.

7.2.2. The applicant has submitted information indicating that he was born and reared in Killina and needs to be close to his elderly parents. Furthermore, I note that he has submitted documentation indicating that he has resided in the area. However, I note that his occupation is not related to agricultural activities. I acknowledge the letter submitted by the applicant requesting that the Board consider his personal

circumstances but having regard to the nature of his employment, I am not satisfied that he has a genuine local need to be considered for a dwelling on unzoned land that is currently in agricultural use.

- 7.2.3. Furthermore, I note that the NPF refers to rural areas under urban influence and 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. As noted above I am of the opinion that the applicant has not demonstrated a genuine need to live in the countryside outside of a nearby town or village or the rural node as indicated by the Planning Authority. Having visited the site, I am satisfied that the site could not reasonably be considered as part of the Killina Rural Node. As such I am satisfied that the applicant has not demonstrated compliance with policy RH2 or NPF Objective 19 and as such I consider that the proposal should not be permitted based on contravening the aforementioned policy and objective.

7.3. Compliance with Policies RH9 and 10

- 7.3.1. The second reason for refusal refers to the ability of the area to absorb further development and to control the level of piecemeal and haphazard development of rural areas. The Planning Authority consider that the proposed development would exacerbate an excessive density of development and would contribute to the increasing suburbanisation of the area. I fully agree with the Planning Authority in this respect. The area is clearly under pressure as evidenced by the numbers of one-off dwellings along the canal as well as the R403 road.
- 7.3.2. The particular field that the applicant has applied to develop is quite large and already houses a dwelling in the south-east corner. To permit further development in this field with significant road frontage, as well as bounding the canal would set an undesirable precedent in an area where there are limited public services and in an area with a very limited capacity to absorb further development. In my opinion this would contravene policies RH9 which requires assessment of an area's capacity to absorb further development and RH10 which seeks to control haphazard and piecemeal development.

7.4. Compliance with policy RH4

- 7.4.1. Policy RH4 seeks to restrict residential development on a landholding where there is a history of development through the speculative sale or development of sites.

- 7.4.2. I draw the Board's attention to the note that is appended to the Development Plan under Table 4.3(b) which outlines the local needs criteria. In this particular circumstance, I consider that this note is of relevance having regard to the specifics of the appeal.
- 7.4.3. The note states that applications for "rural one off dwellings will be considered,, where it is demonstrated that the development would not prejudice the environment and the rural character of the area. In this regard factors such as the sensitivity of the receiving environment, the nature and extent of existing development and the extent of development on the original landholding will be considered" (my emphasis).
- 7.4.4. I refer to this note because it clearly states that while an applicant may comply with local needs criteria laid out in Table 4.3(b), there are other policies and objectives which equally must be complied with.
- 7.4.5. The note clearly states that factors to be considered are the nature and extent of existing development and the extent of development on the original landholding. I agree with the Planning Authority that development is excessive in this particular area and there is already substantial development on the original landholding as illustrated in the Planner's Report.
- 7.4.6. Therefore, I am of the opinion that this development would contravene policy RH4 as well as RH2.

7.5. Impact on Amenities of the Area

- 7.5.1. The fourth reason for refusal of the Planning Authority stated that the development would be seriously injurious to the amenities of this area and would set an undesirable precedent for further such development.
- 7.5.2. As referred to above, the site bounds the Grand Canal which is considered an Area of High Amenity. I note that there are a number of dwellings along the canal towpath just south of the site. I am of the opinion that to permit this development would lead to an undesirable precedent and potentially open up this area of the Grand Canal to further development.
- 7.5.3. I am in agreement with the Planning Authority and am of the opinion that to permit this proposal would be, by reason of its location and siting, seriously injurious to the amenities of the canal and set an undesirable precedent.

7.6. **Appropriate Assessment**

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

8.0 **Recommendation**

I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

1. The site of the proposed development is located within an “Area Under Strong Urban Influence” 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. Furthermore, the subject site is located in an area that is designated under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, 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 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, and having regard to the provisions of the current Kildare County Development Plan 2017 - 2023, and would be contrary to the proper planning and sustainable development of the area.
2. Taken in conjunction with existing development in the vicinity, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and would contravene the policy of the planning authority, as expressed in the current Development Plan, to direct residential development to serviced centres,

which policy is considered to be reasonable. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The site of the proposed development is located in an area designated as an Area of High Amenity in the current Development Plan for the area. The objective for this area, as expressed in the Development Plan, is to prevent inappropriate development along canal banks. This objective is considered reasonable. The proposed development, which is not related to the amenity potential of the area, would be seriously injurious to amenities of this high amenity area and would set an undesirable precedent for further such development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Ciara Kellett
Senior Planning Inspector

15th July 2019