



An
Bord
Pleanála

Inspector's Report ABP 304787-19

Development

Construction of a new house including domestic garage, domestic sewage treatment system and soil percolation filter with associated site works.

Location

Monkstown, Mount Temple, Moate, Co. Westmeath.

Planning Authority

Westmeath County Council.

Planning Authority Reg. Ref.

197087.

Applicant(s)

Ailbhe Wright McNamara.

Type of Application

Residential.

Planning Authority Decision

Grant Permission.

Type of Appeal

Third Party

Appellant(s)

John Campbell.

Observer(s)

None

Date of Site Inspection

13th September 2019.

Inspector

Brendan Coyne.

1.0 Site Location and Description

1.1. The subject site (0.29ha) is located at the end of a local rural road, accessed off the L1437, in the rural townland known as Monkstown. The site is located c. 3.2km north-east of Mount Temple village and c. 9 km north-west of Moate Town. The site is rectangular in shape and is accessed via a narrow laneway at the end of the local rural road. The site is under grass with a ground level of 106m above O.S. Datum along the south-eastern boundary of the site dropping to 100m above O.S. Datum at the north-western corner of the site. The north-eastern boundary of the site is defined with a timber post fence, mature trees and hedgerow. The remaining site boundaries are undefined. A two storey detached dwelling is located on the adjoining site to the north-east. The surrounding area is characterised by agricultural land and dispersed rural one-off housing and agricultural buildings.

2.0 Proposed Development

2.1. The proposed development comprises the following;

- Construction of a detached 1.5 storey 5-bedroom dwelling (256 sq.m.) and domestic garage,
- Sewage treatment system, soil percolation filter and private well,
- New site entrance and driveway,
- Landscaping and associated site works.

3.0 Planning Authority Decision

3.1. Decision

Westmeath County Council granted permission for the proposed development, subject to 13 no. Conditions.

3.2. **Planning Authority Reports**

3.2.1. **Planning Report**

- The dwelling, while substantial, is considered acceptable having regard to the size of the landholding and existing/proposed screening of the site.
- The applicant is the daughter of the landowner. A letter was submitted outlining the applicant's family links with the area. Based on the information submitted, it is considered that the applicant meets the local needs criteria of policy P-SRA1 of the Westmeath County Development Plan.
- The proposal would not give rise to significant adverse direct, indirect or secondary impacts on the integrity of any nearby Natura 2000 sites, having regard to their conservation objectives.
- The site is located outside a designated flood risk zone.

3.2.2. **District Engineer Report**

Re. Access / Parking:

- The section of the road from the end of the public road to the entrance of the proposed development is not a public road as defined in Section 2(i) of the Roads Act 1993. The issue of access rights over this section of roadway is a civil matter between respective landowners.
- Condition recommended regarding the gradient of the entrance/driveway/car parking area, the driveway width and no. of car parking spaces to be provided.

Re. Water and Foul / Surface Water Drainage: No objection subject to Conditions.

4.0 **Planning History**

None for subject site

Adjoining sites to the north-east:

- 054080** Permission granted to James McNamara in 2005 to retain and complete an existing house, as constructed, and all ancillary works including a driveway.
- 00343** Permission granted to James McNamara in 2000 to construct a dwelling house and a septic tank.

5.0 Policy and Context

5.1. Westmeath County Development Plan 2014 – 2020

Zoning The site is located on un-zoned land, outside a zoned town.

Rural Area The site is located in a ‘strong rural area under significant urban influence’, as identified on Map 11.1 of the Development Plan which details rural typologies in Co. Westmeath (pg.179).

P-SRA1 Strong Rural Areas Under Significant Urban Influence Policy – It is the policy of Westmeath County Council to accommodate demand from individuals for permanent residential development in strong rural areas who have strong links to the area and who are an intrinsic part of the rural community, subject to good planning practice, environmental carrying capacity and landscape protection considerations.

P-GRH1 General Rural Housing Policy - To have regard to the Westmeath Rural Design Guidelines and the Department of Environment, Community and Local Government Sustainable Rural Housing Guidelines in the assessment or rural residential proposals and any subsequent amendments in the assessment of applications for rural housing.

P-GRH2 General Rural Housing Policy - To promote the clustering of houses particularly on the same landholding or for the same family and promote shared accesses to minimise hedgerow removal.

P-GRH5 General Rural Housing Policy - To ensure that the road network is adequate to cater for the development and that the traffic movements generated by the development will not give rise to a traffic hazard.

P-GRH7 General Rural Housing Policy - To resist urban generated and speculative residential development outside the settlement hierarchy.

Settlement Hierarchy: The County's Settlement Hierarchy is set out in Table 2.3 of the Westmeath County Development Plan (pg.37). The subject site is located outside

any designated settlement in the Westmeath Settlement Hierarchy.

P-LHN1 Local Housing Need Policy - To permit residential development in areas outside of the development boundaries of the settlement hierarchy subject to the following circumstances:

(1) Persons who are actively engaged in agriculture, horticulture, forestry, bloodstock and peat industry,

(2) Members of farm families seeking to build on the family farm,

(3) Landowners and members of landowners' families (landowner for this purpose being defined as persons who owned the land in question since the year 2000),

(4) Persons employed locally whose employment would provide a service to the local community,

(5) Persons who have personal, family or economic ties within the area, including returning emigrants

(6) Persons who wish to return to farming and who buy or inherit a substantial farm-holding which is kept intact as an established farm unit, will be considered by the Council to be farmers and will be open to

consideration for a rural house, as farmers. Where there is already a house on the holding, refurbishment or replacement of this house is the preferred option.

P-LHN2 Local Housing Need Policy - To manage the development of one off rural housing in conjunction with the Rural Typology Map and Local Need criteria. Applicants must submit documentary evidence of compliance with the rural housing policy and comply with local need criteria.

Section 14.4 Development Management Standards for new residential development in a rural area.

Map 11.1 Rural Typologies in Co. Westmeath.

Westmeath Rural Design Guidelines (2005)

5.2. **National Planning Framework – Project Ireland 2040**

NPO19 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.

5.3. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

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'.

5.4. Other Relevant Government Guidelines

Rural Housing Policies and Local Need Criteria in Development Plans - Circular Letter SP/5/08

Development Management Guidelines (2007)

Code of Practice Wastewater Treatment Disposal Systems serving Single Houses (October 2009)

Implementation of new EPA Code of Practice on Waste Water Treatment and Disposal Systems Serving Single Houses - Circular PSSP1/10

5.5. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A third-party appeal was received from John Campbell, who owns lands to the north of the access road serving the site. The following is a summary of the grounds of appeal;

- The access road for the proposed dwelling is a private road which is the property of both John Campbell and his mother, Mrs. Bridie Campbell.
- There is no agreement in place for the applicant to use the private road, which would serve the proposed dwelling.
- It is acknowledged that a right of way exists for the two dwellings at the end of the public road, through this private road. However, the appellant considers that the erection of an additional dwelling which requires access through their property is unreasonable.
- The approval of the proposed dwelling, which requires access through private land, would provide an onus on John Campbell and his family to provide maintenance of the access road for the use by other persons, along with the requirement to provide public liability insurance for protection against the increased volume of traffic and persons through these lands.

6.2. Applicant Response

6.2.1. Brendan McGettigan, Architect and Design Consultant, has responded on behalf of the applicant to the third-party grounds of appeal, as follows;

- The matters raised by the Appellant are not proper matters which The Board or the Planning Authority are required to have regard to, pursuant to Section 34 of the Planning and Development Act, and the Appellant's grounds of appeal should be dismissed ab initio.
- The access road serving the site has long been an ancient public roadway linking the Monkstown area to Labawn and the nearby village of Mount Temple. The frontage of the site is located so as to preserve the ancient public roadway.
- The Appellant, while accepting that a right of way exists over his family lands serving the two properties at the end of the local rural road, makes no mention of the historic roadway that is the access road to the site.
- The existence of this historic roadway has informed the configuration and definition of the applicant's site. The legitimacy of the route to the proposed house is based on the historic public access route that went up to and beyond the subject site.

- The applicant has legitimate access to the site.
- The Applicant's parents and the owner of the adjoining site resurfaced the access road at their own expense.
- The Appellant has failed to submit sufficient evidence that the roadway is the private property of him or his family.
- Appendices submitted include the following;
 - A Statutory Declaration provided by the Vendors of the lands to the applicant's parents, detailing Deed of Transfer of property, dated 2nd July 1996. This Declaration states that the roadway serving the property and more particularly delineated on the map attached and thereon coloured yellow has been used as a public roadway and used by all the adjoining landowners for the last 30 years.
 - An Ordnance Survey Map outlining the family home and site of the proposed development.
 - Historic OS Survey Maps showing the ancient roadway connecting Monkstown to Mount Temple Village.
 - Observation submitted by the appellant regarding proposed development under previous planning application P.A. Ref 05/4080, whereby concern was expressed regarding the blocking of a right of way from Monkstown to Labawn.
 - Photos showing the access road in 1998 before and after the surfacing and upgrading of the road.

Note: Maps and photographs submitted are black and white copies.

6.3. **Planning Authority Response**

6.3.1. The Planning Authority did not respond to the grounds of appeal.

6.4. **Observations**

None received.

7.0 Assessment

7.1. The main issues for consideration, as raised in the Grounds of Appeal, are as follows;

- Title of Land,
- Roads / Access Issues.

However, having reviewed the documentation submitted and having regard to relevant policy in the Westmeath County Development Plan and relevant Government planning policy and Guidelines, I consider that other issues for consideration include the following;

- Rural Housing Need,
- Design and Layout.

7.2. Title of Land

7.2.1. The third-party appellant has appealed the grant of permission for the proposed development on the grounds that the access road serving the proposed dwelling is a private road, in the ownership of the appellant and his mother and that no agreement is in place for the applicant to use this private road.

7.2.2. The applicant contests the grounds of appeal, stating that the access road is a historic public road linking the rural townland of Monkstown to Mount Temple village and that the appellant has failed to submit sufficient evidence demonstrating that the access road is in the appellant's private ownership. The applicant states that she has legitimate access to the site using the public right of way access road.

In consideration of this issue, Section 5.13 of the *Development Management Guidelines (2007)* refers to 'Issues relating to title to land' and states that the planning system is not designed as a mechanism for resolving disputes about title to or rights over land and that these are ultimately matters for resolution in the Courts. The Guidelines advise that where there is doubt in relation to the legal title of the applicant, the Planning Authority may decide to grant permission, however a grant of

permission is the subject of Section 34(13) of the *Planning and Development Act 2000 (as amended)*. Section 34(13) of the *Planning and Development Act* states that 'a person is not entitled solely by reason of permission to carry out any development'.

Having regard to the above and in the absence of absolute certainty that the applicant has sufficient legal interest to carry out the proposed development, I consider it inappropriate to refuse permission for the proposed development on these grounds.

7.3. Roads / Access Issues

- 7.3.1. Access to the site is via an unpaved laneway, at the end of a local rural road. The laneway is approx. 5m wide and has a length of c. 35 metres from the end of the local rural road to the site. Two vehicular entrances are located at the end of the local road, adjacent to the laneway entrance.

Concerns were raised by the appellant that the access road leading to the site is unsurfaced and that the proposed development would result in increased volumes of traffic along this road.

It is noted that the District Engineer's Report of Westmeath County Council outlines no objections to the proposed development subject to standard Conditions regarding the gradient of the entrance, driveway and car parking area, the driveway width, no. of car parking spaces to be provided and that development contributions be applied for road restoration works to the L-14373.

- 7.3.2. Having regard to the context of the site at the end of a cul-de-sac rural road with low levels of traffic, and the limited number of additional vehicular movements the proposed development would generate, it is my view that the proposed development would not result in a traffic hazard or generate any road safety issues.

7.4. Rural Housing Need

- 7.4.1. While not raised in the grounds of appeal, I consider it appropriate to assess whether or not the proposed development complies with the Westmeath County Development

Plan and Government planning policy and Guidelines regarding rural/local housing need.

- 7.4.2. The site is located 3.2km north-east of Mount Temple village, 9km north-west of Moate Town and c. 16km east of Athlone town, on un-zoned rural lands outside any designated settlement. The site is located in a 'strong rural area under significant urban influence', as identified on Map 11.1 of the Development Plan. Such areas are identified in Section 3.2 of the '*Sustainable Rural Housing Guidelines for Planning Authorities*' as 'rural areas under strong urban influence' and are defined as rural areas exhibiting characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such areas and pressures on infrastructure such as the local road network. Policy Objective 19 of the National Planning Framework requires that, in rural areas under urban influence, the core consideration for the provision of a one-off rural house should be based on the demonstratable economic or social need to live in the rural area.
- 7.4.3. Policy GRH7 of the Development Plan seeks to resist urban generated residential development outside the County's settlement hierarchy. Settlements in the County's Settlement Hierarchy are set out in Table 2.3 of the Westmeath County Development Plan. Policy P-SRA1 seeks to only accommodate demand from individuals for permanent residential development in strong rural areas where they have strong links to the area and form an intrinsic part of the rural community (underline emphasis added). Section 11.8 of the Development Plan refers to 'local housing need' and policy P-LHN1 sets out local housing need policy requirements to permit residential development in areas outside of the development boundaries of the County's settlement hierarchy, detailed in Section 5.1 above.
- 7.4.4. Documentation submitted with the application, putting forward the applicant's case for 'local housing need', detail the following;
- In the application form, the applicant Ailbhe Wright McNamara states that she is the daughter of the landowner of the site, whose consent has been given for the making of the subject application.

- A letter of consent from James McNamara and Jennifer Wright, confirming that they are the owners of the application site and give consent for their daughter Ailbhe Wright McNamara to make the planning application on the subject site.
- The Westmeath County Council Local Needs Questionnaire Form details that the applicant currently resides in Chapelizod, Dublin 20 and works as a microbiologist in St. James Hospital in Dublin 8. The applicant plans to return to work in a Midlands Hospital, in either Tullamore or Mullingar.
- A Letter titled 'Clarifying Local Needs Compliance', detailing the following;
 - The applicant's parents moved to Monkstown, Mount Temple in 1997 and purchased the family landholding of 10 hectares, at this time.
 - The applicant has 3 siblings and the applicant is the first child to receive a gift of land.
 - The applicant's fiancé, John Connellan wishes to move home to the Athlone area, to be closer to his family who live in Athlone. John Connellan is a Barrister of Law who predominantly practices on the Midland Court Circuit.
 - Details provided of the Wright / McNamara family's involvement in the Mount Temple community.
 - The applicant and her fiancé are getting married in September 2019 and wish to raise a family in close proximity to the applicant's family home.

7.4.5. It is noted that the Planning Report of Westmeath County Council, based on the information submitted, considers that the applicant meets Development Plan policy regarding local needs criteria, as set out in Section 11.8 of the Development Plan.

7.4.6. Having reviewed the documentation submitted, I consider that the applicant complies with the requirements of Policy P-LHN1. The documentation submitted demonstrates that the applicant has close family ties with the immediate rural townland, by reason that her parents live on the adjoining site.

7.4.7. Notwithstanding the above, I consider that the proposed dwelling would comprise an urban generated residential development outside of a designated settlement in the County's settlement hierarchy. As detailed in the Local Needs Form submitted, the applicant confirms that she currently lives in Chapelizod, Dublin 20 and works in St.

James Hospital in Dublin 8. This establishes that the applicant's need for a house is urban generated. Such development would be contrary to Policy P-GRH7 of the Development Plan, which seeks to resist urban generated residential development outside of designated settlements.

- 7.4.8. Given that the proposed development would comprise and urban generated residential development, I consider that the proposed development would be contrary to National Policy Objective 19 of the National Planning Framework which seeks to facilitate the provision of single housing in the countryside, in areas under urban influence, based on the core consideration of demonstrable economic or social need to live in a rural area and the viability of smaller towns and rural settlements. The applicant has demonstrated neither an economic or social need to live in this rural area or demonstrated how their housing needs could not be satisfactorily met in a nearby town or village. For this reason, I recommend that the proposed development be refused permission.

7.5. Design and Layout

- 7.5.1. While not raised in the grounds of appeal, I consider it appropriate to assess the design and layout of the proposed dwelling, in accordance with Development Plan policy / standards.
- 7.5.2. The proposed development is a 1.5 storey 5-bedroom. The dwelling is located on the south-eastern section of the site with a setback of 63m from the edge of the access laneway serving the site. The front building line of the dwelling approximately aligns with the front building line of the applicant's parents dwelling on the adjoining site to the north-east. The FFL of the proposed dwelling is 105.3, which is 5m above the access road level.
- 7.5.3. The floor area of the proposed dwelling is 256 sq.m. The proposed dwelling has a front elevation width of 19.25m and a depth of 12.3m. The front elevation faces in a north-westerly direction towards the access laneway. The ridge height of the dwelling is 7.2m., which approximates with the ridge height of the applicant's parents dwelling. The roof profile of the dwelling is pitched presenting a gable element and 2 no. dormer windows to its front elevation. Elevation finishes are stated as comprising

render finish, with natural stone to the projecting 2 storey front gable elements and blue/black roof slate tiles.

- 7.5.4. Having reviewed the drawings submitted, I consider that the scale and design of the proposed dwelling is generally acceptable and would be in keeping with the rural character of the area. Its design is largely consistent with the Development Management standards as set out in Chapter 14 of the Westmeath County Development Plan and the Westmeath Rural Design Guidelines (2005), as provided for in Section 11.13 of the Development Plan.

7.6. **Screening for Appropriate Assessment**

- 7.6.1. The closest Natura 2000 site to the appeal site is Carn Park Bog (Site Code 002336) which is located 3.2km to the south-west of the site and Ballynagrenia and Ballinderry Bog NHA (Site Code 000674) which is located 4.1km to the south-east of the site. Taking into consideration the nature and scope of the proposed development, the wastewater treatment system proposed to serve the dwelling, the details provided on the site characterisation form and the existing residential and farm development in the immediate vicinity, I am of the opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 **Recommendation**

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

9.0 **Reasons and Considerations**

The site is located in a rural area outside any designated settlement in the Westmeath Settlement Hierarchy and is located in a 'strong rural area under significant urban influence', as set out in the Westmeath County Development Plan 2014-2020. For such areas, Policy GRH7 of the Development Plan seeks to resist

urban generated residential development outside of urban areas in the County's settlement hierarchy.

It is considered, based on the information submitted, that the proposed dwelling would comprise an urban generated residential development outside of an urban area in the County's Settlement Hierarchy. As such, the proposed development would materially contravene policy GRH7 of the Development Plan.

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, in rural areas under urban influence, based on the core consideration of demonstrable economic or social need to live in a rural area and having regard to siting and design criteria and the viability of smaller towns and rural settlements.

Having regard to the documentation submitted with the application and appeal, it is considered that the applicant does not have a demonstrable economic or social need to live in this rural area, and that the applicant's housing needs could be satisfactorily met in a smaller town or rural settlement. It is considered, therefore, that the applicant does not come within the scope of National Policy Objective 19 of the National Planning Framework.

The proposed development would, therefore, be contrary to general rural housing policy in the Westmeath County Development Plan and over-arching national policy within the National Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Note: The Reason cited refers to a new issue in the appeal and requires re-circulation prior to decision.

Brendan Coyne
Planning Inspector

02nd October 2019