



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305171-19

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<b>Development</b>	Construction of a dwelling house and all associated site works
<b>Location</b>	Kilbrennan , Dalystown , Mullingar
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority Reg. Ref.</b>	196061
<b>Applicant(s)</b>	Jack and Ruth Hanrahan.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To grant with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	William Tilley and others.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	26 <sup>th</sup> November 2019
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

- 1.1. The 0.65ha appeal site is situated c.4.5km to the north west of Rochfortbridge and c.9km south of Mullingar, in the townland of Kilbrennan, County Westmeath. The site lies c.1km to the east of the N52 on a minor county road, the L11274.
- 1.2. The site comprises part of a larger agricultural field that lies to the east of the public road. The field rises towards the southeast and a water course runs along the southern and eastern boundaries of the field. To the south of the site are two single storey detached dwellings on higher land facing the public road. To the east of the agricultural field, in which the site, lies is woodland. Agricultural fields on the western side of the public road are lower lying than the appeal site.

## 2.0 Proposed Development

- 2.1. The proposed development, as revised by way significant further information submitted in July 2019, comprises a single storey residential dwelling (238sqm) and detached domestic garage (39sqm). Water supply is from the public mains and foul water will be disposed of into a proprietary effluent treatment system and percolation area to the rear (east) of the proposed dwelling.
- 2.2. The planning application is accompanied by the following reports:
  - Local Needs Form.
  - Site Suitability Assessment.
  - Flood Risk Assessment.

## 3.0 Planning Authority Decision

### 3.1 Decision

On the 23<sup>rd</sup> July 2019 the planning authority decided to grant permission for the development subject to 13 conditions, including the following:

- No. 2 – Revised plans to be submitted amending the front elevation of the property (setting back the left-hand side by 300mm).
- Nos. 3 and 4 – External finishes and landscaping.

- Nos. 5 and 13 – Require the payment of a general development charge and special development charge (damage to local road).
- No. 7 – Occupancy condition.
- No. 8 – Provision of sightlines.
- Nos. 9 and 10 – Control surface and foul water.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- 30<sup>th</sup> April 2019 – Refers to the planning history of the site, submissions/observations made and relevant planning policy. It states that land to the west of the public road is subject to flood risk (CFRAMS). The report identifies a number of matters that require clarification i.e. local housing need, design and flooding. However, it recommends refusing permission on the grounds that the development contravenes conditions associated with previous permissions granted for dwelling houses on land to the south of the site.
- 1<sup>st</sup> May 2019 – A report by the District Manager refers to attached legal advice, in respect of sterilisation agreements, and recommends that further information is sought.
- 1<sup>st</sup> May 2019 – This report recommends further information in respect of local housing need, flooding and visual impact (requests the applicant to consider a single storey dwelling and to address overlooking of adjoining properties).
- 18<sup>th</sup> July 2019 – Refers to the further information and legal advice obtained which states that whilst a valid sterilisation agreement can be taken into account in determining an application, it should not be deemed to be a conclusive aspect of the case, for example if the proper planning and development of an area no longer require the restriction. The report states that based on the details provided by the applicant, it is considered the development complies with policies in relation to rural residential development and that subject to compliance with conditions, will not adversely impact on neighbours, be adversely affected by flood risk or impact on a European site.

The report recommends granting permission for the development subject to condition.

### 3.2.2. Other Technical Reports

- Area Engineer (9<sup>th</sup> April 2019) – No objections subject to conditions.
- Area Engineer (15<sup>th</sup> July 2019) – No objections subject to conditions.

### 3.3. Prescribed Bodies

- Irish Water (7<sup>th</sup> March 2019) – No objections.

### 3.4. Third Party Observations

3.4.1. There are three third party observation on file (one of the four observations originally made was withdrawn). Observers raise the following issues:

- Precedent - William T. Tilley, an observer, was previously refused permission on the site for a dwelling house on the grounds that (i) the development materially contravened a condition of a previous permission (PA ref. 98810 and 99/34) which prevented further non agricultural development on the lands, and (ii) having failed percolation tests, it was considered that the site could not be drained satisfactorily.
- Flood risk - The lands which are the subject of the appeal are prone to flooding.
- Local housing need - Applicant does not reside at the family home as stated in the application documentation or belong to a local darts club. The applicant's company has a registered address in Mullingar which has recently been changed for the purposes of the current planning application. Absence of recent evidence of local residency. The applicant has sought to get planning permission for a dwelling at Clonfad, Dalystown (PA ref. 186193 and 186332, both withdrawn).
- Residential and visual amenity - Overlooking by proposed development (from patio and side windows) on residential property to the south and loss of light. Proximity to existing dwelling (c.1.3m). Inconsistent building line with adjoining residential properties. Impact of construction traffic (danger and

noise) on animals, young children (being minded, nieces and nephews visiting), observers (including those with asthma and chronic illnesses) and condition of the local road. Concern that the applicant, a welder, may operate his business from the property.

- Water - Impact on wells serving nearby housing (from contamination, disruption to supply arising from connection to water main or provision of a well).
- Site notices - First site notice was incorrectly erected (no site notice at entrance to site and site notice was destroyed within days). Second site notice was erected the date after the applicant stated it was.

## 4.0 Planning History

4.1. The following planning applications have been made in respect of the appeal site and adjoining lands:

- PA ref. 971147 – Outline permission refused for 3 no. dwelling houses at Kilbrennan, Dalystown. The site included the appeal site and land to the north of it, to the northern boundary of the agricultural field in which it is situated (applicant Maurice Gavin).
- PA ref. 98810 and 9934 – Outline and subsequently permission granted for two dwelling houses at Dalystown, on land to the south of the appeal site. Condition no. 14 of both permissions require that no further non-agricultural development take place on the remaining lands to the north of the site (applicants Bernadette Gavin and Seamus Coyne respectively).
- PA ref. 064409 – Permission refused for a dwelling house, on land to the north of the appeal site (same agricultural field) on the grounds that the development contravened a condition of the previous permissions granted (above) and failed percolation test (applicant Lorna Nugent, the appellant). (There is some confusion on file regarding the reference numbers for this development. The applicant refers to it under PA ref. 065460. However, the appellant and the planning authority's documents, on file, refer to it under PA ref. 064409. My understanding is that PA ref. 065460 refers to an application

made by the appellant for a dwelling at Kilbrennan, Gaybrook, a townland to the north of the appeal site).

## 5.0 Policy Context

### 5.1. National Planning Framework (NPF)

- 5.1.1. National policy objective 19 of the NPF seeks to facilitate the provision of single houses in the countryside based on the core consideration of demonstration of economic or social need to live in a rural area and design criteria for rural housing.

### 5.2. County Westmeath Development Plan 2014 to 2020

- 5.2.1. The appeal site is situated in a Strong Rural Area south of Mullingar Town. In such areas, policies of the Plan seek to accommodate demand from individuals for permanent residential development who have strong links to the particular rural area and who are intrinsic members of the rural community (Policy P-SRA1), and to permit residential development outside of the settlement hierarchy subject to the following local housing need circumstances (Policy P-LHN1) including:

- 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.*

- 5.2.2. In section 14.29 (Development Management Standards) the Plan seeks to avert the threat of flooding in new developments and to minimise the impact of structures and earthworks on flood plains.



### **5.3. Natural Heritage Designations**

- 5.3.1. The appeal site lies c.2km to the south east of Lough Ennell, a proposed Natural Heritage Area and Special Area of Conservation (site code 000685) and a Special Protection Area (site code 004044).

### **5.4. EIA Screening**

- 5.4.1. The proposed development is of a type that constitutes an EIA project (involving construction works and demolition) and is a sub-threshold development of Class 10(b)(i), Part 2, Schedule 5 of the Planning and Development Regulations, 2001 (as amended), construction of dwelling units. However, the development is well below the threshold set out in the Schedule, is a type of development which is not likely to give rise to the use of significant natural resources or the production of wastes, pollution or environmental nuisance and is proposed on agricultural land which is relatively abundant in the area. Consequently, there is, therefore, no real likelihood of significant effects on the environment to warrant environmental impact assessment.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. The appellant repeats the matters raised during the course of the planning application and raises the following new issue:
- Cost of connecting to the public water main are excessive and the applicant may install a well on site and which could lead to the pollution of neighbouring wells.

### **6.2. Applicant Response**

- 6.2.1. The applicant responds to the appeal and I refer to the submissions made in my assessment below.

### 6.3. **Planning Authority Response**

- No response.

### 6.4. **Observations/Further Responses**

- None.

## 7.0 **Assessment**

7.1. Having regard to the submission on file and my inspection of the appeal site, key issues to be addressed in this appeal comprise:

- Principle and precedents.
- Local housing need.
- Impact on residential and visual amenity.
- Flood risk.
- Impact on wells.
- Public health.

7.2. The appellant also states that the site notices were erected incorrectly/after the stated date. The planning authority is responsible for validating a planning application and the veracity of public notices. Notwithstanding this, by virtue of the appeal made, the purpose of the public notice, to alert the public to the nature and extent of the development, has been served.

### 7.3. **Principle and precedents**

7.3.1. The proposed development is brought forward on land which was previously the subject of condition of permissions granted under PA ref. 98810 and 9934 i.e. that non-agricultural development was precluded from the remaining landholding (shown in blue in 1:5000 map on file). Permission for the development was granted in 1999, almost 20 years ago, in a different local, regional and national policy context. The Planning and Development Act, 2000 (as amended) does not preclude an applicant from seeking permission to vary a condition of a permission, which in effect this application for permission does. Further, there is no evidence of file of a legal

agreement that was entered into with the planning authority, that would raise matters outside of the planning code.

- 7.3.2. Having regard to these factors, I consider that the application for the proposed development be considered on its merits. Parties to the appeal refer to one other matter of precedent, the ability to drain the site. This matter is considered below.

#### 7.4. **Local housing need.**

- 7.4.1. The appeal site lies within a 'Strong Rural Area under Significant Urban Influence' (see attachments) to the south of Mullingar town and with ready access to the N52 and M6.
- 7.4.2. The applicant indicates that he currently resides at Castlelost West, Rochfortbridge, Co. Westmeath. I understand this townland to be c.1.5km to the south east of the appeal site (see application documentation) and is the place where the applicant's parents lived, and the applicant grew up, since 1994. On file there is information which supports this residency, however there is an absence of continuity (e.g. with dates in 2004, 2007, 2013 and 2019) and clarity regarding inconsistencies on the file (e.g. applicant's residency in Mullingar and registered business address, 38 Greenpark West).
- 7.4.3. It is also stated that the applicant works as a part time mobile welding service and part time farmer in the rural area and his partner in Mullingar. Evidence is provided that shows links to the local community (Hurling Club, Dalystown NS, Teagasc programmes, membership of local clubs etc).
- 7.4.4. It is evident from the documentation on file, therefore, that the applicant grew up in the local area and has links to it. However, the NPF clearly sets out a requirement that in areas under strong urban influence, single houses should be restricted to those with a demonstrable economic or social need to live in the local area. Further, in the applicant's submissions there is no reference to, or supporting arguments in respect of, a need to live in the local area.
- 7.4.5. In the absence of this, and the robust evidence to support the assertions made regarding current residence, I consider that the proposed development is inconsistent with the national policy framework for rural housing.

7.4.6. [The appellant refers to other applications made elsewhere by the applicant, under PA references 186193 and 186332 at Clonfad, Dalystown. However, these are not directly relevant to the current appeal, but they do infer that the applicant has no need to live at the subject location. (In response to the appeal, I note that the applicant refers to an incorrect planning application reference number, PA ref. 186322, not 186332).

**7.5. Impact on residential and visual amenity.**

7.5.1. The proposed residential dwelling is a single storey property, situated c.30m north of the existing single storey dwelling to the south of the appeal site and on lower lying land. At this scale, distance and relative orientation and elevation, no significant issues will arise as a consequence of overlooking or overshadowing.

7.5.2. The building line of the proposed dwelling is further from the public road, than the existing properties. However, the road bends at the location of the site and the proposed dwelling is on a large site, suggesting a natural set back in excess of the existing properties. I do not consider that it is in the interest of the visual or residential amenity of the area that the existing building line is followed.

7.5.3. I note the appellant's concerns regarding the impact of the development on the health and safety of residents and visitors and would comment :

- i. The proposed development is a dwelling with little associated traffic and an absence of significant environmental pollution.
- ii. Construction traffic is likely to give rise to short term noise, dust, disturbance on the public road and for adjoining property and possibly damage to the public road. However, such effects will be short term, are unlikely to be unreasonable (given the modest scale of the development) and can be controlled by condition.
- iii. Use of the property as a welding business, would require a future application for planning permission.

7.5.4. In their decision to grant permission the planning authority consider the front elevation of the property to be overly long (c.16m) without relief and require the setback of the left-hand sided section by 300mm. In contrast, I consider that the

frontage is already broken by the projecting front door with gable over and that such an alteration is unnecessary.

## **7.6. Flood risk.**

- 7.6.1. The applicant's Flood Risk Assessment Report assesses the likelihood of fluvial flooding of the site arising from the stream flowing along the northern boundary of the agricultural field in which it is situated and the main channel of the stream (Rochfort stream) which lies to the west of the site and discharges into Lough Ennell, c.2km to the north west of the site. (The FRA states that the main channel of the Rochfort stream lies 300m to the west of the appeal site. However, I estimate this to be c.150m).
- 7.6.2. The Report calculates that the 1000-year flood event (with an allowance for climate change) would generate a maximum flood water level 98.2m in Rochfort stream and a maximum level of 98.82m arising from the stream flowing along the eastern boundary of the site. These levels compare to a finished floor level of 100.4m and proposed site level that varies from 99.9m to 100.50m (the public road as it passes the site is 99.9 to 100.0m). The Report indicates that the subject site is unlikely to flood in the event of adverse weather conditions.
- 7.6.3. The conclusions of the FRA seem reasonable in the wider context that the OPW's Flood Maps indicate no history of flooding on the site and both the planning authority and appellant (see photographs) refer to flooding only of land on the western side of the public road, which is lower lying than the appeal site.
- 7.6.4. Having regard to the above, I do not consider that there is any evidence that the appeal site is subject to flooding or is likely to experience flooding in the future. Subject to the satisfactory onsite discharge of surface water, the proposed development is also unlikely to give rise to flooding.

## **7.7. Impact on wells**

- 7.7.1. There is no information in the planning application documentation on the location of wells serving the adjoining residential properties. However, both properties are on a higher elevation than the appeal site and the proposed WWTS lies to the north east of these on lower lying land, with likely subsurface drainage following the topography

i.e. moving to the north and east, away from the adjoining properties.

Notwithstanding this, the matter and potential effects of construction works on adjoining wells could be addressed by condition.

## **7.8. Public health**

- 7.8.1. The appellant's argue that there is a precedent set that the subject lands cannot be adequately drained on the basis that a previous planning application (under PA ref. 06/4409) was refused permission on the grounds of inadequate percolation.
- 7.8.2. The proposed development is situated on lands to the south of the site refused permission under PA ref. 064409. Further, the application for the proposed development is accompanied by a Site Characterisation form and percolation tests which conform to the EPAs current code of practice. The site assessment indicates that the appeal site overlies a locally important aquifer with low vulnerability (groundwater protection response R1). Depth to groundwater is stated to be 1.2m and T = 33.83 and P = 26.31 indicating that the site is suitable for a wastewater treatment system. From inspection of the site, I observed water at depth in the trial hole, but no water lying in the shallower percolation holes and no evidence of ponding or rushes in the agricultural field. I consider, therefore, that the proposed wastewater treatment system with raised soil polishing filter (with more than 1.2m of unsaturated soil between the invert of the distribution system and water table) is adequate to discharge waste water from the site without risk to public health of the contamination of groundwater.

## **8.0 Appropriate Assessment**

- 8.1. The appeal site is situated c.2km south east of Lough Ennell, a Special Area of Conservation (site code 000685) and a Special Protection Area (site code 004044). Further, surface water bodies in the vicinity of the site discharge into the Lough raising the potential for connectivity. Notwithstanding this, the proposed development comprises a modest development on a large site which is physically removed from these water bodies. Further, all surface water is proposed to be discharged to an on-site soakaway and foul water into a proprietary effluent treatment system with raised percolation area. Having regard to these design details

(but even in their absence), the distance of the site from Lough Ennell and the dilution and attenuation of soils/underground pathways, any discharges to ground are unlikely to give rise to any significant effects on water quality in Lough Ennell.

- 8.2. It is considered, therefore, that no Appropriate Assessment issues arise, and that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 Recommendation

- 9.1. I recommend that permission for the proposed development be refused.

## 10.0 Reasons and Considerations

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 and in an area where housing is restricted to persons demonstrating local need in accordance with the Westmeath County Development Plan 2014-2020. Furthermore, the subject site is located in a rural area that is 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 planning application and the 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 would be contrary to the proper planning and sustainable development of the area.

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Deirdre MacGabhann  
Planning Inspector

3<sup>rd</sup> December 2019