



An
Bord
Pleanála

Inspector's Report

ABP-305194-19

Development	Bungalow with effluent treatment system and percolation area using existing vehicular entrance and all associated site works.
Location	Clonanny, Portarlinton, Co. Laois.
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	19312
Applicant	Kasey-Jo Hyland
Type of Application	Permission.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant	Kasey-Jo Hyland
Observer	Cllr. Tom Mulhall
Date of Site Inspection	23 rd , October 2019
Inspector	Paddy Keogh

1.0 Site Location and Description

- 1.1. The site of the proposed development which has a stated area of 0.344 hectares is located in the rural townland of Clonmany. The site comprises the eastern portion of a paddock with frontage onto a straight section of the Regional Road R424 along which traffic travels at up to the maximum speed limit. The site is low lying and enclosed by sections of hedgerow and a post and wire fence separating it from the remainder of the paddock. There is currently an occupied mobile home and sheds placed on the remainder of the paddock. The latter has direct vehicular access onto the R424.
- 1.2. There is a scattering of houses (on both sides of the R424) in the general vicinity of the site. At the time of site inspection there was a bungalow for sale on a site on the same side of the R424 as appeal site and c. 100m west of the site.
- 1.3. There are open drains running along both the front and rear boundaries of the site.
- 1.4. The proposed means of access to the proposed dwelling will be via an existing vehicular entrance from the R424 which is located c. 300m west of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development involves the construction of a bungalow together with effluent treatment system and percolation area together with all associated and ancillary works
- 2.2. The proposed bungalow will connect with the Regional Road R424 via an existing vehicular entrance (via a proposed new c. 300m access driveway/private laneway connecting with the existing entrance).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of a decision to refuse planning permission for the proposed development for 4 reasons was issued by the planning authority per Order dated 24th, July 2019. Briefly, the stated reasons for refusal were:

- (1) The proposed development would contravene policy 'Trans 19' of the Laois County Development Plan 2017-2023 which restricts new access onto Regional routes save for full-time farmers or farmers and / or their children and where evidence submitted clearly demonstrates that an alternative site accessed from a local road is not available and the development can be accommodated without representing a traffic hazard.
- (2) The proposed development itself and by the precedent it would set would be contrary to the proper planning and sustainable development of the area.
- (3) The proposed development would exacerbate the risk of flooding within the site and / or increase the risk and consequences of flooding elsewhere contrary to the provisions of the Planning System and Flood Risk Management Guideline, Guidelines for Planning Authorities (2009).
- (4) The applicant has not demonstrated sufficient estate to carry out the proposed development as a right of way onto the unnamed road, which adjoins Regional Road R424, has not been shown.

3.2. Planning Authority Reports

3.2.1. Planning Reports

A report from the planning authority Executive Planner dated 19th, July 2019 includes:

- The site is located within an area designated as being '*Under Strong Urban Influence*' under the Laois County Development Plan 2017 – 2023.
- The site is located within an area characterised as 'lowland agricultural' in the Development Plan.
- The northern portion of the site of the proposed house falls within an area designated as 'Flood Zone B'. The proposed (private) access road to the site falls within an area designated as 'Flood Zone A'.
- Recent planning history of the site noted, namely Reg. Ref. 18/669 under which planning permission for a dwelling on the same site, to the current

applicant (with different access arrangements) was refused by the planning authority.

- No details of compliance with Development Plan policy for a dwelling at this location has been submitted with the current planning application. However, under Reg. Ref. 18/669, the applicant was deemed to have complied with planning authority rural housing policy for a dwelling at this location.
- Access to the site of the proposed development will be onto a Regional Road (R424) within a 60 kph speed limit zone. This is contrary to Development Plan Policy *TRANS 19* which provides restrictions in relation to development requiring access onto Regional Roads where speed limits in excess of 50 kph apply (subject to relaxation in certain circumstances e.g. single dwelling units for farmers, a farmer's son of daughter subject to no other more suitable site being available, farm minimum area of 91 acres etc.).
- Comments of Roads Department in respect of applicant's failure to demonstrate the required (160 m) unobstructed sight lines in each direction noted.
- The proposed development involves the construction of a 300m 'entrance roadway' from an 'existing entrance roadway' to the west of the site. However, this route currently comprises fields and gateways. No construction details have been submitted in respect of this proposed access route.
- The proposed 300m access roadway is located within a 'Flood Risk Zone A'. Neither a Flood Risk Justification Test nor a Flood Risk Assessment has been submitted with the application which is contrary to the 'Planning System and Flood Risk Management (Guidelines to Planning Authorities) (November 2009) and contrary to Policy FD2 of the Laois County Development Plan 2017-2023.
- The applicant has not demonstrated that she has sufficient ownership and/or access rights to use the proposed access route to the Regional Road R424.
- Further details are required in relation to site suitability for effluent disposal by means of a proprietary on-site effluent treatment unit.

3.2.2. Other Technical Reports

Road Design Engineer – Report dated 25th, June 2019 recommends that the applicant be requested to submit further information to (i) demonstrate that required 160m sight lines are achievable at the proposed point of access and (ii) confirm details of ownership of the proposed access laneway.

Executive Technician Planning – Report dated 20th, June 2019 recommends that further information be requested from the applicant in relation to method of calculation and assessment of site suitability for effluent disposal by means of proposed effluent treatment system and percolation area.

4.0 Planning History

Reg. Ref. 18/669 – Planning permission to construct a bungalow, septic tank, percolation area/treatment system a new entrance from the R424 for Kelly-Jo Hyland Briefly, the stated reasons for refusal were as follows:

- (1) The proposed development would contravene policy ‘Trans 19’ of the Laois County Development Plan 2017-2023 which restricts new access onto Regional routes save for full-time farmers or farmers and / or their children and where evidence submitted clearly demonstrates that an alternative site accessed from a local road is not available and the development can be accommodated without representing a traffic hazard.
- (2) The proposed development itself and by the precedent it would set would be contrary to the proper planning and sustainable development of the area.

[The current application/appeal is essentially a repeat of this application with revisions to the proposed access route]

5.0 Policy Context

5.1. Laois Development Plan 2017 - 2023

- 5.1.1. The site of the proposed development is located within a rural area designated as being an area ‘*Under Strong Urban Influence*’ per Table 6 of the Development Plan.

5.1.2. Table 6 specifies that in relation to areas 'Under Strong Urban Influence' it is an objective of the Council only to permit single houses to facilitate those with a local rural housing need in the area, particularly those who have lived in a rural area. In order to demonstrate a genuine rural housing need any of the following criteria shall be met:

- (a) The application is being made by a long term landowner or his/her son or daughter seeking to build their first home on family lands; or
- (b) The applicant is engaged in working the family farm and the house is for that persons own use; or
- (c) The applicant is working in rural activities and for this reason needs to be accommodated near their place of work; or
- (d) The application is being made by a local rural person(s) who have spent a substantial period of their life living in the local rural area , and, who for family and/or work reasons need to live in the rural area.

5.1.3. Policy 'CS44' states:

Ensure that the provision of rural housing will not detract from the county's natural and built heritage, economic assets and environment and the planning authority will have regard to the relevant Development Plan objectives.

5.1.4. Policy 'CS49' states:

Outside the settlements which are zoned and designated in the Settlement Strategy, all proposed development which is vulnerable to flooding and is located in flood zones A and B must pass the Development Management justification test.

5.1.5. Policy 'TRANS 19' states that is policy of the Council to:

Restrict development requiring access onto Regional Roads where speed limits in excess of 50 kpm apply. This restriction will not necessarily apply in the following cases:

- *In the case of applications for single dwelling units for a farmer or a farmer's son or daughter, permission may be considered, where evidence*

submitted clearly demonstrates that an alternative site accessed from a local road is

not available and where the Council's road standards can be met. Also, the farm in question is of a minimum size of 37 hectares (91 acres).

- *etc....*

5.2. National Policy

5.2.1. Sustainable Rural Housing Planning Guidelines

The site of the proposed development is located within an area designated as being under strong urban influence.

The Guidelines distinguish between 'Urban Generated' and 'Rural Generated' housing need. Examples of situations where rural generated housing need might apply as set out in the Guidelines include rural houses for '*persons who are an intrinsic part of the rural community*' and '*persons working full time or part time in rural areas*'

5.2.2. National Planning Framework

National Policy Objective No. 19 states

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.

5.3. Natural Heritage Designations

- 5.3.1. The River Barrow and River Nore Special Area of Conservation (SAC) (Site Code 002162) is located c. 800m to the north of the subject site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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. The submitted grounds of appeal include:

- The appeal site is in the ownership of the applicant/appellant. This is the only site available to her. She has no claim to any other lands in the vicinity.
- The proposed access arrangements (which overcome the planning authority concerns in relation to the previous proposal refused planning permission per Reg. Reg. 18/669) will utilize an existing entrance onto the R424 and do not involve the creation of a new entrance.
- The proposed dwelling will not be located on lands that have been identified as being within an area of Flood Risk. Only 42% of the proposed access route has been identified as an area of Flood Risk. Laois County Council did not afford the applicant the opportunity (by way of a request for further information or otherwise) to provide a Site Specific Flood Risk Assessment to prove that the proposed access route would be fully functional and would not exacerbate the risk of flooding within the site and/or increase the risk of consequential flooding elsewhere.

6.2. Planning Authority Response

None

6.3. Observations

- 6.3.1. A submission per letter dated 26th, August 2016 from Cllr. Tom Mulhall states that he supports the proposed development.

6.4. Department of Culture, Heritage & the Gaeltacht.

- 6.4.1. A submission per letter dated 21st, October 2019 states that the Department supports the planning authority decision to refuse planning permission for the proposed development based on the fact that lands in the immediate vicinity of the site have been identified as being at risk of flooding.

7.0 Assessment

I consider that the key matters arising out the current appeal can be addressed under the following headings. The matter of Appropriate Assessment also needs to be addressed.

- (1) Access
- (2) Flood Risk
- (3) Other Matters

(1) Access

- 7.1.1. The planning authority have previously refused planning permission for a dwelling at this location for reasons including the fact that the proposed development would involve the creation of an access onto Regional Road R424 in contravention of Development Plan policy 'TRANS 19' i.e. at a point where speed limits in excess of 50 kph apply. (Reg. Ref. Reg. Ref. 18/669).
- 7.1.2. The current proposal seeks planning permission for a similar dwelling on the same site as that previously refused planning permission under Reg. Ref. 18/669. However, it is now proposed to connect the site with an existing vehicular entrance onto the R424 at a point to the west of the site. This connection will entail the creation of a new c. 300 m private driveway/private lane through existing agricultural fields to the rear of the site and through adjoining fields currently being used for agriculture.

- 7.1.3. Development Plan policy *TRANS 19* seeks to restrict development requiring access onto Regional Roads where speed limits in excess of 50 kpm apply. Development Plan policy provides that this restriction will not necessarily apply in the case of applications for single dwelling units for a farmer or a farmer's son or daughter, permission may be considered, where evidence submitted clearly demonstrates that an alternative site accessed from a local road is not available and where the Council's road standards can be met. Furthermore, the farm in question should be of a minimum size of 37 hectares (91 acres).
- 7.1.4. The planning authority Roads Department have reported that sightlines of 160m in each direction at the point of access onto a Regional Road are required. The Roads Engineer notes that there are a number of obstructions within the 160m sightlines from the existing entrance onto the Regional Road. No details have been submitted by the applicant demonstrating how these obstructions (which are on lands outside the appeal site and, therefore, possibly outside the applicant's control) are to be removed or managed.
- 7.1.5. In the circumstances outlined, the proposed development would result in an intensification of turning movements via an entrance onto the Regional Road R424 at a point where speed limits in excess of 50 kph applies and where sight lines of 160 m in each direction have not been provided.
- 7.1.6. No details have been submitted with the current application in relation to family landholding in the area. However, I note details on file relating to the previous application under Reg. Ref. 18/669 which indicates details of the family landholding at this location. It would appear from this documentation that the family landholding does not meet the minimum 37 hectare (91 acre) requirement specified for the purposes of policy '*TRANS 19*'. Furthermore, it would appear that there are more suitable alternative sites within the family land ownership with frontage onto a local access road that would be unburdened by the problems associated with the access now being proposed from a Regional Road.
- 7.1.7. The proposed new private roadway/driveway to connect with the existing entrance onto the R424 will cross existing low lying agricultural land and run parallel to an existing drainage channel that runs to the north of the appeal site. The submitted documentation states that a right of way will be provided along this route (indicated

in yellow on a submitted drawing). A letter on file (unsigned) from Mai & Joe Hyland (the applicant's parents) states that they give permission to the applicant to use the existing entrance and land to gain access to the appeal site. No details in relation to the design and construction of the proposed access road have been submitted.

7.1.8. Documentation on file indicates that the appeal site has been legally transferred to the applicant. It is stated that this is the only land owned by the applicant and that no other site is available to the applicant on the family landholding for reasons relating to the effective management of the family farm.

7.1.9. It appears from the documentation on file (including the documentation relating to the previous refusal of planning permission per Reg. Ref. 18/669) that the family lands include land with road frontage to a local road. It is stated that the applicant's parents have transferred sites to each of their three children. On the basis of the submitted documentation, I am not satisfied that the applicant has fully explored the availability of other more suitable sites within the family landholding. In my opinion, it is not sufficient to merely state that a more suitable site is not available on the grounds that the selected site would have less impact on the running of the farm from a practical point of view. I consider that this does not justify granting of planning permission onto a Regional Road where the speed limit is in excess of 50 kph and resulting the the intensification of the use of an existing entrance which does not benefit from unobstructed sight lines for at least 160 m. in both directions. Accordingly, I consider that the applicant has not demonstrated that proposed development falls within the exceptions allowed for in relation to the general restriction relating to access onto a Regional Road under Development Policy 'TRANS 19'. Therefore, the proposed development which would result in an intensification of use of an existing entrance would be contrary to this policy. Furthermore, in the circumstances outlined I consider that the creation of a 300m private entrance road to connect the appeal site (to serve a single dwelling) with an existing entrance would be unwarranted,

(2) Flood Risk

7.1.10. The proposed dwelling is located outside an area identified as a Flood Risk zone. Nonetheless, a significant portion of the proposed c. 300 m. access road linking the appeal site with the existing entrance onto Regional Road R424 is located within an

area identified as a Flood Risk Zone and the northern portion of the site for the proposed dwelling is located within a Flood Risk Zone (Zone A and Zone B).

- 7.1.11. Policy 'CS 49' of the Development Plan states that 'outside the settlements which are zoned and designated in the Settlement Strategy, all proposed development which is vulnerable to flooding and is located in flood zones A and B must pass the Development Management justification test.
- 7.1.12. The submitted grounds of appeal argue that the applicant was not afforded an opportunity by the planning authority (by way of a request for further information) to provide a Site Specific Flood Risk Assessment to justify the construction of the proposed development (within and adjoining areas of flood risk).
- 7.1.13. No Flood Risk Assessment or justification test has been submitted by the applicant in the documentation lodged with the planning authority nor was a Flood Risk Assessment or justification test included in the documentation accompanying the appeal lodged on behalf of the applicant. In these circumstances, the proposed development is contrary to Development Plan policy and requirements of the '*Planning System Flood Risk Management (Guidelines for Planning Authorities)*' issued by the Dept. of Environment, Heritage and Local Government in 2009.

(3) Other Matters

- 7.1.14. Documentation submitted with the current application and appeal highlights that the applicant owns the appeal site having been gifted it by her mother. The site has been sub-divided from a larger family farm holding. The applicant attended a local school. On this basis, it would appear that the applicant complies with the planning authority Rural Housing to justify a rural dwelling in an area designated as being Under Strong Urban Influence (Table 6 of Development Plan). Nonetheless, no details in relation to the applicants current social and economic circumstances (place of employment, nature of employment etc.) have been submitted. In this regard, I consider that the applicant has not satisfactorily demonstrated how she complies with National Policy Objective 19 of the National Planning Framework.
- 7.1.15. I consider that this matter constitutes a new issue in the context of the current application and appeal and that including this as a reason for refusal would be unwarranted at this juncture.

- 7.1.16. The site of the proposed development is low lying. Drainage ditches run along both the northern and southern boundaries of the site. The applicant proposes to provide for effluent disposal by means of a proprietary on-site effluent treatment unit. On the basis, of the documentation on file the applicant has not demonstrated that the site is capable of accommodating the proposed (12 PE) unspecified treatment unit.
- 7.1.17. I consider that this matter constitutes a new issue in the context of the current appeal and that including this as a reason for refusal would be unwarranted at this juncture.

7.2. Appropriate Assessment Screening

- 7.2.1. The River Barrow and River Nore SAC (Site Code 002162) is located c. 800m to the north of the appeal site. This is the only Natura 2000 site within a 15 km radius of the site. There is no water connection between the appeal site and the SAC.
- 7.2.2. 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 considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European site.

8.0 Recommendation

- 8.1. I recommend that planning permission for the proposed development be refused for the reason and considerations as set out below.

9.0 Reasons and Considerations

- (1) Development Plan policy as set out at 'TRANS 19' of the Laois County Development Plan 2017-2023 seeks to restrict development requiring access onto Regional Roads where speed limits in excess of 50 kph apply save in

circumstances where the proposed development is for full-time farmers and farmers and/or their children and where evidence submitted clearly demonstrates that an alternative access from a local road is not available and the development can be accommodated without representing a traffic hazard. On the basis of the documentation submitted with the current application and appeal, the Board considers that the applicant has not satisfactorily demonstrated that alternative family lands with access onto a local road are not available to the applicant. Furthermore, it is considered that proposed development would result in an unwarranted intensification of traffic turning movements at an existing entrance onto the Regional Road R424 at a point where a speed limit in excess of 50 kph applies and where traffic travels at up to the maximum speed limit. Accordingly, the proposed development would contravene Development Plan policy as set out at Policy 'TRANS 19', would set an undesirable precedent for similar developments and would, therefore, be contrary to the proper planning and sustainable development of the area.

- (2) The majority of proposed c. 300 m. access road linking the site of the proposed development with the existing access route to Regional Road R424 together with the northern end of the site of the proposed development is situated on lands identified as areas of flood risk (Flood Zones A and B). The applicant has not demonstrated how the proposed development complies with development management criteria set out in 'The *Planning System and Flood Risk Management - Guidelines for Planning Authorities*' issued by the Department of the Environment, Heritage and Local Government (2009) in terms of a justification test for the proposed development which is classified as 'highly vulnerable' development. Furthermore, the applicant has not demonstrated how the proposed development complies with Policy 'CS 49' of the Laois County Development Plan 2017-2023 which stipulates that outside the settlements which are zoned and designated in the Settlement Strategy, all proposed development which is vulnerable to flooding and is located in flood zones A and B must pass the Development Management justification test. Accordingly, the proposed development would be contravene Development Plan policy 'CS 49' and would contravene the Planning System

Flood Risk Management Guidelines and would be contrary to the proper planning and sustainable development of the area.

NOTE:

(1) The Board was not satisfied, on the basis of the documentation submitted with the current application and appeal, that the applicant complies with the requirements of National Policy Objective 19 of the National Planning Framework to justify a dwelling in this rural area which is classified as an area Under Strong Urban Influence. However, the Board considered that this matter constitutes a new issue in the context of the current appeal and, therefore, decided not to pursue the matter further in light of the substantive reasons for refusal as set out above.

(2) On the basis of the documentation submitted with the current application and appeal, the Board was not satisfied that the applicant had satisfactorily demonstrated that the proposed on site effluent treatment unit could be satisfactorily accommodated on site. However, the Board considered that this matter constitutes a new issue in the context of the current appeal and decided not to pursue this matter in light of the substantive reasons for refusal as set out above.

Paddy Keogh
Planning Inspector

2nd, December 2019