



An  
Bord  
Pleanála

## Inspector's Report ABP-305283-19.

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<b>Development</b>	Construction of a new dwelling house and domestic garage together with septic tank, proprietary treatment unit and percolation area, access road and all other ancillary site works
<b>Location</b>	Mooretown, Rathcoffey, County Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority Reg. Ref.</b>	19/119.
<b>Applicant(s)</b>	Rosemary & Mark Sweeney.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Rosemary & Mark Sweeney.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	13 <sup>th</sup> November, 2019.
<b>Inspector</b>	A. Considine.

## 1.0 Site Location and Description

- 1.1. The subject site is located in the northern area of Co. Kildare, approximately 6.3km to the south of the M4 Motorway, 8km to the south of Maynooth, 10 km to the west of Celbridge and within 1km to the south west of the settlement of Rathcoffey. The site lies in a rural location and immediately to the rear of a number of family members houses, all of which are accessed off the R408 regional road. The area, while rural in its nature, has been subject to pressure for one off houses as evidenced along the approach road.
- 1.2. The site has a stated area of 0.414ha, comprises part of a larger field and is currently under grass. The site is generally flat and level and is accessed over an unpaved, grassed area of land which has a width of approximately 11m. This access is bound on the south by a hedge and the north by a post and rail timber fence, both associated with existing residential sites. The wider area of the site lies approximately 90m from the road.
- 1.3. The existing houses to the front of the proposed site comprise large detached dormer dwellings on large sites.

## 2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for the construction of a new dwelling house and domestic garage, together with septic tank, proprietary treatment unit and percolation area, access road and all other ancillary site works, all at Mooretown, Rathcoffey, Co. Kildare.
- 2.2. The application included a number of supporting documents including as follows;
  - Plans, particulars and completed planning application form
  - Rural Housing Planning Application Form – including details to confirm compliance with Rural Housing Policy
  - Site Suitability Assessment – Percolation Test Report
  - Land Registry Folio
- 2.3. The house design proposes a single storey building with a maximum ridge height of 6.225m and with a total floor area of 309m<sup>2</sup>. The house will provide for four double

bedrooms, two en-suite, a games room, two family bathrooms, playroom and laundry room. The kitchen / living / dining rooms are provided in a large open plan area with a separate pantry proposed. The development also proposes a double garage. The house will be finished in a nap plaster finish with blue/black slate to the roof and uPVC windows.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority decided to refuse planning permission for the proposed development for the following 3 stated reasons:

1. Policy RH10 of the Kildare County Development Plan 2017-2023 seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. It is considered that the proposed development by reason of its location in proximity to the designated Rural Settlement of Rathcoffey and the town of Clane, would further exacerbate the level of development proximity to both settlements where lands are zoned for residential purposes, having regard to the level of existing development in the area, and the precedent of backland development that the proposed development would set for further development in this area, would contribute to the further unsustainable development of this rural area. The proposed development would materially contravene Policy RH10 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.
2. Policy RH9 of the Kildare County Development Plan 2017-2023 seeks to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other siting and design considerations, including the capacity of the area to absorb further development. Policy RH12 of the Kildare County Development Plan 2017-2023 seeks to discourage ribbon development. In conjunction with the level of existing development in the vicinity, it is considered that the proposed development would exacerbate an excessive density of development in this rural area, would constitute ribbon

development, would contribute to the increasing suburbanisation of the area and would materially contravene both policy RH9 & RH12 of the Kildare County Development Plan 2017-2023. The development would therefore be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical and prescribed bodies reports, planning history and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report.

The initial Planning Report concludes that further information is required in relation to the development pressure in the area, evidence to demonstrate compliance with the settlement location policy of the CDP and National Policy Objective 19 of the NPF as well as site suitability issues and entrance details.

Following the submission of a response to the FI request, the final planning report concludes that proposed development the applicant has demonstrated compliance with the local need criteria and is acceptable. The Planning Officer recommends that permission be granted for the proposed development, subject to 16 conditions.

The SEP considered the proposed development and the EPs report in relation to same. The SEP concludes that notwithstanding the applicants apparent compliance with the Planning Authoritys local needs criteria for rural housing, permission should be refused for the 2 reasons as stated.

This Planning Report formed the basis of the Planning Authority decision to refuse planning permission.

#### 3.2.2. Other Technical Reports

**Water Services:** No objection subject to compliance with conditions.

**Environment Section:** Further information required in relation to site suitability.

The report notes that the site is not suitable for a standard septic tank system but appears suitable for a secondary system and polishing filter but water table was visible at 0.5m bgl.

Following the submission of a response to the FI request, the Environment Section advises no objection subject to compliance with conditions.

**Maynooth Municipal District Engineer:** No objections subject to compliance with conditions.

**Roads, Transportation & Public Safety:** No objection subject to compliance with conditions.

### 3.2.3. Prescribed Bodies

**Irish Water:** No objection subject to compliance with conditions

### 3.2.4. Third Party Submissions

There is 1 no third party submission noted on the planning authority file from James Lawless TD, supporting the proposed development.

## 4.0 Planning History

There is no relevant planning history pertaining to the subject site.

The following relates to adjacent sites:

**PA ref 99/1031:** Planning permission was granted to Caroline Dowd (applicant's sister) for the construction of a dwelling on a site to north east of the entrance to the current site.

**PA ref 03/171:** Planning permission was granted to Trevor Keenan (applicant's brother) for the construction of a dwelling on a site to south west of the entrance to the current site.

**PA ref 05/2459:** Planning permission was granted to Sandra Kenny (applicant's sister) for the construction of a dwelling on a site to north east of the entrance to the current site.

**PA ref 07/374:** Planning permission was granted to Debra Bell (applicant's sister) for the construction of a dwelling on a site to north east of the entrance to the current site.

## **5.0 Policy and Context**

### **5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018**

The National Planning Framework – Project Ireland 2040 is a high level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations. In rural areas elsewhere, it refers to the need to 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. Sustainable Rural Housing Development Guidelines 2005**

The Rural Housing Guidelines seek to provide for the housing needs of people who are part of the rural community in all rural areas and makes a distinction between 'Urban Generated' and 'Rural Generated' housing need. Chapter 4 of the guidelines relates to rural housing and planning applications and states that in areas under significant urban influence, applicants should outline how their proposals are consistent with the rural settlement policy in the development plan. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply, including 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

The Guidelines further require that new houses in rural areas be sited and designed in a manner so as to integrate well with their physical surroundings and generally be compatible with water protection, roads, traffic and public safety as well as protecting the conservation of sensitive areas.

### 5.3. Development Plan

- 5.3.1. The Kildare County Development Plan 2017-2023 is the relevant policy document pertaining to the subject site. Chapter 4 refers to Housing, Chapter 10 to Rural Development, Chapter 14 to Landscape, Recreation & Amenity and Chapter 16 to Rural Design.
- 5.3.2. The Plan sets out criteria for an applicant to be considered for a one-off dwelling in the county, and 2 rural housing zoned are identified. 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). Map V1-4.4 of Chapter 4 indicates that the area is located in 'Rural Housing Policy Zone 1'.
- 5.3.3. In the context of the current appeal before the Board, as neither are actively engaged in farming, the applicant is considered a Category 2 Applicant in Zone 1 and is therefore required to comply with the following:

**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<sup>1</sup> 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

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<sup>1</sup> Immediate family members are identified as mother, father, son, daughter, brother, sister or guardian.

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.

Table 4.3(b) includes the following note:

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.

5.3.4. Section 4.13 of the Plan deals with Policies: Rural Housing and the following policies are considered relevant:

- 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’.
- 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’.
- 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 criteria relating landscaping, location and design, protection of landscape features,



capacity of landscape to accommodate further development, vehicular access, waste water treatment and flood risk management.

- 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 a number of areas including efficient development of towns and villages, provision of future infrastructure and the potential to undermine the viability of public transport.
- Policy RH12 seeks to discourage ribbon development.
- Policy RH14 advises that the Council will only consider family members for backland development. Only single storey bungalow (including attic accommodation) type houses will be allowed in such backland locations to limit visual impact and overlooking.

5.3.5. The subject site is located within Northern Lowlands Landscape Character Area which is identified as a Class 1 landscape having low sensitivity. Such areas are described as 'Areas with the capacity to generally accommodate a wide range of uses without significant adverse effects on the appearance or character of the area.'

#### 5.4. **Natural Heritage Designations**

The site is not located within any designated site. The Ballynafagh Bog SAC (& pNHA) (Site Code: 000391) is located approximately 6.1km to the south west of the site, with Ballynafagh Lake SAC (& pNHA) (Site Code: 001387) is located approximately 6.5km to the south west of the site

The Donadea Wood pNHA (Site Code 001391) lies approximately 2.5km to the west of the site and Hodgestown Bog NHA (Site Code 001393) is located approximately 6.8km to the west of the site.

#### 5.5. **EIA Screening**

Having regard to nature and scale of the development, which comprises a single rural house, together with the nature of the site and 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

This is a first party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development for the three stated reasons. The appeal presents a background to the application advising that the applicants are the last in their family to seek permission to build their home on family land. They are not in a position to buy a site in Rathcoffey/ Donadea which are approximately €225,000 and houses ranging from €410,000 to €700,000. The applicant seeks to build a home on family lands in their native area where she was born, educated and now works. The appeal is summarised as follows:

- The planner recommended granting permission subject to conditions and there were no technical objections subject to conditions.
- Reason no. 1:
  - The site is an infill site adjacent to family members homes, on family land.
  - A grant of permission would not be contrary to the proper planning and development of the area.
  - An existing entrance is in situ and the house will connect to public water supply.
  - There has been precedent set by Kildare County Council for similar type developments – ie backland. Appeal references previous permissions in Rathcoffey and Donadea.
- Reason no. 2:
  - The house has been designed and located to be sympathetic to the landscape and surroundings and aims to contribute to the overall attractiveness of the area in accordance with Policy RH9.

- In terms of compliance with Policy RH12, it is submitted that the house will be located in excess of 100m from the road and does not occupy any part of the road frontage. It is an infill site adjacent to family members on family lands.
- In terms of Policy RH14, all adjacent houses have supplied letters of support for the proposed development.

It is requested that permission be granted as requested on the basis that the applicant seeks to build a home on family lands adjacent to family members on an infill site.

## **6.2. Planning Authority Response**

The Planning Authority submitted a response to the first-party appeal advising no further comments.

## **6.3. Observations**

None.

## 7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site and the nature and scale of the proposed development, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Compliance with National Guidelines & Standards, the County Development Plan & General Development Standards
2. Visual Impacts
3. Site Suitability Issues
4. Roads & Traffic
5. Other Issues
6. Appropriate Assessment

### 7.1. Compliance with National Guidelines & Standards, the County Development Plan & General Development Standards:

- 7.1.1. The subject site is located within a rural area in Co. Kildare which is identified as being under strong urban influence for one-off housing, as defined in the Sustainable Rural Housing Guidelines and the Kildare County Development Plan. There is a presumption against development in such areas save for in instances where it can be demonstrated that an applicant complies with the Planning Authority's rural housing policy. Should the Board be minded to grant planning permission in this instance it should be satisfied that the appellant adequately complies with the requirements of these stated policies as detailed in Chapter 4 of the Plan, as well as National Policy Objective 19 of the National Planning Framework. The wider area is under urban influence given its proximity to the wider Dublin commuting belt and the M7, which is located approximately 7km from the site.
- 7.1.2. Objective 19 of the National Planning Framework seeks to ensure that in rural areas under urban influence, the provision of single housing in the countryside will be

based on the core consideration of demonstratable economic or social need to live in a rural area..... having regard to the viability of smaller towns and rural settlements.

- 7.1.3. In terms of the Rural Housing Policy of Kildare County Council, the site is located in an area identified as Rural Housing Policy Zone 1. The applicant is not a farmer or engaged in farming, therefore they must meet certain criteria to be considered in terms of local needs. Table 4.3 (b) refers and notes that in order to be considered 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.

- 7.1.4. 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'. In addition, Policy RH6 of the CDP seeks to prohibit urban-generated housing in rural areas.

- 7.1.5. In the context of the subject appeal, the Board will note that Mrs. Sweeney has provided adequate evidence to confirm that she is from the locality and the subject site lies adjacent to the family homes of her siblings. The applicants parents reside in the family home approximately 3km from the subject site. Mrs. Sweeney works as a Social Work Team Leader for an intellectual disability organisation which provides services in the local rural areas of Rathcoffey, Donadea, Clane and Prosperous, which require her to be local and readily available to provide assistance. Mr. Sweeney works as a District Retail Manager for Oxfam Ireland and travels for work, covering Kildare, Dublin, Meath, Westmeath and the west of Ireland. The applicants currently live in rented accommodation in Clane and advise that they cannot afford to purchase either a site or a house in the area due to the current market costs. It is

clear that neither applicant has a specific economic need to live on the landholding, but evidence has been presented to indicate a possible social need. All of Mrs. Sweeneys siblings live within the immediate area of the site, on lands purchased by her father to provide for his children. While I acknowledge the above, I have serious concerns in terms of the significant pressure this area of the County is under and as evidenced by the extensive length of ribbon development from the site towards the zoned area of Rathcoffey, approximately 560m to the north east of the site. I further consider that the development amounts to urban-generated housing.

- 7.1.6. In addition to the above, 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 a number of areas including efficient development of towns and villages, provision of future infrastructure and the potential to undermine the viability of public transport, while Policy RH12 seeks to discourage ribbon development.
- 7.1.7. A grant of planning permission, in my opinion, will contravene Policy RH6, Policy RH10 and Policy RH12 of the CDP. As such, I am satisfied that the applicant has not demonstrated adequate compliance with the policy objectives of the County Development Plan as they relate to rural housing, Objective 19 of the National Planning Framework or the guidance provided within the Sustainable Rural Housing Guidelines.

## 7.2. **Visual Impacts**

- 7.2.1. The subject site is located within Northern Lowlands Landscape Character Area which is identified as a Class 1 landscape having low sensitivity. Such areas are described as 'Areas with the capacity to generally accommodate a wide range of uses without significant adverse effects on the appearance or character of the area.'
- 7.2.2. Chapter 16 of the County Development Plan provides guidance in terms of design for new dwellings which seeks to focus on both site selection, location within the site, and the scale, form and proportion of the design. The focus is on choosing the least obtrusive site, blending the house with the topography, avoiding prominent hillside locations, and using simple forms.

- 7.2.3. The house design proposes a single storey building with a maximum ridge height of 6.225m and with a total floor area of 309m<sup>2</sup>. The house will provide for four double bedrooms, two en-suite, a games room, two family bathrooms, playroom and laundry room. The kitchen / living / dining rooms are provided in a large open plan area with a separate pantry proposed. The development also proposes a double garage. The house will be finished in a nap plaster finish with blue/black slate to the roof and uPVC windows. The layout of the house forms almost a U shape and therefore occupies a large footprint on the site.
- 7.2.4. I consider that the overall design of the house proposed is acceptable and note the landscaping proposals for the wider site, which would provide screening from the public roads. Having regard to the overall size of the site proposed, together with the retention of significant lengths of the existing hedgerow, and proposals to plant further hedgerows, I would not be concerned that the development could not appropriately integrate into its physical surroundings.

### 7.3. **Site Suitability issues**

- 7.3.1. In terms of site suitability, the Board will note that the applicant submitted a full site assessment and recommendations for the treatment and disposal of waste water. Kildare County Council raised concerns regarding the use of a septic tank and the matter was a subject of the further information request issued by the Planning Authority. In response, the applicant has advised that it is intended to install TRICEL will provide and oversee the installation of the wastewater treatment system. The raised percolation area will be installed a minimum of 1000mm above the observed water table 0.5, bgl. The system proposed will provide secondary treatment using submerged aerated filter technology. The Environment Section of Kildare County Council advised no objection to the proposed development in this regard.
- 7.3.2. Having considered the information provided with regard to the proposed development, I am satisfied that the applicant submitted a robust and complete site assessment regarding its suitability in terms of the treatment and disposal of wastewater generated on the site. The site assessment appears to have been carried out by a suitably qualified professional.

7.3.3. I have considered all of the information presented on the file and I am generally satisfied that the subject site has been adequately assessed to show that it is capable of accommodating the proposed development in terms of the treatment and disposal of wastewater arising from the development of a house. I am therefore satisfied that the development, if permitted, is unlikely to result in a public health hazard or impact on the quality of ground or surface waters in the area.

#### 7.4. **Roads & Traffic**

7.4.1. The proposed development is to use an existing agricultural entrance which is located between two existing houses. In the context of the subject site, I am generally satisfied that a grant of planning permission would not give rise to any significant traffic hazard by reason of the additional turning movements associated with the proposed development.

#### 7.5. **Other Issues**

##### 7.5.1. **Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

#### 7.6. **Appropriate Assessment**

The site is not located within any designated site. The Ballynafagh Bog SAC (& pNHA) (Site Code: 000391) is located approximately 6.1km to the south west of the site, with Ballynafagh Lake SAC (& pNHA) (Site Code: 001387) is located approximately 6.5km to the south west of the site.

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the 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 be refused for the proposed development for the following stated reasons.

## 9.0 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. 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.

In addition, Policy RH6 of the Kildare County Development Plan 2017 – 2023 seeks to prohibit urban-generated housing in rural areas while Policy RH10 seeks to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements and Policy RH12 seeks to discourage ribbon development.

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.

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A. Considine

Planning Inspector

6<sup>th</sup> December, 2019