



An
Bord
Pleanála

Inspector's Report

ABP-305848-19

Development	Construction of house, on-site well, installation of proprietary wastewater treatment system / percolation area.
Location	Athclare, Dunleer, Co Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	19/543
Applicant(s)	Cliona McCann
Type of Application	Permission
Planning Authority Decision	Grant permission (8 no. conditions)
Type of Appeal	Third Party
Appellant(s)	John and Christina Howell
Date of Site Inspection	28/01/2020
Inspector	Conor McGrath

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Athclare, southeast of Junction 12 (Dunleer) on the M1 and approx. 2km south of Dunleer itself. It is located to the east of a narrow local road L-6273-0, referred to as the Old Coach Road, approx. 125m south of its junction with the R132. This regional road was the old Dublin – Belfast Road.
- 1.2. The site comprises a stated area of 0.4ha and is part of a larger field under tillage. The lands rise to the southeast and the site occupies a relatively elevated position with views to the north and west. The roadside boundary is comprised of a ditch and wall with hedgerow behind while the southern site boundary includes mature trees and hedgerow. The northern and western boundaries are currently open. A two-storey traditional farmhouse immediately adjoins the southwestern corner of the site, which is provided with ground and first floor windows facing the site. The bored well serving this dwelling property is located inside the southern boundary of the appeal site. There are a number of houses along this road and those on the opposite side of the road are located at a lower level than the appeal site.

2.0 Proposed Development

- 2.1. The development comprises the construction of a 1^{1/2}-storey dwelling with a ridge height of 6.8m and total floor area of 198.50-sq.m. on the site. A new entrance will be provided to the adjoining local road at the northern end of the road frontage. The development is to be served by an on-site bored well and proprietary wastewater treatment system discharging to a new percolation area.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission of the proposed development subject to 8 no. mainly standard conditions, including the following:

2. S.47 Occupancy Agreement
3. Development contributions of €5,400.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The applicant has successfully demonstrated that they meet the local needs qualifying criteria of this area and is therefore in compliance with Development Plan rural housing policies subject to standard occupancy condition.

There are dwellings to the north and south of the site, but they will not be visually linked to the site. The site is elevated but will not be unduly prominent. The design and ridge height has been reduced and there are mature trees on the southern boundary. The proposed design is suitable for the site and addresses concerns in the previous refusal. Given separation from the adjoining dwelling to the south, mature boundary, and separation from property on the opposite side of the road, the proposed development will not adversely impact on the amenity of properties in terms of overshadowing, overlooking or overbearing impacts.

3.2.2. Other Technical Reports

Environmental Compliance Section: The applicant has submitted adequate information to satisfy the section that there will be no threat of environmental pollution from the proposed development. Conditions recommended. In the event that the site is subject to 1:200-year flooding, the Section objects to the development on public health grounds.

Infrastructure: Following receipt of further information, no objection subject to conditions.

3.3. Third Party Observations

A number of observations were received on the application, including observations in support of the application. Others observation raised issues of impacts on drinking water quality, traffic safety, overlooking and retention of trees and hedgerows.

4.0 Planning History

PA ref. 17/649 ABP ref. ABP-300882-18

Permission refused to the same applicant for a two-storey dwelling on this site for the following reasons and considerations:

1. Having regard to the siting, design, scale, and two-storey nature of the proposed development, consisting of a large suburban house type, on an elevated site, above the skyline in a rural area outside lands zoned for residential development, the proposed development would constitute an overly dominant feature in the landscape and would impact adversely on the visual amenity and character of the rural area. The proposed development would, therefore, be contrary to Section 2.20 of the Louth County Development Plan 2015-2021 in respect of rural housing design and siting.
2. Having regard to the free flowing drainage characteristics of the site which is located within an area where there is a possible risk to groundwater as a resource given that bedrock may be encountered close to ground level, that in the absence of a Ground Water Assessment being carried out and taken in conjunction with existing development in the vicinity, including a concentration of individual waste water treatment systems and private wells, the Board is not satisfied that the proposed development would not cumulatively have an impact on groundwater in the area. Therefore, the Board is not satisfied based on the documentation submitted that the proposed development would comply with Policy SS 65 and Section 8.7 of the Louth County Development Plan 2015-2021 in relation to wastewater treatment and disposal systems and would not impact adversely on water resources in the area.

3. Having regard to the details submitted on the Site Layout Plan and as revised by the Further Information submitted to the planning authority, the Board is not satisfied that the proposed development can be carried out on lands within the applicant's ownership or that the consent of the adjoining landowner to the north has been obtained for the section of realignment of roadside boundaries required as shown outside of the red line boundary of the application site. The Board is also not satisfied that it has been demonstrated that the new access can be located having regard to both road safety and the protection of existing roadside hedgerow, trees and boundaries.

The Board direction also noted the following,

Having regard to the location of the site within an Area Under Strong Urban Influence, and to National Policy Objective 19 of the National Planning Framework issued by the Department of Housing, Planning and Local Government in February, 2018 which, for rural areas under urban influence, seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements, it is considered that the applicant might not comply with National Policy Objective 19. The proposed development, in the absence of any identified locally based need for the house, might therefore contribute to the encroachment of random rural development in the area and might militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. However, having regard to the substantive reasons for refusal above, the Board did not pursue this matter.

5.0 Policy Context

5.1. Louth County Development Plan 2015-2021

2.18 Rural Housing

Whilst the Council acknowledges the role of rural housing in sustaining rural communities, it also recognises that uncontrolled and excessive one-off urban generated housing in the countryside is not sustainable in the long-term and accepts that measures need to be put in place to regulate this form of development. A concern arises that if one-off rural housing is permitted at the current levels, then irreparable damage will be done to the environment and the legitimate aspirations of those brought up in the countryside to continue to live within their own communities will be compromised.

2.19 One-Off Rural Housing Policy

Policy SS 18: To permit rural generated housing in order to support and sustain existing rural communities and to restrict urban generated housing in order to protect the visual amenities and resources of the countryside, subject to the local needs qualifying criteria as set out in Section 2.19.1 below.

Policy SS 19: To require that applicants for one-off rural housing demonstrate compliance with the Local Needs Qualifying Criteria relevant to the respective Development Zone as set out in Section 2.19.1

2.19.1 Local Needs Qualifying Criteria

The appeal site is located within Development Zone 5: To protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance. Critical infrastructure projects of local, regional or national importance will also be considered within this zone.

Local Need qualifying criteria for this zone are:

1. Son / daughter of a qualifying landowner with a rural housing need, or
2. Have lived for a minimum period of 10 years in the local rural area (including cross-border), and have a rural housing need, Or
3. Is actively and significantly involved in agriculture, Or
4. Is actively and significantly involved in the bloodstock and equine industry, forestry, agri-tourism or horticulture or rural based enterprise, Or

5. Is providing care for an elderly person or a person with a disability who lives in an isolated rural area and who does not have any able bodied person residing with them, Or
6. Is required to live in a rural area for exceptional health reasons.

Policy SS 23: To attach an occupancy condition of 7 years in respect of all planning permissions for new dwellings in rural areas and Level 4 Settlements.

Policy SS 25: To require that applications for one-off houses demonstrate compliance with Development Management Assessment Criteria for One-Off Rural Housing as detailed in Section 2.19.7.

Policy SS 26: To require that the design and siting of the proposed dwelling is such that it does not detract from the rural character of the landscape or the visual amenities of the area. In this regard, applicants will be required to demonstrate that the proposal is consistent with the document Building Sensitively and Sustainably in County Louth and the guidelines contained in Section 2.20

Policy SS 53: To prevent the creation of ribbon development by not permitting more than four houses in a row along any public road. A minimum gap of 300 metres shall be maintained between such developments. An exception to this requirement may be considered where the dwelling is required to meet the housing needs of a son/daughter/foster child of a qualifying landowner and where the planning authority is satisfied that there is no other suitable site available on the landholding.

Policy SS 60: To require that new accesses are located so as to minimise the impact on existing roadside boundaries.

Policy SS 63: To require that new accesses are located having regard to both road safety and the protection of existing roadside hedgerows, trees and boundaries.

Policy SS 64: To require, where it is necessary to modify or remove the existing roadside boundary in the interest of traffic safety, that the new boundary is located behind the visibility sight line and that a new boundary consistent with the nature and character of the area is planted behind the visibility sight line.

Section 2.20 sets out 2.20 Rural Housing Design and Siting Criteria

Table 7.4 sets out Minimum Visibility Standards. In respect of Local Class 3 roads, sight distances of 75m are required, however, where the 85% percentile speed is shown to be below 50 kilometres per hour, the minimum sight distance requirements contained in the document National Roads Authority –Design Manual for Roads and Bridges, shall apply.

5.2. Sustainable Rural Housing Guidelines 2005

The Guidelines distinguish between:

- Housing needed in rural areas within the established rural community by persons working in rural areas or in nearby urban areas (rural generated housing), and
- Housing in rural locations sought by persons living and working in urban areas, including second homes (urban generated housing).

With regard to urban generated housing in the open countryside, the NSS identified four broad categories of rural area types with differing development circumstances that required tailored settlement policies in the development plan process.

The appeal site is located within an area identified generally as an Area Under Strong Urban Pressure. In rural areas under strong urban influences, development driven by cities and larger towns should generally take place within their built-up areas or in areas identified for new development through the planning process.

These areas will exhibit 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 urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.

5.3. Ireland 2040: National Planning Framework

National Policy Objective 15: Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of

areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

National Policy Objective 19: 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;

5.4. Eastern and Midlands Region: Regional Spatial & Economic Strategy

Section 4.8 notes the key challenge is to ensure that in planning for rural places, responses are uniquely tailored to recognise the balance required between managing urban generated demand in the most accessible rural areas, typically in proximity to Dublin and other towns, whilst supporting the sustainable growth of rural communities and economies, including those facing decline. The development strategy for these rural places is to be set out in the core strategies of county development plans.

RPO 4.80: Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.5. Natural Heritage Designations

The site is not subject to any designations for natural heritage purposes and there are no such sites in proximity to the site.

5.6. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity or connectivity to any sensitive location, 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

John and Christina Howell make the following points in their appeal against the planning authority decision to grant permission in this case:

- Concerns remain regarding contamination of their water supply.
- Flow to the appellant's well is from the direction of the proposed development.
- Previous agricultural activities on the site impacted on their water quality.
- The development presents a risk to public health through water contamination.
- Testing of their well water in 2017 indicated that bacterial levels were outside parameters for human consumption (copy of results submitted).
- This elevated two-storey dwelling will directly overlook their bedrooms, bathroom and garden and impact on the rural and country character of their home.

6.2. Applicant Response

The first party make the following comments in response to the third-party appeal:

- The development is fully in keeping with relevant development plan policies.
- The applicant has demonstrated a local need and is in compliance with National Policy Objective 19.
- All previous reasons for refusal on the site have been addressed.
- The customer name cited on the submitted water quality test results is Darragh Grogan and not the appellants.

- Mr. Grogan has not appealed the decision to grant permission and inclusion of these test results is misleading.
- The test results do not state that the waters were undrinkable or identify the source of impacts on water quality.
- The appellants also own a field elevated above the appeal site which is also in agricultural use
- Given the surrounding uses it is not possible to relate impacts on their water quality specifically to activities on the appeal site.
- The submitted Ground Water Risk Assessment report confirms that the development does not present a risk to water quality in surrounding wells.
- Testing of the applicant's parents well to the north and at a lower elevation to the appellants property, confirms that ground water quality is good.
- The proposal is in accordance with EPA Code of Practice and development plan policy SS65.
- Change from agricultural use and installation of a high specification treatment plant will have a positive impact on the appellants concerns.
- Separation distances, design and existing and proposed planting will address all potential impacts on the appellants property.
- The design and form of the proposed dwelling will positively contribute to the general vernacular of the surrounding cluster of houses.
- The applicant wishes to be allowed to build in the area where she was raised.

6.3. **Planning Authority Response**

The planning authority make no further comment in relation to the appeal and are of the opinion that the application has addressed concerns raised in the previous refusal of permission under PA ref. 17/689, ABP ref. ABP-300882-18.

7.0 **Assessment**

7.1. It is proposed to consider the appeal under the following broad headings:

- Rural Housing Policy
- Design and Layout
- Wastewater Treatment and Drainage
- Access and Traffic

7.2. Rural Housing Policy

- 7.2.1. I note the policies of the development plan for the area with regard to rural housing and the location of the site within Development Zone 5. The applicant is the daughter of the landowner, having been brought up in the family home to the north of the appeal site. It appears from correspondence on the previous application on these lands that the applicant works in Ardee, however this is not confirmed in the current case. Having regard to the documentary evidence submitted, and as noted in the previous appeal case, the applicant would appear to meet the requirements of the development plan to establish a rural housing need at this location.
- 7.2.2. I note reference in the previous Board Direction on this site under ABP-300882-18 to National Policy Objective 19 of the NPF and the requirement to demonstrate an economic or social need to reside in an area. There is no economic rationale established in this case and the case for rural housing is one of social and family ties. I consider that the criteria under National Policy Objective 19 have been satisfied.

7.3. Design and Layout

- 7.3.1. The appeal site occupies a locally elevated position. The lands rise by approx. 3-4m in a south-easterly between the roadside boundary and the eastern site boundary. The house is set back approx. 38m from the roadside boundary, close to the top of this local ridge.
- 7.3.2. I note the previous refusal on this site which referred to the design of the dwelling and its location on an elevated position, on the skyline. The dwelling design has been amended from the previous application. This revised design comprises a northern, gable fronted dormer element, rising to 6.8m with two north-facing dormer

windows, and a single-storey southerly element (5.7m). The design is generally regarded as an improvement on the previous application, which comprised a two-storey house, with a ridge height of 8m.

- 7.3.3. The siting of the dwelling has not been revised significantly, however, such that the finished floor level will be 3m+ over road levels at the proposed entrance. Having visited the site I remain of the view that, notwithstanding the revised dwelling design, the elevation position of the proposed development would result in negative impacts on the landscape character and visual amenities of the area. I note the first party submission on the file which identifies the extent of lands in the family ownership to the north, at a lower level than the appeal site. I consider that, in terms of landscape and visual impacts, such lands would offer a preferable alternative to the appeal site.
- 7.3.4. Ground levels within the site are elevated above the level of the adjoining road. The development proposes the setting back of the roadside ditch and hedgerow over a distance of approx. 100m, including a section on lands to the north, to achieve required sightlines. Notwithstanding the proposed replacement planting along the boundary, I consider that these works would will negatively impact on the rural character and visual amenities of the area and would be contrary to the provisions of the development aimed at retention of existing roadside boundaries. In this regard, I note also the potential for alternative locations on the landholding which would not appear to require equivalent works.
- 7.3.5. Although considered in the previous case on this site, the issues of visual impacts and loss of roadside boundary are effectively new issues in the consideration of this appeal.
- 7.3.6. The adjoining farmhouse to the south includes ground and first floor windows facing onto the appeal site. Having regard to separation from the proposed dwelling and layout of development on the site, it is not considered that the proposed development would negatively impact on the residential amenities of that property. Similarly, it is not considered that overlooking or loss of privacy of properties to the west of the local road would arise, notwithstanding the difference in levels.

7.4. Access and Traffic

- 7.4.1. The appeal site is served by a narrow local road, sufficient in width for one car, with limited passing opportunities. The carriageway is approx. 2.5m wide, or less in parts. The road has low level of capacity and would not be suitable for increased levels of traffic. The road joins the R132 approx. 125m north of the proposed site entrance and sightlines at this junction are generally satisfactory.
- 7.4.2. The development proposes the achievement of 50m sightlines at the site entrance. In this regard, the applicants have submitted survey data confirming the generally low traffic speeds on this road. Such reduced sightlines are therefore regarded as acceptable for this location. Previous concerns regarding the control and ownership of lands affected by the realignment of boundaries to the north are addressed satisfactorily in this application. I have already commented on the impact of proposed realignment works to achieve the required sight distances, however.
- 7.4.3. I note that the previous decision of the Board did not refer to the width or capacity of this road to accommodate further traffic movements. Notwithstanding this, I consider that the introduction of further traffic movements onto this narrow road would be inappropriate. In this regard, I note that there are alternative lands available to the north within this landholding which would not require traffic movements along this narrow road, which should be examined. This is a new issue in the consideration of this appeal.

7.5. Wastewater Treatment and Drainage

- 7.5.1. The proposed development includes the provision of a proprietary wastewater treatment plant and percolation area in the north-eastern corner of the site. The dwelling will also be served by a bored well located to the south of the dwelling. Properties in the surrounding area, including those at lower elevation than the appeal site, are similarly served by on-site services. The general groundwater gradient in this area is to the west / northwest.
- 7.5.2. I note that the site is located within an area of High - Extreme groundwater vulnerability - Rock at or near Surface or Karst, overlying a Poor Aquifer - Bedrock which is Generally Unproductive except for Local Zones. The application was accompanied by a Site Suitability Assessment and a Groundwater Risk Assessment Report.

7.5.3. The site suitability assessment reflects that which was submitted in respect of the previous application on the lands. The proposed treatment plant and percolation area are located on the boundary of the high and extreme vulnerability zones. The appropriate response in an area of extreme vulnerability is identified as R2¹:

“Acceptable subject to normal good practise. Where domestic water supplies are located nearby, particular attention should be given to the depth of sub-soil over bedrock such that the minimum depths required in Section 6 are met and that the likelihood of microbial pollution is minimised”.

7.5.4. Trial holes on the site confirm the shallow depth of subsoils to bedrock in this location (1.4m). The watertable was not encountered in such holes. The site assessment records relatively high T-values at T=67, which the EPA Code of Practice interprets as follows:

“Wastewater from a septic tank system is likely to cause ponding at the surface of the percolation area. Not suitable for a septic tank system. May be suitable for a secondary treatment system with a polishing filter at the depth of the T-test hole”.

Subsequent P-test results indicate that such secondary treatment is a viable option for the site.

7.5.5. The proposed solution comprises secondary treatment, with tertiary treatment provided in a sand filter. A raised mound is provided to achieve the minimum required unsaturated sub-soils in accordance with the EPA Code of Practice. A specific certified treatment plant is identified which has a capacity of up to 6PE. While there is a concentration of on-site wastewater treatment systems and private wells at this location, the proposed development exceeds the separation distances set out in Table 6.1 of the EPA Code of Practice.

7.5.6. The absence of a Groundwater Risk Assessment was raised in the previous refusal of permission on these lands. The planning authority Environment Report in that case, indicated that the matters to be addressed in such assessment should include the impacts on the chemical and microbial quality of groundwater at this location. This was to include a sample of waters from within 150m of the proposed percolation area.

- 7.5.7. The Groundwater Risk Assessment report submitted in the current case categorises groundwater vulnerability as high and the associated groundwater protection response as R1, which differs from the site suitability assessment. Both responses (R1 and R2¹) indicate that this is acceptable subject to best practise, however. The key factor is correctly identified as the depth of unsaturated subsoils available below the invert of the percolation trench.
- 7.5.8. It is reported that testing of the applicant's parents well, located approx. 150m north of the appeal site indicates that ground water quality at this location is good. In terms of impacts on microbial quality, the report concludes that given the level of treatment proposed, the proposed depth of unsaturated subsoils and compliance with the EPA Code of Practise, the development will have no adverse impacts.
- 7.5.9. In assessing impacts on the chemical quality of groundwater, the report confirms that the proposed treatment plant will not increase the concentration of nitrogen in receiving groundwaters, which will remain below threshold values. The report further notes that subject to compliance with the provisions of the Code of Practice, in particular the achievement of minimum subsoil thickness through site improvement works, the proposed development will not pose a risk to groundwater quality.
- 7.5.10. I note the planning authority reports from the Environmental Compliance Sections which expressed satisfaction with these proposals. Having regard to the reported characteristics of the site and the information on the file, I do not consider that the proposed development would give rise to a risk to groundwater quality or impacts on public health.

8.0 Screening for Appropriate Assessment

8.1. It is noted in that the site is not proximate to any Natura 2000 sites. The closest sites are:

- Stabannan-Braganstown SPA (004091) approx. 8km northeast of the site
- Dundalk SAC (000445) and SPA (004026 c.8kms from the site
- Boyne Coast and Estuary SAC (001957) & SPA (004080) c.9 south and 11kms southeast of the site respectively and;

- Clogherhead SAC (001459) c.11kms east of the site

There are no direct connections or pathways between the site and these European sites.

- 8.2. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the distance to the nearest Natura 2000 sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. That permission be refused for the proposed development for the reasons and considerations set out below:

10.0 Reasons and Considerations

1. Having regard to the topography of the site, the elevated position of the proposed development on the skyline, in a rural area outside lands zoned for residential development and to the requirement for the removal of the existing roadside boundary and hedgerow, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the rural character and visual amenities of the area. The proposed development would, therefore, be contrary to Policies SS25 and SS26 of the Louth County Development Plan 2015-2021 and would be contrary to the proper planning and sustainable development of the area.
2. The site is located on a minor road which by reason of its substandard width and structural condition, does not have the capacity to safely and satisfactorily accommodate the traffic movements generated by the proposed development.

The proposal would therefore endanger public safety by reason of traffic hazard and obstruction of road users.

Conor McGrath
Planning Inspector

29/01/2020