



An
Bord
Pleanála

Inspector's Report ABP-305917-19

Development	Construction of dwelling located on the area/footprint of an incomplete shell of a dwelling commenced in 1980 under permission 80/232.
Location	Killucan Road , Kinnegad , Co.Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	196244
Applicant(s)	Sarah McGinley
Type of Application	Permission.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Sarah McGinley
Observer(s)	F. Kiernan.
Date of Site Inspection	16 th January 2020
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site is located in a rural area on the eastern side of Killucan Road (L1015-0) about 1km north of the R148 and less than 2km from the Main Street in Kinnegad. There is a modestly scaled single storey dwelling (with sheds and a mobile home) to the south of the site and football grounds are on the opposite side of the road. An industrial scaled veterinary premises and yard is located further south. The surrounding area is otherwise open fields.
- 1.2. The site is rectangular in shape and overgrown. It contains incomplete structures that are obscured from the road due to the hedgerow and growth. The shell of the larger incomplete structure is stated to measure about 19m by 5.4m. The site is relatively flat and at time of inspection during relatively dry conditions the trial hole revealed quite a high water table – considerably less than 1m in depth below ground level.
- 1.3. There is an access at the southern end of the frontage and a wire/rope fence extends along the depth of the site but does not appear to define the width of the site as it is close to the southern side of the structure delineated on the site layout drawing.
- 1.4. The boundary between the adjacent house to the south is largely undefined with the exception of a painted metal sheet fencing near the frontage. The submitted site layout plans do not show the mobile home on the adjacent site close to the boundary and its contiguous relationship.
- 1.5. The road fronting the development is relatively straight but marked by a continuous white line and has restricted margins. I also noted at time of inspection 8.20-8.45 a.m. that the road was heavily trafficked.

2.0 Proposed Development

- 2.1. The proposed development is described as comprising:
 - a two-storey dwelling (of approx. 330 sq.m) located generally on the area/footprint of an incomplete shell of a dwelling house commenced in 1980 under permission 80/232 and to include the removal of an incomplete shed for m

- a wastewater treatment unit with percolation area
 - boundary fences, entrance driveway and all ancillary works.
- 2.2. In a letter from the applicant's solicitor to the agent, the applicant's land ownership is clarified .
- The site of 0.18 hectares is registered in the ownership of the applicant
 - An additional strip of .0367hectares is part of a separate folio which is stated to have been purchased and subject of a land registry application. (map appended to this correspondence.)
- 2.3. It is also explained in correspondence that it is proposed to demolish the structure but as such demolition would be exempt the description of this was not included.
- 2.4. A local need form is attached to the proposal and in this it is explained that the applicant rents a property in the area and is a market gardener operating 500m from her home. The site was purchased in 2018.
- 2.5. An AA screening report concludes the proposal will not have any significant impacts on Mount Hevey Bog and will not impact upon any sensitivities or threats and will have no adverse impact on the conservation objectives for this site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Refusal of permission based on the following reasons:

- The site of the proposed development is located in an Area Under Strong Urban Influence as set out in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the DEHLG in 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 NPF 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 visibility of smaller towns and rural settlements. Having regard to the documentation submitted with the planning application the applicant has not demonstrated an economic or social need to live at this site within this rural area

or that the applicant's housing need could not be met within a town or settlement. It is therefore considered that the applicant does not come within the criteria as set out in the Guidelines or in national policy or policies P-LHN1 and P-LHN2 of the County Development Plan 2014-2020 for a house in this location and the proposed development would therefore be contrary to ministerial guidelines and would be contrary to the proper planning and development of the area.

- It is considered that the proposal fails to have regard to the Westmeath Rural Design Guidelines by reason of siting, height, elevational treatment, bulk and scale and would detract for the landscape and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The circumstances of the applicant are noted.
- The objections are noted in regard to site delineation, frontage , wastewater treatment and disposal, sightlines and local need.
- Extensive chapters of the development plan are referred to, in addition to the Westmeath Rural Design Guidelines.
- Particular reference is made to policies P-LHN1 and P-LHN2 which permit single houses in the case of landowners and members of the landowners' families have owned the land in question since 2000, have personal, family or economic ties to the area.
- The applicant is considered to have failed to demonstrate that she has spent substantial periods of her life living in this rural area as part of an established rural community and fails to comply with the development plan requirement having regard to :
 - The ownership since 2018
 - and absence of evidence of ties to the area
 - lack of clarity on the market gardening business. (location and duration)
- the house is considered very large and fails to have regard to the Westmeath Rural Design Guidelines.

3.2.2. Other Technical Reports

- Area Engineer: Roads- No objections subject to condition. 2.4m x 90m sightlines shall be maintained shall remain unobstructed and nothing shall be planted sown constructed or erected forward of sightlines. A 2.4 x 9m parking strip shall front the development adjoining the metalled edge of the roadway.
- Services: No objection subject to conditions.
- It is noted that the site is to subject to flooding according to the latest OPW maps.

3.3. Prescribed Bodies

- 3.3.1. Irish Water: No objections subject to conditions including restriction of planting of trees close to service connections.

3.4. Third Party Observations

- 3.4.1. One letter of objection refers to inadequacies of the proposal with respect to: site delineation, frontage , wastewater treatment and disposal, sightlines and local need.

4.0 Planning History

- 4.1. The following planning authority cases relate to the subject site. 19-6160 refers to incomplete application for a similar proposal on the subject site.

- 06-5676 refers to refusal of permission for demolition works and construction of dwelling
- 06-5589 refers to an incomplete application later submitted in the case above.
- 94-436 refers to an undecided application due to outstanding response to further information for a bungalow.
- 80-232 refers to permission for house

5.0 Policy Context

5.1. National Planning Framework

- 5.1.1. Policy objective 19 aims to : 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;

- 5.1.2. Section 6.6 identifies the issues associated with fragmented/leapfrog development including ribbon development and objective 33 aims to ‘Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.’ It sets out key objectives for housing including the recognition that housing ‘be located in our smaller towns, villages and rural areas, including the countryside, but at an appropriate scale that does not detract from the capacity of our larger towns and cities to deliver homes more sustainably.’

5.2. Sustainable Rural Housing, Guidelines for Planning Authorities (2005)

- The site is located within an area designated as being ‘Rural Areas under Strong Urban Influence’ within these Guidelines.
- Section 3.3.3 deals with ‘Siting and Design’.

5.3. Development Plan

- 5.3.1. Rural housing: Chapter 11 sets out the policy for rural housing. The site is classified as a being in a strong rural area under significant urban pressure. Map 11.1 and policy P-SRA-1 seeks ‘To accommodate demand from individuals for permanent residential development in strong rural areas who have strong links to the area and

who are an intrinsic part of the rural community, subject to good planning practice, environmental carrying capacity and landscape protection considerations.'

- 5.3.2. Section 11.14 refers to 'Development Within the Hinterland of Larger Town' and here the aim of policy in these areas is to avoid undesirable ribbon development on the approaches to settlements and to protect the fabric of settlements by restricting development on the outskirts of towns and villages. Provision will be made for farmers, members of farm families and people that have spent substantial parts of their lives as part of the established rural community building their first home. Proposals shall in all instances, except for reasons of traffic safety, design or other environmental consideration, be clustered with the existing family home or if farm buildings are isolated from the family dwelling, consideration can be given to grouping with farm structures.
- 5.3.3. The policy of strong rural area under significant urban influence is set out in section 11.7 and the 2 policies apply.

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

- (1) Persons who are actively engaged in agriculture, horticulture, forestry, bloodstock and peat industry,
- (2) Members of farm families seeking to build on the family farm,
- (3) Landowners and members of landowners' families (landowner for this purpose being defined as persons who owned the land in question since the year 2000),
- (4) Persons employed locally whose employment would provide a service to the local community,
- (5) Persons who have personal, family or economic ties within the area, including returning Emigrants
- (6) Persons who wish to return to farming and who buy or inherit a substantial farm-holding which is kept intact as an established farm unit, will be considered by the Council to be farmers and will be open to consideration for a rural house, as farmers. Where there is already a house on the holding, refurbishment or replacement of this house is the preferred option.

P- LHN-2 To manage the development of one-off rural housing in conjunction with the Rural Typology Map and Local Need criteria. Applicants must submit documentary evidence of compliance with the rural housing policy and comply with local need criteria.

5.3.4. Design: PGRH-1 To have regard to the Westmeath Rural Design Guidelines and the Department of Environment, Community and Local Government Sustainable Rural Housing Guidelines in the assessment of rural residential proposals and any subsequent amendments in the assessment of applications for rural housing.

5.3.5. Landscape Character Management: Chapter 6 refers. The site is in Area 10 – ‘Lough Ennell South Eastern Corridor’ for which there are no character objectives specific to the area. P- LLM- 1 To require that development is sensitively designed, so as to minimise its visual impact on the landscape, nature conservation, archaeology and groundwater

5.3.6. Other settlement policies:

- Kinnegad is a tier 3 service town where agri-food sector is targeted
- Regional Planning Guidelines: Settlement strategy for the Eastern Development Area: - - Kinnegad, key priority to avoid any further large scale residential development in this area, focus on provision of necessary social and community development.
- Core strategy identifies it as self-sustaining -core policy obj. 2.6 Promote consolidation in Self-Sustaining Growth Towns coupled with targeted investment where required to improve local employment, services and sustainable transport options and to become more self-sustaining settlements.
- The Core Strategy in the Draft Westmeath CDP 2022-2027 classes the area of the site as Rural Area under Strong Urban Influence. (Figure 2.15)

5.4. **Natural Heritage Designations**

5.4.1. Mount Hevey Bog SAC is approx. 1.4km north east.

5.5. EIA Screening

- 5.5.1. Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

- It is inferred that no other consideration other than the reasons on which the planning authority decision is based are warranted.
- It is clarified that the original site is augmented by a more recent purchase.
- With respect to services it submitted that the planning authority has raised no objection and that:
 - The proposed vehicular access has sufficient sightlines. (This is not supported by topographically survey drawings with the required dimensions.)
 - Wastewater proposals are sufficient.
- The site had benefit of permission house that is submitted to be ‘the ugliest house ever commenced’ and that this was built to wall plate level but ceased many years ago leaving a shell and excavated ground.
- The case for stating an economic or social need is not applicable in this case in view of the planning history. It is argued that there is a permitted dwelling use on the site. This is stated by reference to the publication, Planning and Development Law, Garrett Simons ch.2-69 to 2-24 regarding the implication of ceasing permitted built work and his premise that the planning permission must be treated as on-going as far as the approved use is concerned. It is deduced that the site has approved dwelling use and the applicant is entitled to live there in a tent for example.
- In view of the on-going permitted use there should be a presumption in favour of completing the house.
- It is argued that there have been no material changes since the permission. While works have ceased this is not an abandonment of use.

- While the need for evidence of compliance with requirements in chapter 11 is denied by the appellant, it is stated that the applicant meets with 4 of the 6 tests. Only one test needs to be met.
 - It is submitted that the applicant is engaged in market gardening and rents the adjacent field as outlined in blue. (No dates of duration of this)
 - The applicant is stated to be self-employed in the locality and provide service to local community in her capacity of contributing local produce to the Organic Food Chains
 - The applicant lives in the area in rented accommodation with her mother and 6 daughters and accordingly has personal family and economic ties.
 - The structure on site is, by strict legal interpretation, a house and accordingly the 6th test [in satisfying development plan criteria] is relevant. This states inter alia, that where there is already a house on the holding, refurbishment or replacement of the house is the preferred option. The Board is requested to give primary consideration to this in the first instance.
- The proposed design is defended by way of
 - Critiquing the Westmeath Rural Design Guidelines,
 - There is an incomplete house of an ugly design on the site. This is submitted to be an improvement and it is questioned if it is any worse than the adjacent house or nearby garage.
 - It is a standard formulaic house seen across the country. (Photo attached.)
 - The applicant simply wanted to replicate a relative's house that she fell in love with.
- The Board is requested to invite a redesign or grant outline permission or address the matter by condition.

6.2. Planning Authority Response

- No comments on the grounds of appeal.

6.3. **Observations**

- 6.3.1. A letter of objection from the occupant of the neighbouring dwelling raises issues as previously outlined to the planning authority. This is appended with photographs contained in a separate pouch in the file.

7.0 **Assessment**

7.1. **Issues**

- 7.1.1. Permission is sought for the construction of a very large two storey house on the site of incomplete modest dormer bungalow development on foot of permission in 1980. Since that time there have been changes to both planning policy guidance as reflected in the development plan and national policy as well as the wider environmental and water quality standard emanating from European Directives. Having regard to the submissions on file and observation on the appeal, the issues centre on:

- Principle of development- Rural housing need
- Design
- Residential amenity
- Effluent disposal.
- Entrance
- Appropriate Assessment

7.2. **Principle of development**

- 7.2.1. The applicant relies heavily on the existence of a structure pursuant to permission for a house in 1980. The fact is, there is no habitable dwelling on site and permission is required for such and also for the installation of a wastewater treatment system. I note that the applicant seeks determination on the legal definition of the structure as it is the agent's understanding that notwithstanding the legitimacy of the structure, it is submitted to be a house and in such circumstances, the proposed development amounts to a replacement house which is desirable in development plan policy. In this regard I consider the background to the policy and particularly national policy, is most salient in this appeal. I consider the application should be assessed on its

merits and by reference to current policy and standards as is required by the planning acts as amended.

- 7.2.2. The planning authority is not satisfied that the applicant has demonstrated a sufficient need for a dwelling house on the site.
- 7.2.3. The site is classified as being in a strong rural area under significant urban pressure and accordingly its development demands stringent policies to prevent urban generated housing. In an effort to protect the indigenous rural base without compromising the natural environment policy P-SRA-1 for example aims to accommodate demand from individuals for permanent residential development in strong rural areas who have strong links to the area and who are an intrinsic part of the rural community, subject to good planning practice, environmental carrying capacity and landscape protection considerations. It is explained such persons would normally have spent substantial periods of their lives living in the rural area as part of the established rural community, e.g. people employed in the rural area including farmers and their sons and daughters, people originally from the rural area and wishing to return, people wishing to reside near elderly parents to provide security and care for elderly parents wishing to live near other family members, people who would have grown up in rural areas seeking to build their home close to other family members, people working in rural areas such as teachers in rural schools. The aim is to support the desire of individual applicants with strong rural links to settle in that area and to encourage people with no such links to settle in the identified extensive network of towns or villages
- 7.2.4. In section 11.14, which refers to 'Development Within the Hinterland of Larger Towns', the policy for such areas is to avoid undesirable ribbon development on the approaches to settlements and to protect the fabric of settlements by restricting development on the outskirts of towns and villages. Provision will be made for farmers, members of farm families and people that have spent substantial parts of their lives as part of the established rural community building their first home.
- 7.2.5. I accept that the site is not de facto a green field site having regard to the structures. And while there is no immediate loss (other than in the event of reinstatement) of agricultural land, in this way a loss of rural landscape is not a significant issue. (The house design is a separate issue.) What is at issue is the undermining of the

settlement strategy advocated at national, regional and local levels to direct development into serviced settlement areas.

- 7.2.6. In this case the applicant, as a market gardener and with an interest in the land outlined in blue and adjacent to the site, could I accept qualify and in this regard I note the targeted economic role of agri-business in the development plan for Kinnegad, however, there is no substantive evidence of this business other than a brief statement by the agent. Nor is there documentary evidence of the applicant's history of residency that clearly establishes the applicant has spent a substantial part of her life in this rural area.
- 7.2.7. The only evidence is that relating to the title in 2018 but there is no documentary evidence of prior substantive ties to the area.
- 7.2.8. Having regard to the Ministerial guidance and the aims of the National Planning Framework I consider it reasonable to require documented evidence as is expressly set out in development plan policy .
- 7.2.9. It is apparent that, based on the applicant's submission on need, this proposal would run contrary to the Sustainable Rural Housing Guidelines for Planning Authorities, as the appellant has not sufficiently demonstrated a genuine 'rural' housing need within an area of the county that is under significant development pressure for one-off housing, i.e. an Area Under Strong Urban Influence, close to the Tier 3 service town of Kinnegad.

7.3. **Design**

- 7.4. The planning authority considers the house to be very large having regard to its span of 12m and two storey gabled projection to the front. In the context of the site width at 15m it is considered a house of up to 10m above ground level would be a prominent feature, appearing dominant and obtrusive and that in overall terms fails to have due regard to the Westmeath Rural Design Guidelines and would accordingly detract from the rural landscape.
- 7.5. The appellant makes the case that the house is one that is liked and similar to that permitted in the countryside. It is further pointed out that it is an improvement on the design previously permitted on site.

- 7.6. While I accept there are some benefits in removing the derelict structures on site, the replacement with a 330sq.m. house of the nature and scale proposed would be a retrograde step in terms of visual amenity. I concur with the planning authority that the house would be disproportionately large relative to the adjacent dwelling and the width and size of the does not provide for visual assimilation.
- 7.6.1. While I note this is not within a high amenity area, I consider the proposed development by reason of its scale and design and relationship with surrounding built and natural environment would be visually obtrusive and detract from the rural character and visual amenities of the area. This conflicts with the Westmeath Rural Design Guidelines and would be contrary to the policy LLM- 1, to require that development is sensitively designed, so as to minimise its visual impact on the landscape, nature conservation, archaeology and groundwater.

7.7. Residential amenity

- 7.7.1. The observing party is concerned about the impact on her dwelling house. Having regard to the scale and two-storey design in such close proximity to the existing modestly scale single storey dwelling in a rural environment, I am of the opinion that the proposed development would have a particularly significant overbearing impact and would also give rise to overlooking such as that arising from south facing first floor windows and obliquely from other windows at first floor level and would therefore result in a loss of privacy. Accordingly I consider that there would be significant impacts on residential amenity.
- 7.7.2. The appellant suggests that a revised design could be submitted. As there are other substantive issues that are unsatisfactory, I do not consider this to be an appropriate step in consideration of this appeal.

7.8. Effluent Disposal

- 7.8.1. The proposed development seeks to develop a wastewater treatment system reliant on a raised constructed percolation area behind the house and in close proximity to an established dwelling house. The evidence from my inspection and supported by the comments in the observation is that the water table is high and significantly

higher than indicated in the site characterisation form which suggests that the underlining assumptions in the design and site layout have not sufficiently factored in the site conditions or local hydrology. The high T value recorded, and site conditions also indicate a challenging environment for efficient and effective treatment.

7.8.2. I am of the opinion that given the site constraints and site characteristics most notably including a high water table that does not appear to be adequately factored into the design together with the proposed siting of the waste water treatment system immediately adjacent to an established house, and the necessity to significantly engineer a treatment proposal for this site that would require pumping of effluent as an essential component and significant ongoing maintenance, supports the likelihood that this proposal constitutes a pollution threat and would not constitute a sustainable development.

7.8.3. **Entrance**

7.8.4. The observing party raises concerns about the feasibility of achieving and maintaining sightlines that would be reliant on her boundary maintenance. I note that the Area Engineer has no objections. It is my understanding that there are other measures under the Roads Acts to ensure visibility along public roads. It would be helpful if the drawings had more information by way of topographical survey data and dimensions of sightline distances, however, on balance, given the relatively straight alignment, I do not consider there are substantive grounds to refuse permission based on traffic hazard.

7.9. **Appropriate Assessment**

7.9.1. The site is 1.4km from Mount Hevey Bog. While I have indicated concerns relating to the water table and site limitations regarding drainage and there may be a risk of localised pollution, I consider that having regard to the separation distance from Natura 2000 sites it is reasonable to conclude that on the basis of the information on the file, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

8.0 Recommendation

- 8.1. Having regard to the submissions on file, my observations during a site inspection and in view of the foregoing assessment, I recommend that permission be refused based on the following reasons and considerations.

9.0 Reasons and Considerations

- 1 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.
- 2 The site of the proposed development is located within 'Strong Rural Areas under Significant Urban Influence' as set out in Map 11.1 of the current Development Plan for the area, where emphasis is placed on the importance of designing with the landscape and of siting of development to minimise visual intrusion as set out in the current Westmeath Rural House Design Guidelines, which Guidelines are considered to be reasonable.

Having regard to the relatively flat and open terrain, together with the height, depth and scale of the proposed house relative to the site width and relative to the neighbouring dwelling, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would seriously injure the residential amenities of the adjacent dwelling, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment and would set an undesirable precedent for other such prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 3 Having regard to the soil conditions and high water table, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and/or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

Suzanne Kehely

Senior Planning Inspector

6th May 2020