



An
Bord
Pleanála

Inspector's Report ABP 305964-19.

Development	House, garage and all associated site development works.
Location	Kilcarrig, Bagnelstown, Co. Carlow.
Planning Authority	Carlow County Council.
Planning Authority Reg. Ref.	19344
Applicant	Michelle Bolger
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant	Michelle Bolger
Observers	(1) Martin Storey (2) Matthew Kavanagh (3) Breda Duffy (4) Declan Kavanagh (5) Jerry Bolger
Date of Site Inspection	17/1/2020

Inspector

Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Kilcarrig, Bagenalstown, Co. Carlow. It is situated circa 800m to the south-east of the Main Street of Bagenalstown.
- 1.2. The site, with a stated area of 0.21 hectares comprises the south-western corner of a larger field. It lies immediately to the east of a row of residential properties with frontage onto the Regional Road, R705.
- 1.3. The site area also includes the section of the lane which extends for circa 65m from the R705. The western site boundary is formed by a post and wire fence. The southern site boundary is defined by the hedgerow along the existing field boundary.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a dwelling and garage and all associated site development works. Features of the scheme include;
 - The proposed single-storey dwelling has a floor area of 214sq m
 - Dwelling ridge height of 5.5m
 - Domestic garage with floor area of 28sq m
 - Connection to public foul sewer and public watermain.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused for the following reason;

1. The proposed development, by reason of a combination of the backland location and more elevated ground levels of the site, represents a non-integrated, piecemeal and haphazard form of development that (a) would be contrary to the predominant pattern of existing residential development in the local area comprising an established row of dwellings fronting directly onto the public road, (b) would be contrary to the provisions of the Carlow County

Development Plan 2015-2021 which seeks to discourage backland development, (c) would adversely affect the residential amenity of the existing adjoining residential property to the west, (d) would depreciate the value of adjoining and neighbouring residential properties, (e) would if permitted, set an undesirable precedent in the area for further such inappropriate backland developments, and 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 Authority considered that the site being positioned directly to the rear of an existing dwelling would constitute backland development which is contrary to Section 2.7.7 of the CDP. The proximity of the neighbouring dwelling to the west was noted in terms of potential for overlooking and overbearing. The Planning Authority considered that the proposed development on a backland site behind a row of dwellings would be out of context and would not integrate with the established built fabric, would represent an ad hoc approach to the development of the area and would therefore comprise piecemeal and haphazard form of development in the area. Permission was recommended for refusal on that basis.

3.2.2. Other Technical Reports

Municipal District Office – Further information sought in relation to entrance sightlines.

Transportation – Grant of permission recommended subject to conditions.

Environment – Grant of permission recommended subject to conditions.

Water Services – No objection.

Fire Authority – No objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water – No objection subject to a connection agreement to be obtained and entered into prior to commencement.

3.4. **Third Party Observations**

The Planning Authority received 8 no. submissions/observations in relation to the application. The main issues raised are similar to those set out in the observation to the first party appeal. I note that submissions were received from the applicant and from her father which advocated in favour of the proposal.

4.0 **Planning History**

There is an extensive Planning history pertaining to the site which is fully detailed in the Planning Officer's report.

The most recent is decision **PA Reg. Ref 16/201**. Permission was refused to applicant Michelle Bolger for the construction of a dwelling house, domestic garage, connection to public foul sewer, connection to public water mains and associated site works for the following reasons;

1. Having regard to its width, particularly at the junction with the regional road, and the conflict arising from the existing multiple access points on the lane with a short distance of the same, it is considered that additional traffic movements generated by the proposed development would endanger public safety be reason of traffic hazard and would result in a substandard access for the development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the proximity of the proposed house to the southern site boundary, the orientation and siting of the dwelling in relation to existing dwellings in the immediate vicinity, the limited road frontage and its location in relation to existing development would constitute piecemeal haphazard backland development, which would be contrary to the provisions of the Carlow County Development Plan 2015-2021, would have an adverse effect on the residential amenities of adjoining properties, would depreciate value of

housing in the vicinity, and would therefore be contrary to the proper planning and sustainable development of the area.

PA Reg. Ref. 06/313 & PL01.219365 – Permission was refused to applicant Michelle Bolger for a house and site works. Permission was refused for the following reasons;

1. Having regard to the provisions of the current Local Area Plan, it is considered that the proposed development, located in an area served by a poor road and pedestrian network, would constitute a piecemeal and disorderly development of zoned lands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to its width, particularly at the junction with the regional road, and the conflict arising from the existing multiple access points on the lane within a short distance of the same, it is considered that additional traffic movements generated by the proposed development would endanger public safety by reason of traffic hazard and would result in a substandard access for this and future development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Reg. Ref. 05/170 & PL01.213892 – Permission was refused for the development of 5 no. houses and associated site works on lands to the south. Permission was refused for the following reasons;

1. Having regard to its width, particularly at the junction with the regional road, and the conflict arising from the existing multiple access points on the lane within a very short distance of same, it is considered that additional traffic movements generated by the proposed development would endanger public safety by reason of traffic hazard and would result in a substandard access for this and future development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the provisions of the current Local Area Plan, it is considered that the proposed development located in an area served by a poor road and pedestrian network would constitute a piecemeal and disorderly development of zoned lands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Carlow County Development Plan

- 5.1.1. The Carlow County Development Plan 2015-2021 is the relevant Development Plan for the area. The County Development Plan sets out a core strategy in Table 2.4 and maps the settlement strategy on Map 2.3. Carlow is the designated county town. Tullow and Muinebheag/ Bagnelstown are district towns. The objective is to development the district towns to be, as far as practical, self-sufficient incorporating employment activities, sufficient retail services and social and community facilities.
- 5.1.2. Section 2.7.3 – Design Siting Requirements
- 5.1.3. Section 2.7.7 – Backland Development - The Council discourages backland development. All new developments in rural areas must have minimum road frontage of 20m.
- 5.1.4. Chapter 11 – Design and development Standards

5.2. Muine Bheag/Royal Oak LAP 2017-2023

- 5.2.1. The main area of the site is zoned objective (I) Agriculture – To retain and protect agricultural uses.
- 5.2.2. The purpose of this zoning is to ensure the retention of agricultural uses and protect them from urban sprawl and ribbon development. Uses which are directly associated with agriculture or which would not interfere with this use are open for consideration. This includes limited housing for members of landowners' families or persons who can demonstrate a genuine need to live in the agriculture zone, tourism related projects such as tourist caravan parks or campsites and amenity uses such as playing fields, or parks.
- 5.2.3. Table 13: Land Use Zoning Matrix – Agriculture zoning – Dwelling is open for consideration.
- 5.2.4. Section 12.2.2 refers to Definition of Terms – Open for Consideration
- 5.2.5. Land uses shown as 'Open for Consideration' are uses that are not considered acceptable in principle in all parts of the relevant use zone. However, such uses may

be acceptable in circumstances where the Council is satisfied that the proposed use would not conflict with the general objectives for the zone and the permitted or existing uses as well as being in the interests of the proper planning and sustainable development of the area.

5.3. Natural Heritage Designations

- 5.3.1. The River Barrow and River Nore SAC (Site Code 002162) is situated circa 932m south-west of the site.

5.4. EIA Screening

- 5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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

A first party appeal was lodged by Hughes Planning and Development Consultants on behalf of the applicant Michelle Bolger. The main issues raised are as follows;

- The site is subject to Agriculture (I) zoning objective as set out in the provisions of the Muine Bheag/Royal Oak LAP 2017-2023. The objective is to “to retain and protect agricultural uses”.
- It is highlighted that the associated purpose of this zoning objective includes limited housing for members of landowners’ families for persons who can demonstrate a genuine need to live in the agriculture zone.
- It is submitted that the applicant has demonstrated her rural need in accordance with the provisions of section 2.7.14 of the Development Plan which refers to “persons who are an intrinsic part of the rural community”.

- Having regard to the zoning matrix in the Muine Bheag/Royal Oak LAP, dwellings are open for consideration within agricultural zoned lands.
- Reference is also made to the provisions in the LAP with respect to “Transitional Areas”
- “While the zoning objectives indicate the different uses permitted in each zone it is important to avoid abrupt transitions in scale and use at the boundary of adjoining land use zones. In these areas it is necessary to avoid development that would be detrimental to amenity. In zones abutting residential areas, particular attention will be paid to the uses, scales, density and appearance of development proposals and the landscaping, creation of a buffer zone and screening proposals in order to protect the amenities of residential properties.
- It is submitted that the proposed use does not conflict with the general objectives for lands zoned Agriculture (I) or the permitted and existing uses within the vicinity of the site.
- The proposal had due regard for adjoining land uses, namely residential and it is considered that it represents an appropriate transition at this location.
- The report of the Planning Officer refers to Section 2.7.7 of the CDP which discourages backland development and states that the proposed development would be contrary to Section 2.7.7 of the CDP.
- It is also stated in the report of the Planning Officer that the site is located on zoned lands within the development boundary of the Muine Bheag/Royal Oak LAP 2017-2023 therefore not within a rural area where the rural housing policy in the CDP would apply.
- It is argued that Section 2.7.7 of the CDP is not appropriate to the proposed development because the adjoining dwelling ‘Rockhaven’ does not front the public road but rather it fronts the laneway which serves the subject site. It is submitted that the proposed dwelling would be situated to the side of ‘Rockhaven’ and not to the rear. It is highlighted that the site has frontage of 24.5m onto the laneway which has access off the R705.
- It is considered appropriate to utilise existing boundary planting to offset any potential negative impacts on the residential amenity of the adjoining property

to the west 'Rock Haven'. The use of landscaping and tree planting is a common approach used for the purposes of screening and ensuring the privacy of adjoining sites.

- Notwithstanding this a revised design which includes supplementary planting/landscaping within the site has been submitted with the appeal.
- In relation to the elevated nature of the site and potential overlooking/overbearing impacts, it is submitted that the existing screen will mitigate this. Should the Board deem it necessary the applicant would be amenable a condition being attached requiring additional planting/landscaping.
- It is submitted that the guidance provided by the Planning Authority which rezoned the site to agricultural directly addresses the matter of piecemeal/haphazard development.
- The appeal notes that land zoned for new residential development in the LAP is circa 36 hectares with a further 63 hectares zoned for commercial development. Most of the zoned land apart from agricultural lands is situated within closer proximity to the town centre. Therefore, it is submitted that the town has a sufficient extent of zoned land so as not to require the rezoning of the site in the short/medium term. It is stated that the proposal represents low density residential development and that the dwelling has been purposely positioned within the south-west corner of the site so as not to restrict the comprehensive development of the wider bank of lands in the future.
- The appeal cites a number of examples of applications in Co. Carlow where dwellings have been granted without direct road frontage and to the rear of existing dwellings. The cited examples are PA Reg. Ref. 18/69, PA Reg. Ref. 17/206 and PA Reg. Ref. 15/253. A number of other cited examples are also indicated on a map of Co. Carlow. The appellant therefore argues that the Planning Authority have been inconsistent in terms of their assessment of the proposed rural dwelling.
- The revised house design submitted with the appeal includes proposals to install obscure glass to the windows proposed to non-habitable rooms.

Furthermore, trees will be provided along the western boundary to supplement the existing boundary screening.

- In conclusion, it is considered that the proposed development is appropriate in the context of the applicable zoning objective and the standards to which the Planning Authority assess applications for single dwellings. The first party respectfully request that the Board overturn the decision of the Planning Authority and grant permission.

6.2. Planning Authority Response

The Planning Authority wish to reiterate the following points in respect of their refusal of permission for the proposed development;

- The majority of the site including where the house is located is zoned 'Agriculture' in the Muine Bheag/Royal Oak LAP 2017-2023. A dwelling on 'Agriculture' zoned lands is open for consideration. As set out in the LAP development is not deemed acceptable in all parts of a land use zone and it may be acceptable where it does not conflict with general objectives for the zone and permitted or existing uses.
- Section 2.7.7 of the Carlow County Development Plan 2015-2021, discourages backland development. Regarding rural areas it is required in the CDP that all new development must have a minimum of 20m road frontage. The site is located on zoned lands within the development boundary the Muine Bheag/Royal Oak LAP, it is therefore not within a rural area where the rural housing policy of the CDP would apply.
- The site is located directly to the rear of an existing dwelling which fronts onto the adjoining public road Philip Street (R705). Therefore, the proposed dwelling would be located behind the said dwelling. Accordingly, it is clear that the proposed development would constitute backland development. The proposed development would therefore be contrary to Section 2.7.7 of the CDP.
- The matter of potential impacts on neighbouring properties should be addressed in the first instance by site selection rather than reliance on

boundary planting to offset potential negative impacts on existing residential amenity from backland development.

- The Planning Authority have concerns at the siting of the dwelling due to its elevated position which would have an overbearing impact upon existing dwellings to the west.
- It is noted that windows in the rear elevation are circa 7.2m from the shared boundary with the existing dwelling and are 11m from its rear elevation. The revised proposal to provide obscure glazing to windows to address this is not considered sufficient.
- The proposed development on a backland site behind this row of dwellings would be out of context, would represent an ad hoc approach to development in the area and would comprise a piecemeal and haphazard form of development in the area.
- The submitted review of planning permissions on other sites focuses on the issue of the provision of entrances for dwellings onto private roads and the non-availability of public road frontage. The Planning Authority concludes that this does not address the issue of backland development that applies to the proposed development site.

6.3. Observations

Observations on the appeal were received from (1) Martin Storey (2) Matthew Kavanagh (3) Breda Duffy (4) Declan Kavanagh (5) Jerry Bolger. The issues raised can be summarised as follows;

- The proposed access to the site via the laneway is considered inappropriate to due its width and the number of existing properties which it serves.
- The narrowness of the laneway is also raised in respect of pedestrian safety. It is highlighted that congestion arises on the lane when deliveries are carried out by lorries and vans.
- Concern is raised that the junction of the lane and the Regional Road R705 is dangerous and that an increase in traffic would give rise to traffic hazard.

- The previous refusals on the site are noted including Reg. Ref. 15/207 and Reg. 16/201.
- The Planning Authority refused permission on the basis that it would be contrary to the predominant pattern of existing residential development, would be contrary to Development Plan policy in respect of backland development, would adversely affect residential amenities of adjoining property and would set a precedent for further inappropriate backland development.
- The proposed development would depreciate the value of property in the vicinity.
- Concern is raised in respect of the feasibility of refuse collection lorries being able to service the site.
- The application site is an elevated backland site which would cause overlooking into the neighbouring dwellings to the west and north-west.
- The observation from Martin Storey raised the matter of whether the applicant has sufficient legal interest in the lands to develop the vehicular entrance.
- The Observation from Jerry Bolger the applicant's father advocated the proposal. The proposed development is not haphazard as it is situated in the corner of the family landholding in a location which would not interfere with farming activity. The location of the site would ensure direct access to public water supply and public sewerage connection.
- The site has in excess of 20m of road frontage onto a private roadway. It is submitted that it complies with section 2.7.7 of the Carlow County Development Plan 2015-2021. It is submitted that the proposal complies with the Muine Bheag/Royal Oak LAP 2017-2023 for agricultural land in relation to members of farming families.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and in the observations submitted. I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Development Plan policy/Principle of Development
- Design and impact upon residential amenity
- Vehicular access
- Appropriate Assessment
- Other issues

7.1. Development Plan policy/Principle of Development

- 7.1.1. Permission is sought for the development of a dwelling at the Kilcarrig, Bagnelstown, Co. Carlow. The subject site is located within the development plan boundary of the Muine Bheag/Royal Oak LAP 2017-2023.
- 7.1.2. The Planning Authority refused permission for the proposed dwelling on the basis of the backland location of the site and its more elevated ground levels relative to neighbouring property that it would represent a non-integrated, piecemeal and haphazard form of development. The Planning Authority also considered that the proposed would be contrary to the provisions of the Carlow County Development Plan 2015-2021 which seeks to discourage backland development.
- 7.1.3. In response to the matter the first party argued that as the site is located within the development boundary and has been zoned that it addresses the matter of piecemeal and haphazard development. The main area of the site is zoned 'Agriculture' where the objective seeks to retain and protect agricultural uses. As set out in the LAP that zoning seeks to protect such lands from urban sprawl and ribbon development. The zoning does provide for limited housing for members of landowners' families or persons who can demonstrate a genuine need to live in the agriculture zone. This matter is not focuses upon in the appeal, it is referred to whereby it is stated that the applicant has appropriately demonstrated her rural need in accordance with the provisions of Section 2.7.1.4 of the Carlow Development Plan, which refers to persons who are an intrinsic part of the rural community.
- 7.1.4. As detailed in the application form submitted with the application, the applicant Ms. Michelle Bolger is not involved in full time or part time agriculture, while I note that her home address is her parent's family home on the farmholding at Kilcarrig, Ms.

Bolger is employed full time as a Beauty Therapist in Carlow town. Accordingly, I would not be satisfied that the applicant has demonstrated a rural housing need as is required in order develop a dwelling within the agriculture zoned lands.

- 7.1.5. Section 4.6 of the LAP refers to rural and agricultural development it is set out that Given the importance of the rural environment it is essential that its integrity is maintained and enhanced and that the activities which rely upon it do not degrade or detract from it. Section 5.4.1 of the LAP refers to compliance with the Core Strategy and notes that zoned lands located on the periphery of the town including agricultural uses maybe considered for development under any further review of the Muine Bheag Local Area Plan in the medium to longer term. Therefore, these provisions of the LAP seek to protect and retain agricultural zoned lands for agricultural uses until such time in the future where their use for other zoning purposes may be required.
- 7.1.6. The Planning Authority stated in the refusal that the proposal would be contrary to the provisions of the Carlow County Development Plan 2015-2021 which seeks to discourage backland development. The first party argue that the proposal would not constitute backland development on the basis that the neighbouring dwelling to the west 'Rockhaven' does not front the public road but rather it fronts the laneway which serves the subject site. They state that the proposed dwelling would be situated to the side of 'Rockhaven' and not to the rear. It is also highlighted in the appeal that the site has frontage of 24.5m onto the laneway which has access off the R705.
- 7.1.7. With reference to Section 2.7.7 of the Development Plan the Planning Authority response states that as the site is located within the development boundary the Muine Bheag/Royal Oak LAP that it is not within a rural area where a minimum of 20m road frontage is specified. However, they do reiterate that Section 2.7.7 of the Development Plan discourage backland development. Accordingly, whilst the precedent decisions outlined by the first party in the appeal are noted in respect of the matter of backland development in other rural locations with the County, I do not consider that they are directly relevant in this instance.
- 7.1.8. In relation to the location and configuration of the appeal site I would agree with the assessment of the Planning Authority that it would constitute backland development on the basis that it is located behind a row of dwellings fronting directly onto the public road. While I note that the neighbouring property 'Rockhaven' has vehicular

access off the private lane the dwelling directly addresses the Regional road (R705) and it forms part of a row of circa nine dwellings located along the public road.

Accordingly, I would conclude that the development of a new dwelling located behind this property which directly addresses the public road would constitute backland development.

- 7.1.9. Having regard to the site location behind a row of dwellings fronting directly onto the public road I consider that the development would constitute inappropriate backland development which would be out of character with the pattern of development in the vicinity. I would conclude that the current proposal represents development which would be contrary to the provisions of the Muine Bheag/Royal Oak LAP 2017-2023 in relation to development on Agricultural zoned lands and would be contrary to the provisions of the Carlow County Development Plan 2015-2022 in relation to backland development.

7.2. Design and impact upon residential amenity

- 7.2.1. The proposed dwelling has a floor area of 214sq m. The proposed house design is a standard bungalow with a ridge height from 5.5m. The site level is elevated above the neighbouring dwellings to the west. The site level rises from 52.1m at the proposed vehicular entrance to 53.57m at the southern boundary. The proposed finished floor level of the dwelling is 53m and the proposed finished floor level of the garage is 53.3m.
- 7.2.2. The closest residential property is 'Rock Haven' it is situated 10m to the west of the proposed dwelling. 'Rock Haven' is built at the same level as that of the lane and therefore as indicated on the 'Proposed Site Layout' drawing it has a finished floor level of circa 51.14m. Therefore, there is a difference of 1.86m between the finished floor level of the proposed dwelling and the neighbouring dwelling. The western site boundary between the sites is formed by a post and wire fence. There are large conifers planted along the boundary within 'Rock Haven', as a result of the height and maturity of these trees I note that the foliage is sparse along the lower sections of the trucks. Therefore, the existing planting does not provide comprehensive screening between the properties. Having regard to the proximity of the proposed dwelling to 'Rock Haven' and the proposed difference in finished floor level between

the properties of circa 1.86m I would concur with the assessment of the Planning Authority that would have an overbearing impact upon existing dwelling to the west.

7.2.3. I note in the appeal that the first party has proposed obscure glazing to a number of windows in the rear, west facing elevation. The windows in the rear elevation are circa 7.2m from the shared boundary with 'Rock Haven' and are 11m from the rear elevation of the dwelling. The windows where obscure glazing is proposed would serve a bathroom, en-suite bathroom and a walk-in-wardrobe. I note that two bedroom windows are also proposed to this elevation. Therefore, I would concur with the assessment of the Planning Authority that the revised proposal to provide obscure glazing would not be sufficient to address the matter.

7.2.4. Furthermore, notwithstanding the proposals of the first party to supplement the existing boundary screening along the western boundary, having regard to the elevation nature of the site in relation to the neighbouring property and the relative proximity proposed between the properties, I would consider that the proposed development would give rise to negative impacts upon the amenities of property in the vicinity.

7.3. **Vehicular access**

7.3.1. The proposed site access is proposed onto a private lane which extends for circa 80m. The lane has access onto the Regional Road the R705 to the west. It is proposed to develop a new vehicular entrance onto the lane. A 'Traffic Technical Note' was prepared by Traffic Insights and was submitted with the application. As detailed in the report the lane has a width of circa 4.5m to 5.5m between the boundaries of properties adjoining the road. The lane is noted to accommodate small volumes of both vehicular traffic and pedestrian traffic which operate at low speed on a shared surface environment. It was concluded in the report that the lane width is consistent with the guidance of DMURS (Design Manual for Urban Roads and Streets).

7.3.2. As part of the current scheme it is proposed to widen the lane to provide for two-way traffic movements from the proposed dwelling to the junction with the Regional Road. In relation to sightline provision at the proposed entrance onto the lane as detailed in the 'Traffic Technical Note' the lane has a design speed of 20km/h. Based on Table 4.2 of DMURS which refers to stopping sight distance, forward visibility of 14m is

required in both direction at the proposed entrance. As detailed on Drawing No. J437-SL03-01 'Sightline Survey', sightlines of 14m are proposed to the north-east and to the west. Accordingly, given the low speed nature of the lane and the proposals to widen and upgrade the section from the vehicular entrance to the junction with the R705, I consider the sightline provision is acceptable.

- 7.3.3. A number of observations have raised the matter of whether the existing junction between the lane and the Regional Road the R705 is suitable to accommodate additional traffic which the proposal would generate. The 'Traffic Technical Note' states that the design speed of the R705 is 60km/h. Accordingly, as set out in Table 4.2 of the DMURS, forward visibility of 59m would be required in both directions at the junction of the lane and the R705. As detailed on Drawing No. J437-SL03-01 'Sightline Survey –Local Access Road Junction with Regional Road', sightlines of 65m are provided to the north and to the south.
- 7.3.4. Furthermore, I would note the report from the Local Authority Transportation Department which acknowledged the concerns expressed in the report of the Municipal District Engineer regarding sightlines at the junction of the lane and the R705. The report of the Transportation Department noted that the existing boundary walls at either side of the entrance are of a height which would not impact the visibility of sightlines. Having inspected the site and the vehicular junction between the lane and the Regional road, I would concur with the assessment of the Transportation Department.
- 7.3.5. Overall, I would consider that the proposed development would be acceptable in terms of traffic and access considerations and would not give rise to a traffic hazard.

7.4. Appropriate assessment

- 7.4.1. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development, the location of the site in a serviced area and the separation distance to the nearest European site, 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.

7.5. Other issues

Legal issues

- 7.5.1. An Observation to the appeal has raised the matter of whether the applicant has sufficient legal interest in the lands at the proposed vehicular entrance to carry out the proposed works. In relation to this, I would note that this represents a dispute between the two parties in respect of land ownership.
- 7.5.2. The Planning and Development Act 2000, as amended, requires that the applicants have sufficient legal interests in the lands to carry out the development. Furthermore, I note that it is not within the remit of the Board to determine legal interests and/or obligations held by the applicant, in relation to such lands. Section 34(13) of the Planning and Development Act, 2000, as amended, relates as follows: "A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development." This subsection makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate." Accordingly, I do not consider that this matter is reasonable and substantive grounds for refusal of the proposed development.

8.0 Recommendation

- 8.1. I recommend a refusal of permission for the following reasons and considerations.

9.0 Reasons and Considerations

1. The proposed development, because of its location behind a row of dwellings fronting directly onto the public road, constitutes inappropriate backland development which would seriously injure the amenities of property in the vicinity by reason of proximity, uncoordinated piecemeal development, and accordingly would be contrary to the proper planning and sustainable development of the area. Furthermore, the proposed development would be contrary to the provisions of the Muine Bheag/Royal Oak LAP 2017-2023 in relation to development on Agricultural zoned lands and would be contrary to the provisions of the Carlow County Development Plan 2015-2022 in relation to backland development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Siobhan Carroll
Planning Inspector

18th of February 2020