



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306208-19

#### Development

1) Install a wastewater treatment system and polishing filter, 2) To retain the construction of a single storey dwelling, hard standing area, alterations to existing entrance and all associated site works.

#### Location

Ballylehane Lower, Ballylinan, County Laois.

#### Planning Authority

Laois County Council

#### Planning Authority Reg. Ref.

19/238

#### Applicant

Brendan Walsh

#### Type of Application

Permission and Permission for Retention

#### Planning Authority Decision

Grant Permission and Permission for Retention

#### Type of Appeal

Third Party v Grant of Permission and Permission for Retention

#### Appellant

Patrick Leonard

**Date of Site Inspection**

20.03.2020

**Inspector**

Anthony Kelly

## 1.0 Site Location and Description

- 1.1. The site is located off a local road approx. 4.7km south west of Ballylinan in south eastern Co. Laois.
- 1.2. The house is attached to an agricultural building which contains stables in the eastern part of the site. The house is approx. 45 metres from the public road. It is accessed by a driveway with a vehicular circulation/car parking area to the front and side of the house and stables. The majority of the site area comprises an agricultural field with trees and vegetation around these boundaries. There is a hedgerow along the roadside boundary. The dominant land-use in the vicinity is agricultural and there are one-off houses in the vicinity. There is a house and farmyard adjacent to the east.
- 1.3. The site has a stated area of 1.02 hectares.

## 2.0 Proposed Development

- 2.1. The application is for:
  - Permission for the installation of a wastewater treatment system and polishing filter and,
  - Permission for retention of a single-storey house, hard standing area, alterations to the entrance and all associated site works.
- 2.2. The house to be retained has a stated floor area of 97.8sqm. It has a maximum indicated height of 4.2 metres. It is externally finished in unpainted render with a galvanised roof.
- 2.3. Further information was submitted in relation to a revised vehicular entrance location and the application was re-advertised as significant further information. The application was also re-advertised for a second time, again in relation to an amended vehicular entrance location.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The planning authority decided to grant permission and permission for retention subject to 10 no. conditions, including conditions relating to the use of the site, surface water disposal, the proposed entrance and sightlines, effluent disposal, development contributions and a potable water supply.

### 3.2. Planning Authority Reports

- 3.2.1. Planning Officer reports dated 14.06.2019, 25.07.2019, 24.10.219 and 22.11.2019 were the basis for the decision. The Planning Officer concluded that, while the house and attached stables are unusual in form, the applicant has been residing in same comfortably for several years and is seeking to regularise the development on foot of enforcement proceedings. The proposed entrance will improve sightlines and a section of hedgerow on the opposite side of the road, in third-party ownership, will need to be removed and set back; a letter of consent for same has been submitted. The planning authority considers that, having regard to the nature and design of the existing and proposed development, and the character of adjoining development, the development would not seriously injure the amenities of the area or property in the vicinity and would be in accordance with the provisions of the Laois County Development Plan 2017-2023 and with the proper planning and sustainable development of the area.

### 3.2.2. Other Technical Reports

**Area Engineer** – No objection subject to a condition following the submission of the response to the second clarification of further information request.

### 3.3. Prescribed Bodies

None received.

### 3.4. Third Party Observations

3.4.1. A submission was received from Patrick Leonard, Ballylahane Lower, Ballylinan on foot of the re-advertised public notices. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- A letter of consent claiming to be from Joe Leonard (Patrick J. Leonard) in relation to trimming or removing hedgerows to improve sightlines was submitted with the planning application. Permission was not given for this.
- Sightline drawings do not reflect what is on site.

3.4.2. A subsequent submission was also received from Patrick Leonard following the second re-advertisement of public notices. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- The applicant has not explained how a letter claiming to be from Joe Leonard made its way into the application.
- It appears that on 16.08.2019 the hedgerow under third party ownership was cut down in order to give a line of site. The hedge on the applicant's property was also trimmed at the same time. The hedge on the far side was cut down/removed in spring of 2019 but it grew back during the summer. It is not practical in the long-term to carry out hedge cutting indefinitely on third-party land as permission may be withdrawn. Sightlines in that case would be 50-60 metres, nowhere near the 120 metres required.

## 4.0 Planning History

4.1. There has been one previous relevant planning application on site:

4.2. P.A. Reg. Ref. 18/202 – Permission refused in 2018 for permission for installation of a wastewater treatment system and permission for retention of a single-storey house, hard standing area, alterations to entrance and all associated site works for two reasons:

1. Having regard to the results of the site suitability assessment submitted with the application and the inspection of the site it is not considered that the

proposed site is suitable for the safe treatment and disposal of domestic effluent and the proposed development would accordingly be prejudicial to public health.

2. Visibility at the site of the proposed entrance is extremely restricted, particularly to the southwest. It is considered that adequate sightlines of 120m are not achievable at the point of the entrance subject of retention. The development, therefore, would, endanger public safety by reason of traffic hazard because of the unavailability at the entrance of satisfactory sightlines on this heavily trafficked Local Primary Road L3858 at a point where the maximum speed limit applies.

- 4.3. Enforcement file UD 17/70 relates to the subject development.

## **5.0 Policy Context**

### **5.1. Project Ireland 2040 National Planning Framework**

- 5.1.1. Section 5.3 (Planning for the Future Growth and Development of Rural Areas - Countryside) states that it is important to differentiate between rural areas located within the commuter catchment of the five cities, largest towns and places of employment and rural areas outside these catchments. A more flexible approach, primarily based on siting and design, than the demonstration of a functional economic or social requirement for housing need in areas under urban influence, will be applied to rural housing in areas that are not subject to urban development pressure.
- 5.1.2. National Policy Objective 19 states it is an objective to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence and elsewhere. In rural areas not under urban influence, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

## **5.2. Eastern & Midlands Regional Spatial & Economic Strategy 2019-2031**

- 5.2.1. Section 4.2 (Settlement Strategy) – Support the sustainable growth of rural places by promoting the revitalisation of rural towns and villages, including ready to go regeneration projects coupled with investment where required in local employment and services and targeted rural housing policies, to be determined by local authorities.
- 5.2.2. The ‘Policy Response’ to local towns, villages and rural areas set out in Table 4.3 (Settlement Typologies and Policy Responses) is ‘consolidation coupled with targeted rural housing and investment policies where required to improve local employment, services and sustainable transport options and to become more self-sustaining’.
- 5.2.3. Section 4.8 (Rural Places: Towns, Villages and the Countryside) states, inter alia in relation to housing, that support for housing and population growth within rural towns and villages will help to act as a viable alternative to rural one-off housing. It also states that the National Planning Framework and the RSES makes a distinction between areas under urban influence and rural areas outside these catchments and in these rural areas ‘a more flexible approach based primarily on siting and design will apply’.
- 5.2.4. Regional Policy Objective RPO 4.81 states that in rural areas outside the Rural Areas Under Strong Urban Influence local authorities shall encourage sustainable growth in areas that have experienced decline or stagnation, facilitate the provision of single houses in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

## **5.3. Sustainable Rural Housing Guidelines for Planning Authorities, 2005**

- 5.3.1. These guidelines are relevant to the current planning application.

## **5.4. Laois County Development Plan 2017-2023**

- 5.4.1. Under Section 2.6 (Rural Housing Strategy) the site is in an area designated as a ‘Structurally Weak Area’ under Figure 7 (Rural Area Designations). A ‘Structurally Weak Rural Area’ is defined in Table 6 (Rural Area Designation) as a rural area which ‘generally exhibit characteristics such as persistent and significant population decline as well as a weaker economic structure based on indices of income, employment and

economic growth. These rural areas are more distant from the major urban areas and the associated pressure from urban generated housing'. The criteria set out for such areas is as follows; 'To help stem decline and strengthen structurally weak areas, it is an objective of the Council that in general, any demand for permanent residential development should be accommodated, subject to meeting normal planning and environmental criteria'.

- 5.4.2. Table 32 (Development Management Standards) includes DM 18 (Wastewater Treatment) which states, inter alia, the Council will ensure only suitably designed systems in suitable locations will be permitted and systems shall meet the requirements of the EPA Code of Practice 2009.
- 5.4.3. Section 6.1.2.3 (County Roads and Urban Roads/Streets) states sight distance requirements for local roads are outlined in the Council's 'Roads and Parking Standards', 2007 and Policy TRANS 22 requires access proposals accessing onto local roads to comply with these standards.

## **5.5. Natural Heritage Designations**

- 5.5.1. The closest heritage area is River Barrow and River Nore SAC approx. 5.8km to the south east.

## **5.6. EIA Screening**

- 5.6.1. Having regard to the nature and scale of the development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.



## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal are submitted by Patrick Leonard, Ballylahane Lower, Ballylinan. The appellant lives adjacent to the east of the site. The main issues raised can be synthesised as follows:

#### Impact on Appellant's Farmyard

- The house is closer to more of the appellant's farmyard than the appellant's house is. The position of the house in relation to the appellant's farmyard will remove exemptions that can be availed of under planning regulations and effectively sterilise the appellant's right to these exemptions leading to time and cost implications for preparing planning applications.
- The appellant is concerned that if permission is granted this will affect plans for upgrading/extending an existing silage pit to accommodate an increase in cattle numbers as a result of a slatted shed built in 2018 where a planner could deem it too close to the house or that the occupant of the house could object. Relocation of the silage pit would come at significant cost and relocation off-yard is not practical. The silage pit extension is only one of a number of upgrades the appellant has in mind.
- The applicant could site a house to the western boundary of the site which would be over 100 metres from the appellant's farmyard. Obtaining planning permission through retention did not allow the appellant to object to this location from the start.
- No well should be allowed within 60 metres of the appellant's farm boundary.
- The development is contrary to Policies RUR1 and CS15 of the Laois County Development Plan which relate to supporting the agricultural sector and assessing proposals for development in terms of the impact on adjacent developments, land uses and the landscape.

#### House Design

- The house design is contrary to Policy CS6 of the Laois County Development Plan as it has a galvanised roof and is converted from a stable. It does not seem to be universally accessible and is contrary to standard conditions set down over at least the last six years.

#### No Housing Need Established

- Local need does not seem to have been established. The planning authority conditions state that no commercial activity be allowed take place from the stables.

#### Road Safety

- The drawing submitted in relation to sightlines on 06.09.2019 does not reflect the situation on the ground, in particular in relation to the width of the verges.
- The appeal includes a letter from the third-party landowner (Patrick Julian) who had given his consent for the removal or setting back of the hedgerow as necessary to improve sightlines. The updated letter withdraws his agreement to trim or set back the hedge until a number of specified conditions are met.
- If the set back is allowed the eircom pole in the verge will be dangerous.
- The Area Engineer's concerns about hazard as a result of altering the verge layout was not included in the planning authority conditions.
- No drawing has been submitted to show the hedge set back on the opposite side of the road. It is hard to see how the set back agreement is going to be legally binding on the third-party landowner. If a legally binding agreement is not in place there is a concern that sightlines will not be achieved, the entrance will be a traffic hazard and contrary to Policy TRANS 22 of the County Development Plan 2017-2022.

#### Miscellaneous

- If permission is granted the appellant requests that there is no well within 60 metres of the farm boundary and that it is conditioned that the owner of the property or house cannot object to any planning application for agricultural development in the appellant's farmyard.

## 6.2. Applicant's Response

The main points made relevant to the application can be summarised as follows:

- The appellant has objected twice to Laois County Council in relation to sightlines and the Council are satisfied that requirements will continue to be met. That was his main concern on previous objections but now three other new issues have been raised which mainly concern his own environment.
- The property was purchased c.2006. In 2011 the wetroom/canteen in the stables were converted to a kitchen and bedroom without altering the structure of the building and, for stated personal reasons, the applicant lived there on a full-time basis.
- The applicant was born and raised in the countryside and is well aware of what farm life entails. While appreciating the appellant's concerns in relation to his farming business, the applicant has never passed any comment on what works the appellant does within his own boundaries.
- Reference in the grounds of appeal to the outdated Monaghan County Development Plan 2013-2019 is not relevant. Laois County Council was satisfied that the house did not impede or distract from the countryside or from other houses in the area.
- The applicant has never had an issue with water or flooding or entering or exiting the property but as the Council has made recommendations in the interest of road safety and waste management those recommendations will be complied with as soon as possible.
- From Laois County Council reports more than adequate sightlines will be achieved from the proposed entrance without having to cut back the hedges across the road even though the farmer has consented in writing.

## 6.3. Planning Authority Response

None received.

## 7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Traffic Hazard/Sightlines
- Impact on Adjacent Farmyard
- Housing Need
- House Design
- Wastewater Treatment
- Appropriate Assessment

### 7.1. Traffic Hazard/Sightlines

7.1.1. Traffic hazard/sightlines was cited as a reason for refusal under P.A. Reg. Ref. 18/202, was the primary reason for the planning authority seeking further information and clarification of further information on two occasions, formed a significant basis of the appellant's submissions to the planning authority and has also been referenced in the grounds of appeal.

7.1.2. Section 8.5 (Development Management Standards) of the Laois County Development Plan 2017-2023 contains DM 44 and DM 45 which state that all applications with access onto the public road network shall have regard to the technical criteria contained in the Council's 'Roads and Parking Standards (2007)' document and that sightlines shall be measured from a point 3 metres back from the edge of the public road to points on the nearside of the public road in both directions. DM 54 (Hedgerows) (ix) states that the wholesale removal of hedgerows to facilitate the achievement of adequate sightline visibility for one-off houses in the countryside will not be encouraged. Table 2.1 of the 'Roads and Parking Standards (2007)' document gives a 120 metres distance for a Local Primary road with an 80kph speed limit. Though Section 2 (Visibility Standards) refers to 'desired minimum sight triangles', Page 5 states that 'at the proposed entrance the driver joining the road or turning right into the

entrance shall be able to have full-unobstructed vision along the required sight line distance. The line of vision **must\***, without exception, lie within the curtilage of the site and the public road. The driver must be able to have full vision along the required sight line distance from a driver's eye height of 1.05m to an object height of 1.15m'. (\* bold emphasis not added). Page 6 states that in certain cases where there are extenuating circumstances and where there is no alternative road frontage available, relaxations in relation to sight distances will be considered subject to the approval of the Senior Executive Engineer and where relaxation will not compromise road safety.

- 7.1.3. Similar to P.A. Reg. Ref. 18/202 the current application initially sought permission for the retention of the existing entrance. Sightlines were shown on a Site Layout Plan and showed sightlines traversing approx. 40 metres of land outside the site boundary to the east. Letters of consent were submitted from Joe Leonard and Paul Julian in relation to trimming or removing hedgerows to improve sightlines. The appellant, Mr. Leonard, subsequently stated that he had not signed this document. The planning authority considered the applicant had adequate road frontage to achieve required sightlines within his site if the entrance was moved further west and sought further information on this basis. The entrance was moved approx. 20 metres to the west under the further information response but the Area Engineer did not consider this addressed the risk associated with cars turning right into the site and clarification of further information was sought including how sightlines can be achieved within the curtilage of the site. The Site Layout Plan received as part of the clarification of further information response moved the entrance further west again and indicated a relatively substantial section of hedgerow on the opposite side of the road to the west to be trimmed or removed to achieve sightlines. A second clarification of further information request issued requested revised plans and particulars indicating the setting back of the hedgerow on the opposite side of the road together with a letter of consent from the relevant landowner clearly stating consent to setting back and maintaining this hedge. A letter from the landowner was submitted in response which clearly consented to the removing or setting back of the hedge as necessary to improve sightlines. The planning authority granted permission having been satisfied the sightline issue had been adequately addressed. Condition 6 of the planning authority decision related to sightlines.

- 7.1.4. However, as part of the grounds of appeal the appellant has submitted a letter from the relevant landowner on the opposite side of the road, Patrick Julian, which states that he was not aware the permission requires the hedge to be removed and replanted further into the field. Mr. Julian is not in favour of any possible reduction to his farm area, understood the hedge was only to be cut down to the ground on the outside edge for a short distance and that a couple of metres of thick, stock proof, hedgerow was to be retained. He is not in favour of eircom poles being moved into the field. The letter states that Mr. Julian will only agree to the set back or trimming of the hedge to facilitate the development subject to a number of conditions being met, and his agreement is removed until all conditions are met and he gets more information on the actual consequences of any proposed set back.
- 7.1.5. This letter from Patrick Julian significantly changes the situation from that which existed when the planning authority granted permission. I consider that most of the conditions set out by Mr. Julian are matters to be agreed between the relevant parties. It is not reasonable or appropriate to grant permission subject to the conditions sought by Mr. Julian, a number of which may be outside the applicant's ability to deliver. The applicant has not made any reference to this letter in his response to the grounds of appeal but states that the planning authority reports indicate that more than adequate sightlines will be achieved from the proposed entrance without having to cut back the hedges across the road (Pages 3 and 4). The planning authority reports do not state this and it is made clear that the sightlines are dependent on the setting back of the hedgerow on the opposite side of the road.
- 7.1.6. I consider that, having regard to the grounds of appeal in this regard, it has not been clearly established that sightlines in accordance with the planning authority's 'Roads and Parking Standards (2007)' document can be achieved and maintained and therefore to grant permission would give rise to traffic hazard and would be contrary to the proper planning and sustainable development of the area.

## **7.2. Impact on Adjacent Farmyard**

- 7.2.1. The grounds of appeal state that granting permission would result in the house being within 100 metres of the appellant's farmyard and he would lose exempted

development rights. The appellant's business would be stifled and any future development could be affected by the proximity of the house to the farmyard.

7.2.2. The presence of a house under third-party ownership within 100 metres of a farmyard does not mean that every agricultural development within that farmyard requires planning permission and that exempted development rights are removed. Agricultural structures are referred to in Schedule 2 Part 3 (Exempted Development – Rural) (Agricultural Structures) Classes 6–10 of the Planning & Development Regulations, 2001 (as amended). One of the 'Conditions and Limitations' to exempted development for Classes 6-9 is that 'no such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof'. Therefore, the presence of the house does not necessarily mean that every application within the appellant's farmyard will require planning permission. Any planning application made in the farmyard would be assessed on its own merits.

7.2.3. I do not consider that the development is contrary to Policies RUR1 or CS15 of the County Development Plan 2017-2023 as set out in the grounds of appeal. Policy RUR1 relates to, inter alia, supporting the expansion and intensification of agriculture by facilitating appropriate related development. That is not the subject of this application. Policy CS15 is in the context of residential development and is contained within Section 2.5.1 (Settlement Hierarchy) of the Plan.

7.2.4. Having regard to the foregoing, I do not consider the fact that the house is within 100 metres of a farmyard not within the applicant's ownership is a reasonable reason for refusal. Exempted development rights are not necessarily removed as a result and I consider that it would set an undesirable precedent to refuse permission on this basis.

### 7.3. **Housing Need**

7.3.1. The grounds of appeal state the applicant has not established a local need.

7.3.2. The National Planning Framework differentiates between rural areas located within the commuter catchment of the five cities, largest towns and places of employment and rural areas outside these catchments. The Framework provides for a more flexible

approach, primarily based on siting and design, than the demonstration of a functional economic or social requirement for housing need in areas under urban influence, in areas that are not subject to urban development pressure. This is echoed in the Eastern & Midlands Regional Spatial & Economic Strategy 2019-2031. The Laois County Development Plan 2017-2023 considers the site to be in a 'Structurally Weak Rural Area'. In these areas the Plan states that, 'in general, any demand for permanent residential development should be accommodated, subject to meeting normal planning and environmental criteria'.

7.3.3. Notwithstanding, National Policy Objective 19 of the National Planning Framework states that regard must be had to the viability of smaller towns and rural settlements. The site is approx. 4.7km south west of Ballylinan, a 'Local Service Town' and approx. 2.5km east of Wolfhill, a very small rural settlement.

7.3.4. Having regard to the provisions of national, regional and Council policy, the length of time the site has been under the applicant's ownership, the presence of stables, the relatively large site area and the fact that housing need was not included as a reason for refusal under P.A. Reg. Ref. 18/202 I do not consider that non-demonstration of a local housing need should comprise a reason for refusal for this planning application.

#### **7.4. House Design**

7.4.1. The grounds of appeal state the house is not in keeping with other houses in the area.

7.4.2. The house is unusual in that it appears to have been converted from a former stable and stables remain attached to the rear of the house. The house is relatively limited in floor area (97.8sqm) and height, 4.2 metres. It is externally finished, primarily, in unpainted render with a galvanised roof. The house is set back approx. 45 metres from the public road. Compliance with building regulations is not a matter for the planning process.

7.4.3. I consider that the house does not comprise a visually obtrusive feature in the landscape and, despite its unusual relationship with the stables building, I do not consider it visually incongruous. The house design is considered to be acceptable at this location.



## 7.5. Wastewater Treatment

- 7.5.1. The first reason for refusal under P.A. Reg. Ref. 18/202 related to effluent disposal. The site suitability assessment was carried out by an architectural technician on behalf of the applicant and the treatment system was to be located in the field west of the house. Under the current application the site suitability assessment was carried out by the planning authority on the applicant's behalf and the treatment system is positioned in a revised location further away from the house.
- 7.5.2. The site is at a poor aquifer with low vulnerability. Water was encountered at a depth of 1.3 metres in the 2.2 metres deep trial hole. No bedrock was present. Soil conditions were primarily subsoil, clay and cobbles. Table B.2 (Response Matrix for On-Site Treatment Systems) of the EPA Code of Practice indicates that the site falls within the R1 response category where an on-site system is acceptable subject to normal good practice.
- 7.5.3. The T-test result was 77.19 minutes which indicates that wastewater from a septic tank is likely to cause ponding at the surface of the percolation area. The P-test result was 33.75 minutes. Table 6.3 (Interpretation of Percolation Test Results) of the Code of Practice states that where a P-test result is between 3-75 the site is suitable for a secondary treatment system with polishing filter at ground surface or overground. The conclusion of the Site Characterisation is that the site is suitable for a septic tank and filter system constructed on-site and polishing filter or a packaged wastewater treatment system and polishing filter. The latter is recommended.
- 7.5.4. The separation distances set out in Tables 6.1 (Minimum Separation Distances In Metres) and B.3 (Recommended Minimum Distance Between A Receptor And A Percolation Area or Polishing Filter) are achieved. The 60sqm percolation area is sufficient to cater for the loading rate from the two-bedroom house.
- 7.5.5. Having regard to the foregoing, and to the fact that the site suitability assessment was carried out by the planning authority, I do not consider that there is any issue with the wastewater treatment element of the development.

## 7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the development and to the nature of the receiving environment, with no hydrological pathway to any European site, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 **Recommendation**

I recommend that the planning application be refused for the following reason and consideration.

## 9.0 **Reasons and Considerations**

1. The 120 metres sight distances required on this Local Road traverse land outside the ownership of the applicant. It has not been adequately demonstrated that these sightlines can be provided and maintained. To permit the development would, therefore, endanger public safety by reason of traffic hazard or obstruction of road users or otherwise and would be contrary to the proper planning and sustainable development of the area.

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Anthony Kelly

Planning Inspector

27.03.2020