



An
Bord
Pleanála

Inspector's Report

ABP-306459-20

Development	(a) Erection of a single storey type house; (b) Garage/fuel store for domestic use; (c) The installation of a proprietary wastewater treatment system with soil polishing filter and all associated site works
Location	Carbury, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	19/1216
Applicant	Mary Grogan
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal of Permission
Appellant	Mary Grogan
Observer(s)	None
Date of Site Inspection	20.03.2020

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located on a local road just east of Carbury in north west Co. Kildare.
- 1.2. The site comprises the north west corner of a larger field and it has an existing agricultural access gate. There is a hedgerow along the roadside boundary and a watercourse running along the western boundary of the site. The site is on a slight bend on the 50kph cul-de-sac local road. A crossroads is located approx. 30 metres west of the site and the Regional Road R402 is approx. 80 metres to the south. There is a line of detached houses on the opposite side of the local road running the length of the cul-de-sac from the crossroads (approx. a dozen houses) but there are no houses on the site side of the road. The site slopes slightly in a southerly direction.
- 1.3. The site has a stated area of 0.381 hectares.

2.0 Proposed Development

- 2.1. The application is for permission for:
 - A single storey house,
 - Garage,
 - Wastewater treatment system.
- 2.2. The proposed house has a stated floor area of 229sqm and an indicated height of 5.635 metres. The proposed garage has a stated floor area of 48sqm and an indicated height of 5 metres.

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused permission for one reason as follows:

1. It is the policy of the County Development Plan 2017-2023, namely policy RH2 to focus the provision of one-off housing in the rural countryside to the category

of 'local need', subject to compliance with normal planning criteria including siting and design considerations. Based on the information submitted with the application, it is considered that the Applicant has not demonstrated compliance with Local Need Criteria, as outlined in Table 4.3(b) of the County Development Plan 2017-2023. The proposed development would therefore contravene materially Section 4.1.3 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. The Planning Report forms the basis for the decision. It concludes that the reason for refusal of P.A. Reg. Ref. 19/549 is still relevant and no justification could be found to overturn the previous reason for refusal.

3.2.2. **Other Technical Reports**

Water Services – No objection subject to conditions.

Heritage Officer – No comment.

Roads, Transportation and Public Safety Section – No objection subject to conditions.

National Road Design Office – No comment.

Environment Section – No objection subject to conditions.

Maynooth Area Office – No objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water – No objection subject to a condition.

3.4. **Third Party Observations**

None received.

4.0 Planning History

The relevant planning history of the site is:

P.A. Reg. Ref. 19/549 – Permission refused in 2019 for a single storey house, garage and wastewater treatment system for one reason: (i) non-compliance with Local Need Criteria for a one-off house in the rural countryside.

P.A. Reg. Ref. 18/1502 – Permission refused in 2019 for a single storey house, garage and wastewater treatment system for four reasons: (i) non-compliance with Local Need Criteria for a one-off house in the rural countryside, (ii) the development would exacerbate an excessive density of development in the rural area and would contribute to the increasing suburbanisation of the area contrary to Policies RH9 and RH10 of the County Development Plan 2017-2023, (iii) would be contrary to National Policy Objective 19 of the National Planning Framework and, (iv) the removal of hedgerows would be contrary to Policies NH1, GI8, GI9 and RH9 of the County Development Plan 2017-2023.

5.0 Policy Context

5.1. Project Ireland 2040 National Planning Framework

- 5.1.1. 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, 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.

5.2. Eastern & Midlands Regional Spatial & Economic Strategy 2019-2035 (RSES)

- 5.2.1. Section 4.2 (Settlement Strategy) – Support the sustainable growth of rural areas 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. 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, contributing to the principle of compact growth.

5.2.3. Regional Policy Objectives for Rural Areas in the RSES include RPO 4.77 and RPO 4.78 which, generally, support local authority development plans prioritising the regeneration of rural towns, villages and rural settlements. Policy RPO 4.80 reiterates National Policy Objective 19 where it states that, in Rural Areas Under Strong Urban Influence and Stronger Rural Areas, local authorities shall manage urban generated growth by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, 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 planning application. Circular Letter SP 5/08 was issued after the publication of the guidelines.

5.4. Kildare County Development Plan 2017-2023

5.4.1. Carbury is designated as a rural node. A rural node is a largely unserved area with limited social and community infrastructure and is addressed in Section 4.13.8 (Rural Nodes).

5.4.2. Section 4.12 (Housing in Rural Areas) is relevant to the application. The site is in an area of the county which is designated as Rural Housing Policy Zone 1. Zone 1 areas are more populated areas with higher levels of environmental sensitivity and significant development pressure. Local Need Criteria is set out in Tables 4.3(a) and 4.3(b) of the Plan. A wide range of rural housing policies are set out in Section 4.13 (Policies: Rural Housing). Chapters 16 (Rural Design) and 17 (Development Management Standards) are also relevant to the application.

5.4.3. Policy RH2 is specifically referenced in the planning authority reason for refusal. This states that it is the policy of the Council to manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application. Section 4.1.3 of the Plan is also specifically cited in the reason for refusal. However, this appears to be a typographical error as there is no Section 4.1.3 in the Plan. Section 4.13 (Policies: Rural Housing), which contains Policy RH 2, may have been intended as the relevant section.

5.5. Natural Heritage Designations

5.5.1. The closest Natura 2000 site is The Long Derries, Edenderry SAC approx. 5.4km to the south west. However, due to the adjacent watercourse, the River Boyne and River Blackwater SAC and SPA, approx. 10.5km to the north, but approx. 26km hydrologically, appears to be the most affected Natura 2000 site. The closest heritage area is Carbury Bog NHA approx. 300 metres to the north of the site.

5.6. EIA Screening

5.6.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, a rural area, 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 stage, and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- The applicant is a native of Croghan, Co. Offaly and is a self-employed physical therapist based at Edenderry Rugby Club at Kishawanny, 3km from the site. It

is unreasonable the applicant was not given the opportunity to clarify the deficiency of the rural housing criteria documentation.

- The applicant needs to build her house on her 3.68 hectare landholding which she inherited from her father in March 2017. The land has been in the Grogan family for generations. Her father inherited the land from his uncle. The applicant assisted her granduncle running the farm during weekends and school holidays. The applicant owns 50 no. sheep and the lands are presently used for sheep breeding and rearing. The applicant has a flock number.
- In terms of social need the site is close to her brothers houses (approx. 2km and approx. 300 metres) and her work.
- Carbury village is a rural node and the site is within the rural node. The site has to be considered infill as existing housing extends further out from the village centre than the proposed site. The Council does not indicate a village boundary. The site is in the centre of the developed area of the village. Two houses were granted permission further from the centre under P.A. Reg. Refs. 18/83 and 18/307. There is a footpath on the opposite side of the road linking to the village centre.
- The applicant has an economic need to reside here as she owns the site. The applicant provides an essential service with her physical therapy clinic, provides a physio service to local sports clubs and at busy times employs assistants, thereby generating professional employment in the area.
- The design and siting of the house and garage is acceptable to the Council. There was no objection from the Environment Section to the wastewater treatment system. There is a public water main. The Roads Department have no objections.
- There is no technical reason for refusal. It appears permission was refused only because the proposal was previously refused.

6.2. Planning Authority Response

- 6.2.1. The detail within the appeal is noted and the planning authority has no further comment.

6.3. Observations

6.3.1. 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:

- Compliance with the Rural Housing Policy
- Wastewater Treatment
- Design and Siting
- Appropriate Assessment

7.1. Compliance with the Rural Housing Policy

7.1.1. This issue forms the basis for the planning authority reason for refusal. It was also the only reason for refusal under P.A. Reg. Ref. 19/549 and one of the reasons cited in P.A. Reg. Ref. 18/1502.

7.1.2. The site is adjacent to the rural node of Carbury. The County Development Plan 2017-2023 does not identify specific boundaries for rural nodes. Rural nodes are designated for limited development at a sustainable scale for immediate local need. They serve as areas where members of the rural community can live as an alternative to housing in the open countryside. Policy RH 25 of the Plan states that one-off housing in the rural node will be facilitated to applicants meeting the local need criteria in the Plan. Therefore, an applicant in a rural node requires similar compliance with the rural housing policy as an applicant on a site remote from a rural node. With regard to the housing need criteria relating to farming in Zone 1 (Table 4.3(a)), I do not consider the applicant complies. The site comprises part of a larger field as opposed to it being a farm. A letter dated 24.04.2019 from the Dept. of Agriculture, Food and the Marine in relation to the applicant's request to register as a sheep flock owner was received after

the planning authority decision to refuse planning application P.A. Reg. Ref. 18/1502. Notwithstanding, the Local Need Criteria requires an applicant to be engaged full time in agriculture and can demonstrate that they have been engaged in farming at that location for a continuous period of over seven years. This is not the case. With regard to Table 4.3(b), the applicant has not grown up and spent a substantial period of her life in rural Kildare. The applicant is a native of Croghan, Co. Offaly, approx. 22km west of the site. As set out in the application, the applicant is a physical therapist. With reference to the accommodating of a person who can satisfy the planning authority of their commitment to operate a full-time business from their proposed home, it is noted that this is not put forward as a basis for complying with the rural housing policy and, in any event, it is not a business that is location dependant and intrinsically linked to a rural location.

- 7.1.3. Policy RH 24 of the Kildare County Development Plan 2017-2023 envisages a scenario where an applicant seeks permission for a one-off house on family land in Co. Kildare but is from a neighbouring county. The policy states applications in areas bordering neighbouring counties will be assessed where the proposed site is located on family land within Co. Kildare at a distance of up to 2km in Zone 1 from the county boundary. However, the site is approx. 4.5km from the Offaly/Kildare border so Policy RH 24 does not apply in this instance.
- 7.1.4. Regional and national policy in relation to rural residential development is set out in Section 5 of this report. The County Development Plan 2017-2023 acknowledges the Sustainable Rural Housing Guidelines for Planning Authorities, 2005, in Section 2.5.2 – Rural Settlements Countryside, where the guidelines identify that Kildare falls within two areas i.e. ‘areas under strong urban influence’ and ‘stronger rural areas’. The guidelines advise that only people who are part of the rural community are facilitated for one-off housing. The site is in an area subject of significant development pressure as evinced by its inclusion within Rural Housing Policy Zone 1 of the County Development Plan 2017-2023. The RSES supports the revitalisation of rural towns and villages by way of, inter alia, targeted rural housing policies. National Policy Objective 19 of the National Planning Framework also acknowledges the importance of retaining the viability of smaller towns and rural settlements. I note that Carbury is not designated as a village or a rural settlement in the County Development Plan 2017-2023, but these settlement types are included in the Plan’s settlement hierarchy.

7.1.5. Having regard to the foregoing, I consider that the applicant does not comply with the rural housing policy of the County Development Plan 2017-2023. In addition, granting permission would also be inconsistent with regional and national policy which is to promote the revitalisation and retain the viability of rural towns, villages and rural settlements. I do not consider that ownership of the site is an economic consideration such that it would override the clear local, regional and national policy with regard to one-off houses in the rural area.

7.2. Wastewater Treatment

7.2.1. The application includes a proposal for a wastewater treatment system.

7.2.2. The site is at a locally important aquifer with high vulnerability. A comment in Section 2 of the Site Characterisation Form stated the groundwater is likely to be of risk because of the high vulnerability. Neither groundwater nor bedrock were encountered in the 2.2 metres deep trial hole. Soil conditions in the trial hole was clay/shale. Table B.2 (Response Matrix for On-Site Treatment Systems) of the EPA Code of Practice indicates the site falls within the R1 response category where an on-site system is acceptable subject to normal good practice.

7.2.3. The T-test result was 13.36 minutes. A P-test was also carried out, giving a result of 17.25 minutes. These results are consistent with the ground conditions observed on site. The site is a field with no rushes or ponding of water. There was some water in the bottom of the trial hole on inspection. Table 6.3 (Interpretation of Percolation Test Results) of the Code of Practice indicates that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater (T-test) or for a secondary treatment system with polishing filter at ground surface or overground (P-test). A secondary treatment system is recommended in the Site Characterisation Form. A polishing filter raised by at least 300mm is recommended because of the increasing shale content below 700mm.

7.2.4. There is no other development in the immediate vicinity of the site and the separation distances set out in Table 6.1 (Minimum Separation Distances in Metres) are achieved including to the watercourse to the west where a 25 metres distance is provided. The percolation area (45sqm) is adequately sized for a six-person house as per Table 10.1 of the Code of Practice.

7.2.5. I consider that the site can accommodate the wastewater treatment system and it is acceptable.

7.3. Design and Siting

7.3.1. The application is for a one-off house in the rural area.

7.3.2. The proposed house is single storey in scale with a stated floor area of 229sqm and an indicated height of 5.635 metres. A 48sqm garage is also proposed. While there is no existing development in the field of which the site forms part, there is extensive ribbon development on the opposite side of the local road to the north. The proposed house has straight lines, fenestration of reasonable proportions and external finishes of plaster with a slate roof. I consider it to be an appropriate house type for a rural area. The site layout plan indicates provision of a post and rail timber fence around the site boundaries with whitethorn hedging and some tree planting which would reduce the visibility of the rear of the house from the Regional Road to the south.

7.3.3. The site is in close walking distance to the centre of the rural node of Carbury. The site is on a cul-de-sac with a 50kph speed limit. Approximately 50 metres of the existing roadside hedgerow would have to be cut back to achieve adequate sightlines from the upgraded existing access point. Approximately 10 metres of this is outside the site boundary but is within other land under the applicant's ownership. A suitable condition requiring replacement hedgerow planting could be included in a grant of permission.

7.3.4. I do not consider that there is any significant design or siting concern in relation to the proposed development.

7.4. Appropriate Assessment

7.4.1. There is a watercourse to the west of the site which flows south. It appears that this is a tributary of the River Kilooney which flows in a general north easterly direction and discharges into the River Blackwater at Johnstown Bridge. The Blackwater flows in a north westerly direction and is a tributary of the River Boyne. At the point of discharge, the Boyne is both an SAC and an SPA (River Boyne and River Blackwater SAC and SPA). (There are two separate Blackwater Rivers that are tributaries of the River

Boyne). There is a hydrological distance of approx. 26km from the site to the point of discharge to the Boyne/Natura 2000 site.

- 7.4.2. Having regard to the distance between the site and the Natura 2000 site whereby any polluting material would be diluted to negligible concentrations by the time of discharge to the Boyne, the content of the Site Characterisation Report, the ground conditions observed on site and the distance from the wastewater treatment system to the watercourse I consider that 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.

8.0 Recommendation

- 8.1. I recommend that the planning application be refused for the following reason and considerations.

9.0 Reason and Considerations

1. Having regard to the location of the site within Rural Housing Policy Zone 1 of the Kildare County Development Plan 2017-2023, Regional Policy Objective RPO 4.80 of the Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy 2019-2031, National Policy Objective 19 of the National Planning Framework and the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the development plan for a house at this location. Furthermore, it is considered that the applicant has not demonstrated an economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements and, therefore, the proposed development does not comply with Regional Policy Objective 4.80 and National Policy Objective 19. The development, in the absence of any identified locally based genuine need for the house would

contravene local, regional and national housing policy objectives and would, therefore, be contrary to the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

20.05.2020