



An
Bord
Pleanála

Inspector's Report

ABP-306751-20

Development	House, well, wastewater treatment system, percolation area and all associated site works.
Location	Browneshill , Kernanstown , Co Carlow
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	19493
Applicant(s)	David and Ann May
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	David and Ann May.
Observer(s)	None
Date of Site Inspection	5 th of May 2020
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is located on the eastern fringes of Carlow Town in a townland called *Kernanstown*. It is a rural area serviced by a road known locally as The Avenue, which supports a large number of one-off houses and a small number of farms. At the eastern end of The Avenue, there is a small settlement which includes a church, Bennekerry N.S. and the Palatine G.A. Club.
- 1.2. As stated and obvious from a site inspection, The Avenue has a large concentration of one-off houses, with an exceptional concentration of linear developments around the subject site. The subject site is 0.30 Ha, rectangular in configuration. There are linear developments across the road from the subject site, and flanking both sides of the subject site. Within a short section of The Avenue beside the site there are 17No. one off houses.
- 1.3. The subject site is currently been farmed as an arable crop. Along the western site boundary is a surfaced field access road to the landholding (which will also provide access to another new dwelling granted planning permission to an immediate family member). To the east is a large two storey dwelling, with an elaborate bell-mouth entrance facing into the subject site, where it is proposed to create a shared entrance with the subject site, with a singular entrance onto The Avenue. The entrance to Browne's Hill House is located opposite the subject site. The roadside boundary (south) is a mature hedge, and the northern site boundary is open.
- 1.4. The general topography is flat, and The Avenue has a mature sylvan appearance.
- 1.5. Included in the Appendix of this report are photographs of the site and surrounding area.

2.0 Proposed Development

- 2.1. The erection of a two-storey dwelling house (203sq.m.), private well, onsite wastewater treatment plant, percolation area and all associated site and landscaping works.

3.0 Planning Authority Decision

3.1. Decision

Carlow Co. Co. **REFUSED** the development for one reason:

The subject site is located within an area zoned as ***Demesne Landscape*** under the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 incorporating the Carlow Town Environs LAP 2012-2018. Within this zoning a dwelling house is not permitted and would therefore be contrary to the objectives of the planning authority for that area, and materially contravene the provisions of the Joint Spatial Plan. (underlining is my own emphasis)

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report focuses on the relevant planning policy for the conclude and concludes the proposed development contravenes the zoning objective for the area.

3.2.2. Other Technical Reports

Carlow Fire Authority: No objection

Environment: Grant subject to conditions.

Area Engineer: No objection

Roads: No objection as the development intends utilising an existing entrance granted under planning registration 10/277. A Right-of-way is required.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

None

4.0 Planning History

Planning Reference 19/195

Permission granted to Paddy Tully (landowner of subject site) for a two-storey dwelling to the north west of the subject site, to be accessed by the agricultural road along the western site boundary. Granted on 8th of April 2020.

5.0 Policy Context

5.1. Development Plan

Carlow Town and Environs is designated in the National Spatial Strategy as a County Town, and in the Regional Planning Guidelines and Carlow County Development Plan 2015-2021.

The Carlow Town and Environs Local Area Plan 2012-2018 as extended is a relevant planning policy for the area and its policies are consistent with the objectives and core strategy of Carlow County Development Plan 2015-2021.

The subject site is located within a zoning objective Demesne Landscape, whereby it is the objective to conserve the special character of the Demesne Landscape.

The Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 (JSP) covers the location of the subject site in terms of planning policy.

Dwelling houses are not permitted under the Demesne Landscape zoning objective.

5.2. Natural Heritage Designations

River Barrow and River Nore SAC (Site Code 002162) is located 3.4km west of the site.

5.3. **EIA Screening** Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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

The subject site is situated along the southern boundary of 75 acres of family owned agricultural land. There are 6 No. dwellings along the road frontage, and 3 No. of the dwellings are occupied by immediate family members of Ms Ann May. The subject site can be considered an infill site as it follows the same pattern as the existing dwellings. The land is primarily used for tillage, and the site is awkward to farm. By inserting a dwelling on the site and straighter line can be maintained along the rear site boundary for farming the land.

The existing roadside ditch and hedgerow shall be retained.

Carlow Co. Co. introduced Amendment No. 2 to the Joint Spatial Plan which facilitates consideration of one-off dwellings applications on lands Demised Strategic Reserve where economic functionality or social requirement is clearly demonstrated.

The applicant's son has been diagnosed with a condition that requires a soft play area and a sensory room.

The applicant's have lived in the local area for past fourteen years and are members of the local GAA club, and their son is a student at the local Bennekerry NS.

The applicant Ann May is a daughter of Patrick Tully who grew up in the family residence of Browneshill House, the sole owner of lands indicated in the planning application.

The appeal includes letters from local estate agent stating there is a lack of suitable homes in the area for the applicants and a letter from an occupational therapist stating it is more economically viable for applicants to build their own homes.

The applicants meet with the local needs criteria of the development plan.

6.2. Planning Authority Response

It is advised the provisions of No. 2 Amendment for the *Joint Spatial Plan* do not apply to land use zoning (Demesne Landscape).

7.0 Assessment

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

- Development Plan Policy/ Principle of Development
- Design and Impact on the area
- Vehicular Access
- Legal Issue
- Appropriate Assessment

7.1 Development Plan Policy

Permission is sought for a two-storey dwelling with a private well and sewage treatment works at Browneshill, Kernanstown, Co. Carlow. The site is located within the Joint Spatial Plan for *Greater Carlow Graiguecullen Urban Area 2012-2018 incorporating Carlow Town Environs LAP 2012-2018 (as extended)* on lands zoned as '**Demesne Landscapes**'. The objective of this zoning is '*To conserve the special character of the Demesne Landscapes and provide research activities.*' The Zoning Matrix indicates that a **Residential** use will not normally be acceptable under this zoning.

On appeal, the applicants have incorrectly stated the site is located lands designated as the '**Strategic Reserve**' whereby an applicant that can demonstrate a definite social and economic need to build in the area will be favourably considered. The planning authority verified the site is not included in the Strategic Reserve land zoning its response to the appeal and submitted the relevant document cited by the applicant on appeal for consideration by the Board.

- 7.2 I note and confirm, the site is located within a zoning objective **Demesne Landscape**, and not the Strategic Reserve zoning, whereby housing is not permitted under the zoning objective. The general recommendations associated with the **Type 5 Demesne Landscape** are to promote agricultural practices, maintain and enhance the estate landscapes, preserve the tree specimens and conserve habitats. The proposed development is contrary to these zoning objectives, and materially contravenes the zoning objective for the area.
- 7.3 It is stated further on appeal by the applicant, that the site is located within a family landholding of 30Ha agricultural land. There are 6No. dwellings along the road frontage of the land holding, three of which are occupied by family members of the applicant, her sister and two aunts. The Board should not, the applicant's father/ landowner simultaneously applied for planning permission for a dwelling house on the landholding also and was granted permission to the north west of the subject site and the second dwelling will be accessed by the agricultural road forming the western site boundary of the subject site.
- 7.4 The applicants currently reside within a kilometre of the site in the same townland, Kernanstown, and have done so for the past 14 years. They are members of the local community. It is stated the proposed dwelling is to provide alternative suitable accommodation for their son who requires a sensory room, and this cannot be provided within their current dwelling. The applicants argue on appeal that they meet with the Carlow County Development 2015-2021 criteria for a one-off house in a rural area under section 2.7.1.4 of the Plan. As the applicants already own and live in the locality within 1km of the subject site, the rural housing need criteria is not applicable, and it is debateable whether they have a need given the essence of national and rural sustainable planning policy on this issue and the fact they already have a house in the area.
- 7.5 The Carlow Town Environs Local Area Plan zoning and objectives are very clear as regards this location. The applicants state the farm, which is currently tillage, will be easier to farm if a dwelling were permitted on the site, creating a clean rear boundary that would make it easier for large agricultural machinery to farm the landholding. In my opinion, this effectively implies the proposed development is an infill development. The importance of maintaining the agricultural use and openness of the landholding is integral to the zoning objective for the area, and the sylvan character of the area. The

demesne qualities of the area have experienced significant pressure for large one-off houses along the road frontage, eroding the very integrity and visual qualities of the area which made it attractive in the first place. It is important to conserve the demesne qualities of the area, and a 1:2500 site location map of the area, or an aerial image will reveal the extent of linear development in the immediate vicinity of the subject site on both sides of the road. It is further demonstrated the immense pressure this unique area is under when the applicant's (Ann May) father has been permitted a dwelling house on a backland site, as the road frontage has become so scarce, and has almost been obliterated in the vicinity of the landholding. In my opinion, it is crucial to maintain the last few agricultural gaps along the road frontage of The Avenue, in accordance with the current Demesne Landscape zoning objective for the area. Having regard to the cumulative impacts associated with the proposed development in the context of the existing and proposed development in the area, I consider the proposal, materially contravenes the zoning objective for the area by eroding the last section of road frontage associated with a sizeable agricultural landholding, and it constitutes a residential development that is unacceptable under the zoning objective for the area. I recommend the planning authority's decision to refuse permission be upheld by the Board on this planning policy issue.

7.6 Design and Impact on the Area

The proposed dwelling is a substantial two storey dwelling, 203sq.m. with pitched roofs and nap-plaster finish. The existing roadside boundary will remain intact and the entrance will be a shared entrance with the existing large two storey dwelling to east. Along the western site boundary there is a hard surface agricultural access road shall be retained to provide access to the residual family land holding to the rear and a new dwelling recently permitted to the applicant's father.

The subject house is similar in design, building line and layout to the existing pattern of the development in the immediate vicinity. The communal circle area providing access to the existing and proposed dwelling is incongruous to the rural setting, and according to the appeal file it was permitted under planning reference 10/277. In addition, there is no letter of consent on file from the adjoining owner of the dwelling to the east to use the communal entrance..

Overall, the house design and setback are in keeping with the general pattern of the development in the area.

The Board should note that this is an additional dwelling into an existing row of 8No. dwellings along the road frontage to the north of The Avenue. On the opposite side of the road there are 9No. dwellings on the southern side of The Avenue. These dwellings each have private treatment plants, and possibly boreholes as a borehole is proposed on the subject site. This is an unacceptable and inappropriate level of ribbon development along a minor county road which is narrow in width and includes no footpaths or lighting. This is a rural area under intense urban generated development pressure. This cluster of linear developments is eroding the rural character of the area and undermines the zoning objective of the area to preserve the Demesne Landscape of the area.

7.6 Vehicular Access

The proposed access is a shared access with the existing dwelling to the east from a circular turning area which was permitted under planning reference 10/277. The road serving the area is local road L 1027, known locally as The Avenue. The planning authority considered the proposed access arrangements to be acceptable. I did note from my inspection the sightline is restricted in a western direction due to the curvature of the local road. However, given the low level of traffic on the road, prevailing low speed limit and the fact it would appear the entrance has the benefit of planning permission, I would accept proposed access arrangements.

7.7 Legal issues

Based on the submission documents on the planning application file, I would question whether the applicant has demonstrated sufficient legal interest in the lands at the proposed vehicular entrance to carry out the proposed works. In relation to this, I note the access serves the adjoining dwelling to the east. I note a letter of consent from the landowner of the subject site was submitted with the planning application, from Mr. Paddy Tully, who is the father of one of the applicants and owns the 30Ha farm holding. However, it is unclear why the consent of the neighbour to the east has not provided consent to the proposed use of the shared access as part of the planning application.

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. In addition, although it was referred to in the Transportation Report on the planning file, this matter was not addressed in detail, and I consider it to be a new issue raised on appeal.

7.7 Appropriate Assessment

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 close proximity to a large urban 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.

8.0 Recommendation

- 8.1. I recommend the planning authority’s decision to refuse the proposed development on planning policy grounds be upheld.

9.0 Reasons and Considerations

1. Having regard to
 - (a) the zoning objective for the area which provides for the conservation of the special character of the Demesne Landscapes,
 - (b) that residential developments are not acceptable under the zoning objective;

(c) the excessive level of existing linear developments in the immediate vicinity of the site

(d) the loss of agricultural land and erosion of rural character of the area as a result of the proposed development in cumulation with existing and proposed developments in the area

it is considered the proposed development would materially contravene the zoning objective for the area, would be contrary to the proper planning and sustainable development of the area

2. The proposed development, which would be located in an unserviced rural area on the outskirts of Carlow town, would constitute random residential development in a rural area that is under strong development pressure, and which already has an excessive density of housing development. It is the policy of the planning authority, as set out in the Carlow and Environs LAP Plan 2012-2018, to channel housing into suitably zoned land in areas where the appropriate social, community and physical infrastructure either exists or is planned, and to restrict development in rural areas designated as Demesne Landscapes. It is considered that the proposed development would exacerbate the haphazard and unplanned form of development in this rural area, would intensify urban sprawl on the road, would exacerbate ribbon development, would militate against the preservation of the rural environment, would represent an undesirable precedent for further such development in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

7th of May 2020