



An
Bord
Pleanála

Inspector's Report

ABP-306809-20

Development	Construction of a single storey dwelling.
Location	Hacklow, Old Kilcullen, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	19/867
Applicant(s)	Maurice O'Connor
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party V. Grant
Appellant(s)	Billy and Marie Casey
Observer(s)	None
Date of Site Inspection	7 th August 2020
Inspector	Elaine Power

1.0 Site Location and Description

- 1.1. The site is located in the townland of Hacklow, approx. 4km south west of Kilcullen. Hacklow is a rural area characterised by agricultural lands and associated dwellings and agricultural buildings. The site is bound to the north and east by agricultural lands, to the south by a private laneway and agricultural lands and to the west by a detached dwelling. There are a number of detached dwellings located to the south of the appeal site, which front onto the L-808.
- 1.2. The site has a stated area of 0.9574ha and is currently a greenfield site. It is square shape and forms part of a larger landholding. The site boundaries comprise mature trees and vegetation. It is significantly elevated from the public road.
- 1.3. The site is located approx. 180m from the L-808. Access to the site is provide from both a laneway, which is overgrown and unsurfaced, and an agricultural route / track. The laneway is approx. 3m in width and approx. 130m in length. The remaining 50m to the proposed access is an agricultural track. The laneway provides access to 1 no. dwelling and a commercial premises. There is a metal gate located at the end of the track, approx. 350m from the junction with the L-808.

2.0 Proposed Development

- 2.1. It is proposed to construct a contemporary single storey house with a gross floor area of 215sqm. The house is irregular in shape. It generally comprises 2 no. rectangular blocks, the blocks are linked by a circulation / entrance area. The house is designed on different levels with a flat roof ranging in height from approx. 4.1m to 5.8m. The predominant external material is a zinc cladding with substantial glazing (doors / windows) and an element of render. The house is generally located in the centre of the site, approx. 37m from the access road, on a section of low lying land within the site.
- 2.2. The works include upgrading approx. 50m of an existing laneway to provide access to the site. The laneway is shown outside of the redline boundary.

2.3. A circuitous driveway with a significant turning area and car parking area is provided to the (front) east of the house.

2.4. A wastewater treatment system is proposed.

2.5. ***Further Information lodged 28th August 2019***

The planning authority requested 4 no. items of further information. In response to items 1 – 3 the applicant submitted, a solicitors letter which addresses the wayleave / right of way over the laneway to the south of the site, a revised site layout plan indicating how the laneway would be upgraded and details of the external materials. In response to item 4, the applicant confirmed that he intends to farm an extensive tract of land, which he owns and, therefore, has a genuine rural housing need.

The response to the further information request did not result in any alterations to the design or layout of the proposed house.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 21 no. standard conditions. Condition 2 was an occupancy condition.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

The initial Area Planners report raised some concerns regarding the proposed development and recommended that further information be sought regarding the following: -

- Details of the wayleave / right of way agreement from the registered landowner allowing access to the public road.
- Details of how it is proposed to upgrade the access land to a suitable standard.
- Details of the proposed external finishes.
- Address the applicants housing need.

Following receipt of further information, the Area Planner considered that all items had been fully addressed and recommended that permission be granted subject to conditions.

3.2.2. **Other Technical Reports**

Water Services: No objection subject to conditions.

Roads, Transportation and Public Safety Department: No objection subject to conditions

Area Engineer: Further information sought regarding a right of way over the access lane and details of how the lane would be upgraded. Final report raised no objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water: No objection

3.4. **Third Party Observations**

A third-party objection was received from Billy and Maire Casey. The concerns raised are similar to those in the third-party appeal submission.

4.0 **Planning History**

Reg. Ref. 18/307: Permission was refused in 2018 for the construction of a house and associated wastewater treatment system. The first reason for refused stated that the applicant does not come within the scope of the rural generated housing need criteria as set out in the development plan. The second reason for refusal stated the proposed development would exacerbate an excessive density of development, would contribute to the increasing suburbanisation of the area and would contravene policies RH9 and RH10 of the development plan.

Reg. Ref. 17/187: Permission was refused in 2017 for the construction of a house and associated wastewater treatment system. The first reason for refused stated that the applicant does not come within the scope of the rural generated housing need criteria as set out in the development plan. The second reason for refusal stated that the

development, by virtue of its prominent and elevated location would be out of character with the pattern of development, would constitute an unduly obtrusive feature on the landscape and would be seriously injurious to the visual amenities of the area.

5.0 Policy Context

5.1. Kildare County Development Plan 2017 - 2023

The appeal site is located on unzoned lands. Map 4.4 of the plan identifies that the site as being located in Rural Housing Policy Zone 1. Zone 1 generally comprises the northern, central and eastern areas of the county which are more populated with higher levels of environmental sensitivity and significant development pressure. Therefore, applicants are required to demonstrate that their proposal complies with a genuine housing need.

Table 4.3(a) requires that the applicant must be a member of a farming family who is actively engaged in farming the family landholding. The applicant must demonstrate a genuine local need to reside in the area through active and direct involvement in the running of the family farm. Category (i) states persons engaged full time in agriculture (including commercial bloodstock / horticulture), wishing to build their home in the rural area on the family landholding and who can demonstrate that they have been engaged in farming at that location for a continuous period of over 7 years, prior to making the application.

Table 4.3(b) requires that the applicant must demonstrate a genuine local need to reside close to their family home by reason of immediate family ties or their active and direct involvement in a rural based enterprise. Of relevance is Category (i): -

Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community and who seek to build their home in the rural area on their family landholding and who currently live in the area. Where no land is available in the family ownership, a site within 2km the original family home may be considered.

The following policies are considered relevant: -

Policy RH 2: 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.

Policy RH9(iv) To ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations (refer to chapter 16 for further guidance) including the following:

The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing development in the area, the extent of ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding.

Policy RH 10: ‘To control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:

- (i) The orderly and efficient development of newly developing areas on the edges of towns and villages;
- (ii) The future provision of infrastructure such as roads and electricity lines; and
- (iii) The potential to undermine the viability of urban public transport due to low density development’.

Policy RH 11: To preserve and protect the open character of transitional lands outside of settlements in order to prevent linear sprawl near towns, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside.

Policy RS 6 Recognise and promote the agricultural and landscape value of the rural area and prohibit the development of urban generated housing in the rural area.

The Kildare Rural Housing Report, 2016 is also considered relevant.

5.2. ***Sustainable Rural Housing Development Guidelines***

The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

5.3. ***National Planning Framework***

Policy Objective 19: '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;
- In rural areas elsewhere, 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'.

5.4. **Natural Heritage Designations**

There are no designated areas in the immediate vicinity of the site.

5.5. **EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. An EIA -

Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal was received from Billy and Marie Casey. The appeal included photographs of the access lane and land registry details and maps. The issues raised are summarised below: -

- The planning authority incorrectly stated that the laneway is public. The laneway to the front of the appeal site is in the private ownership of the appellants. The applicant has not contacted the appellants with regard to including the private laneway in the application.
- The nature of the laneway is such that it only allows for farm machinery belonging to the applicant to use the lane. There is no right of way granted to the applicant. If any such rights were verbally agreed they are not registered on the applicant's folio.
- There is no insurance on the laneway. It is unsuitable as a public roadway.

6.2. Applicant Response

None

6.3. Planning Authority Response

No further comments.

7.0 Assessment

- 7.1. The main issue in this appeal relates to a legal issue regarding access to the site. Compliance with rural housing policy, access and Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Compliance with Rural Housing Policy
- Legal Issue
- Access – New Issue
- Appropriate Assessment

7.2. ***Compliance with Rural Housing Policy***

- 7.2.1. The appeal site is located on unzoned lands approx. 4km south west of Kilcullen. The general area is characterised by agricultural lands and associated dwellings and agricultural buildings.
- 7.2.2. Map 4.4 of the development plan identifies the site as being located in Rural Housing Policy Zone 1. Zone 1 generally comprises the northern, central and eastern areas of the county which are more populated with higher levels of environmental sensitivity and significant development pressure. Table 4.3(b) requires that an applicant must demonstrate a genuine local need to reside close to their family home by reason of immediate family ties or their active and direct involvement in a rural based enterprise. Of relevance is category 2(i) which relates to persons who have spent substantial period, over 12 years living in the rural area of Kildare.
- 7.2.3. The appeal site forms part of a larger landholding, with an overall area of 65 acres, which has been in the applicant's family for over 100 years. Land registry details have been submitted which indicate that the applicant has been in ownership of the lands since 1991. The pre-planning notes state that the applicant lived in the area from 1948 to 1966 and that his daughter currently lives at the family home. It is acknowledged that the applicant lived in the local area for approx. 18 years and, therefore, in my view is in accordance with the criteria set out in Table 4.3(b) of the development plan. It is noted that the planning authority considered that the applicant had demonstrated a genuine rural housing need to reside at this site.
- 7.2.4. Notwithstanding compliance with development plan policy regarding a genuine housing need, the Sustainable Rural Housing Guidelines note that circumstances for which a genuine housing need might apply include persons who are an intrinsic part of the rural community and persons working full time or part time in rural areas. In addition, Policy Objective 19 of the National Planning Framework requires that, in rural

areas under urban influence, the core consideration for the provision of a one-off rural house should be based on the demonstratable economic or social need to live in the rural area and should have regard to the viability of smaller towns and rural settlements.

- 7.2.5. The applicant has stated that there is a requirement to live at this specific location as he intends to breed animals once his house is built, the exact type of animal will vary, depending on Brexit and market factors. It is acknowledged that applicants who are actively engaged in farming have a requirement to reside in close proximity to the farm, however, it is my view that insufficient information has been submitted with the application to demonstrate that the applicant is actively engaged in farming the landholding or currently has any direct involvement in the running of the family farm. Therefore, at this time, there is no economic reason to reside at this specific location.
- 7.2.6. With regard to a demonstratable social need to reside in this location, it is noted that applicant lived at the family home, located approx. 1.9km from the appeal site, for approx. 18 years (1948-1966). However, no information regarding the applicants social ties to the rural area have been submitted, in this regard details of local schools attended or active engagement in any social clubs or associations. It is noted that the applicant currently lives in Rathcoole, Co. Dublin.
- 7.2.7. Having regard to the information submitted, it is my view that the applicant has not demonstrated a sufficient economic or social need to live in the area, as set out in the Sustainable Rural Housing Guidelines and Policy Objective 19 of the National Planning Framework. In the absence of an identified locally based economic or social need to live in the area the proposed development would contribute to the encroachment of random rural development and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would negatively impact on the viability of smaller towns and villages and that permission should be refused on this basis
- 7.2.8. In addition, The Sustainable Rural Housing Guidelines define rural areas under strong urban influence as those within proximity to the immediate environs or close commuting catchment of large cities and towns. The development plan identifies the site as being located in Zone 1 which is an area with significant development pressure.

Having regard to the sites location in Zone 1, it is my view that the provision of an additional dwelling, on unzoned and unserviced lands would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and, therefore, would not be in accordance with policy RH 10 which aims to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. It is also considered that the proposed development would contravene policy RH 11 to preserve and protect the open character of transitional lands outside of settlements and to maintain a clear demarcation and distinction between urban areas and the countryside.

7.3. *Legal Issue / Access*

- 7.3.1. Access to the site is proposed from a laneway off the L-808. This laneway currently provides access to a detached dwelling located to the west of the appeal site. There is an unsurfaced access route located along the southern boundary of the site which provides access to agricultural lands. It is proposed to upgrade this unsurfaced route and continue the laneway to the proposed new vehicular entrance.
- 7.3.2. Concerns have been raised in the third party appeal that this laneway is private and the applicant does not have a legal right to use the laneway. It is also noted that there is no insurance on the laneway and as such it is unsuitable for public use. It is stated that the applicant has not contacted the appellants with regard to using the laneway and that the route is only suitable for farm machinery. The appellants have submitted land registry details which would indicate that the laneway is within their ownership.
- 7.3.3. In response to a further information request from the planning authority, the applicant submitted a solicitor's letter land registry details which indicates that the laneway has been a public road since 1974. It is noted that the applicant engaged with the planning authority with regard to upgrading the laneway to a suitable standard and that the Planning Authority's Area Engineer raised no objection to the proposed works.
- 7.3.4. Section 5.13 of the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about rights over land and that these are ultimately matters for resolution in the Courts. Section 34(13) of the Planning and Development Act 2000 (as amended) states, 'a

person shall not be entitled solely by reason of a permission under this section to carry out any development’.

- 7.3.5. In conclusion, I consider that the disputes between the parties in relation to matters of access that may or may not arise are ultimately matters that would be dealt with more appropriately outside of the planning appeal process.

7.4. Access – New Issue

- 7.4.1. The subject site is located approx. 180m from the junction with the L-808, which is located approx. 50m from the junction with the R-418. Access to the site is provided from both a laneway, which is overgrown and unsurfaced, and an agricultural route / track. The laneway is approx. 3m in width and approx. 130m in length. The remaining 50m to the proposed access is an agricultural track. The laneway provides access to 1 no. dwelling and a commercial premises. There is a metal gate located at the end of the track, approx. 350m from the junction with the L-808. The route is overgrown with mature vegetation on both sides.
- 7.4.2. The applicants have submitted information which indicates that the laneway is in public ownership, it is noted that the Planning Authority’s Area Engineer raised no objection to the upgrading of approx. 50m of the lane to provide access to the site. During a site visit on the 7th July 2020, a sign which read ‘Private Lane’ was noted at the entrance to the lane, at the junction with the L-808. Notwithstanding the applicant’s stated legal right of way over the lane, I would have concerns regarding the capacity of the route to accommodate additional vehicular movements.
- 7.4.3. There are some inconsistencies in the drawings submitted regarding the width of the laneway. The Site Location Map shows the laneway width as approx. 4m in width while the Site Layout Plan shows the laneway width as approx. 6.5m. Having visited the site, it is my view that the laneway is approx. 3m in width.
- 7.4.4. In my opinion the surface and width of the laneway to the site are seriously substandard. The restricted width of the access road does not allow for two vehicles to pass or for vehicles to manoeuvre on the lane. Therefore, vehicles would have to reverse in order to find a suitable place for cars to pass. Having regard to the elevated

nature of the lane and the use of the lane by agricultural machinery, this represents a potential traffic hazard.

7.4.5. Having regard to the restricted width, unsurfaced and elevated nature of the laneway, I am not satisfied that the laneway has the capacity to accommodate development and that permission should be refused on this basis. This is a new issue and the Board may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal set out above, it may not be considered necessary to pursue the matter.

7.5. ***Appropriate Assessment***

Having regard to the nature and small scale of the proposed development and the distance from 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**

I recommend that permission be refused for the reasons stated in the attached schedule.

9.0 **Reasons and Considerations**

1. The subject site is located in area under significant pressure for rural housing, as identified in the Kildare County Development Plan 2017 - 2023. Furthermore, the site is located in an area that is designated as under urban influence in the Sustainable Rural Housing Guidelines and in the National Planning Framework, where National Policy Objective 19 aims to facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in a rural area. Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not

come within the scope of the housing need criteria as set out in national policy for a house at this location. The proposed development would, therefore, contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would negatively impact on the viability of smaller towns and villages.

2. The proposed development would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities. It would contravene Policy RH 10 which seeks to control the level of piecemeal and haphazard development in rural areas and Policy RH 11 which aims to preserve and protect the open character of transitional lands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The proposed development is located along an unsurfaced laneway which is inadequate in width, alignment and structural conditions and would, therefore, endanger public safety by reason of traffic hazard.

Elaine Power
Planning Inspector

10th August 2020