



An
Bord
Pleanála

Inspector's Report

ABP-308128-20

Development	Cottage style house and wastewater treatment system
Location	Lattensbog, Blacktrench, Naas, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	20/642
Applicant(s)	Nora & Fergal O'Reilly
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal of Permission
Appellant(s)	Nora & Fergal O'Reilly
Observer(s)	None
Date of Site Inspection	08.12.2020
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located in a rural area in Co. Kildare, approx. 7km west of Naas.
- 1.2. The site is a field and is located at the junction of a local/main road and a minor road. There is a significant amount of one-off housing in the vicinity. The site is relatively flat and there are substantial drains along the northern, eastern, and southern boundaries. There are some trees and hedgerows around the site boundaries. There is a vehicular access in the north east corner with a gravel surfaced area inside the northern boundary.
- 1.3. The site has an area of 0.448 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for a single-storey house and wastewater treatment system.
- 2.2. The proposed house has a floor area of 196sqm and a maximum height of 6.375 metres. The proposed external finishes to the walls are a mix of pebble dash and smooth render and the roofs are a mixture of concrete tiles and dark green corrugated sheeting.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused for the following three reasons:

1. Policy RH 9 of the Kildare County Development Plan 2017-2023 is to ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations, including the capacity of the area to absorb further development. In conjunction with the level of existing development in the vicinity, it is considered that the proposed house would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities, would contravene Policy RH 9 of the

Development Plan, which policy is considered reasonable. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Taken in conjunction with existing and permitted development in the vicinity and taking into consideration the degree of existing ribbon development in the area, which is identified as five or more houses alongside 250m of road frontage, it is considered that the capacity of the area to absorb any further development has been exhausted. It is also considered that the proposed development would exacerbate ribbon development in the area and therefore the proposed development would be contrary to the provisions of Policy RH12 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.
3. Notwithstanding the information submitted by the applicants for compliance with local need criteria of the Kildare County Development Plan 2017-2023, it is considered that the applicants have failed to adequately demonstrate compliance with Policy RH2 of the Plan, which requires the submission of documentary evidence to substantiate an association with the area for a period of 12 years. To permit the proposed rural dwelling in the absence of the necessary supporting information, would be contrary to the provisions 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 is the basis for the decision. It states that the trial hole and percolation test holes were not open on inspection and the applicants' local need requirements had not been satisfactorily demonstrated. Notwithstanding, the surrounding area remains heavily overdeveloped and there has been no change which would overturn the decision made on P.A. Reg. Ref. 18/1036. There has been a number of applications refused within the last five years relating to overdevelopment of the area, both on site and in the wider area, which further highlights the lack of ability to absorb further development.

3.2.2. **Other Technical Reports**

Area Engineer – No objection subject to conditions.

Environment Section – Further information recommended.

Environmental Health Officer – Further information recommended.

Water Services – No objection subject to conditions.

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

3.3. **Prescribed Bodies**

Irish Water – No objection. Observations made.

3.4. **Third Party Observations**

3.4.1. None.

4.0 **Planning History**

4.1.1. The applicants have had three previous valid planning applications on site:

P.A. Reg. Ref. 15/884 – Permission was refused in 2015 for a house and wastewater treatment system for four reasons: (i) non-compliance with the rural housing policy of the County Development Plan 2011-2017, (ii) further contribute to an excessive density of development in a rural area lacking certain public services and community facilities and the capacity of the area to absorb additional residential development has been exhausted, (iii) exacerbate ribbon development, and (iv) would contribute to the erosion of the rural character of the area.

P.A. Reg. Ref. 17/1323 – An application for a house and wastewater treatment system was withdrawn in 2018.

P.A. Reg. Ref. 18/1036 – Permission was refused in 2018 for a house and wastewater treatment system for four reasons: (i) the site is not considered suitable for an on-site wastewater treatment system, (ii) failure to demonstrate compliance with Policy RH2 of the County Development Plan 2017-2023 (rural housing policy), (iii) would

exacerbate an excessive density of development in a rural area that would detract from the rural character of the area, and (iv) exacerbate ribbon development.

- 4.1.2. There have also been approx. five other earlier, similar applications on site since 2008, all refused permission for reasons including an unacceptable over-development of the rural area, the development would contribute to the erosion of the rural character of the area, the capacity of the area to absorb further development has been exhausted, it had not been demonstrated that the site is suitable for the accommodation of a septic tank system and sightlines.

5.0 Policy Context

5.1. Project Ireland 2040 National Planning Framework (NPF)

- 5.1.1. National Policy Objective (NPO) 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 2019-2031 (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 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 NPO 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, as varied**

5.4.1. Among other issues the variation of the Plan replaced reference to the National Spatial Strategy 2002-2020 with text in relation to the NPF and its implementation at a regional level through RSEs. Section 3.8 (Policies: Settlement Strategy) and Section 3.9 (Objectives: Settlement Strategy) of the Plan are amended to recognise both the NPF and the RSEs. For example, Policy SS 5 includes implementing through appropriate policies the principles and guidance set out in the NPF and the RSEs. Effectively, the County Development Plan 2017-2023 has been varied to include national and regional policy framework that has been introduced since the adoption of the Plan in 2017.

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). 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. Policies RH 2, 9 and 12 are specifically referenced in the planning authority reasons for refusal. Policy RH 2 states that the development of one-off housing will be managed in conjunction with the rural housing policy zone map (Map 4.4) and accompanying

Schedules of Category of Applicant and Local Need Criteria. Policy RH 9 states that, notwithstanding compliance with local need criteria, applicants shall comply with considerations including integration with physical surroundings, landscaping, the capacity of the area to absorb further development, access, wastewater treatment and surface water disposal. Policy RH 12 discourages ribbon development.

5.5. Natural Heritage Designations

5.5.1. The closest Natura 2000 site is Mouds Bog SAC approx. 1.3km to the south.

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 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

6.1.1. The main points made can be summarised as follows:

- The applicants' association with the area dates to 1998 when Nora O'Reilly's mother, Teresa Smith, became partner to Liam Lynch who farms locally. Nora O'Reilly was 18 and therefore has a 22 year long association with this area. Fergal O'Reilly is self-employed with a grab hire service operating locally having also previously worked locally.
- The site was purchased in 2014. The vehicular entrance was constructed in 2014/2015 and the lane was upgraded. Drainage works were carried out on site in June 2018.
- The applicants' previous planning applications are set out together with the planning authority's treatment of the applications.

- In relation to Policy RH 9, the density in this node is approx. 1 house per acre and the application would be in keeping with this development pattern. It is an infill development. Anyone within a 5km radius of this site who feels they comply with RH 2 will be applying for permission despite the accumulating refusals.
- Policy RH 12 is not applicable because (i) the house fronts onto the lane and is screened from the main road and therefore should not be counted with development on the main road and, (ii) the 250 metres rule has been seriously contravened previously.
- The site is suitable for a wastewater treatment system provided a maintenance agreement is in place. The raised sand polishing filter will comfortably allow for the loadings imposed. The imported soils and the existing soils below ground have been tested. There is no peat on site as previously suggested.
- In relation to Policy RH 2, the applicants only became aware that documentary evidence of the Lattensbog address for a 12 year period would be required after a pre-planning meeting in 2015.
 - Photographs are submitted showing the applicants' marriage and the children in Lattensbog dating to 2003.
 - The applicants live with Theresa Smith and Liam Lynch 200 metres away.
 - All relatives and friends live within a four mile radius.
 - There is a support group for bringing up children and Nora is able to assist her mother with her medical issues (supporting letter from doctor attached).
 - Nora O'Reilly attended national school in Allen and the applicants' two daughters attend the school.
 - Fergal O'Reilly is involved with Clongorey United.
- The site is low lying bog land in a rural area, but it is not suitable for agricultural purposes. The main road is 1.2 metres above the site, but the site is at the same level as all the houses in the area.

- Sightline visibility in both directions is more than adequate for the 20kph speed. The applicants are contributing to 15% of the cost of upgrade works to the lane.
- The proposed house has a vernacular cottage narrow form with a tin roof and leaves the impression that it is one of the oldest houses in the area.

6.2. **Planning Authority Response**

6.2.1. No further comment to make.

6.3. **Observations**

6.3.1. None.

6.4. **Further Responses**

6.4.1. None.

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 Rural Housing Policy
- Site Layout and House Design
- Policy RH 9 of the County Development Plan 2017-2023
- Policy RH 12 of the County Development Plan 2017-2023
- Wastewater Treatment
- Appropriate Assessment

7.1. Compliance with Rural Housing Policy

- 7.1.1. Compliance with rural housing policy is a primary issue for every rural housing application. The planning authority's third reason for refusal states that the applicants have failed to adequately demonstrate compliance with Policy RH 2 of the County Development Plan 2017-2023 which requires the submission of documentary evidence to substantiate an association with the area for a period of 12 years.
- 7.1.2. The site is located in Rural Housing Policy Zone 1. The applicants consider they comply with Category 2 (i) of the Schedule of Local Need i.e. persons who have grown up and spent substantial periods of their lives living in the rural area. The planning authority Planning Report states that personal information submitted has been assessed under separate cover, for data protection purposes. This assessment has not been received by the Board. Notwithstanding, I consider an assessment can be made on the basis of the submitted information.
- 7.1.3. The documentation submitted states that the applicant, Nora O'Reilly's, connection to the rural area began in 1998, when she was 18, when her mother, Teresa, partnered with Liam Lynch. The applicants only became aware of the necessity to demonstrate documentary evidence of links to the area following a pre-application consultation with the planning authority in 2015. The applicants' address on the pre-application documentation associated with the 2015 pre-application consultation was a house in Oak Lawns, Kilmeague, a village approx. 4km to the north west. Documentation has been submitted with the application e.g. eir bill, car insurance and motor tax and vehicle registration with a Lattensbog address. These are dated 2016 and 2017. It is stated the applicants and their three children live with Liam Lynch and Teresa Smith 200 metres away. A copy of Nora O'Reilly's birth cert. has been submitted which gives her father's address as Coill Dubh, a village approx. 7km to the north.
- 7.1.4. The County Development Plan 2017-2023 was varied to include reference to the RSES and NPF. Policy SS 5 includes implementing through appropriate policies the principles and guidance set out in the RSES and the NPF. Inter alia, as set out under Sections 5.1 and 5.2, above, these aim to ensure that in rural areas such as this, 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. Fergal O'Reilly's occupation is as a

HGV driver/grab hire truck business and Nora O'Reilly is a homemaker. I do not consider that the detail provided demonstrates a situation which satisfies regional and national policy.

- 7.1.5. Having regard to the foregoing, I do not consider the applicants have demonstrated that they comply with Category 2 (i) of the Schedule of Local Need set out in the County Development Plan 2017-2023. In addition, I consider that the development would be contrary to the rural housing provisions of both the NPF and RSES and I recommend permission be refused for this reason.

7.2. **Site Layout and House Design**

Site Layout

- 7.2.1. The site is located in an area where there is a significant amount of existing residential development. This issue will be addressed elsewhere. In terms of the site layout, the site area is relatively substantial, at 0.448 hectares. It is relatively flat and there are trees and hedgerows around the site boundaries. The site layout plan indicates additional planting through the site. There are significant drains to the north, east and south boundaries. There is an existing vehicular access in the north east corner. There is no concern with the specific layout of the site itself.

House Design

- 7.2.2. The application states that the proposed house has been designed to give the impression that an 'original' building has been recently extended and that it is one of the oldest houses in the area. The house is single-storey in scale with a narrow form. The bedroom area is to the front/central area with the living area to the rear linked by a flat roof lobby. A south facing patio is located off the kitchen/living area. The external wall finishes are a mix of pebble dash and smooth plaster and the roofs a mix of corrugated sheeting and tiles. I consider that the proposed house type is acceptable in terms of design in this rural area.
- 7.2.3. Despite the site area, the house footprint is only 7.5 metres from the western boundary and 8 metres from the northern boundary. Notwithstanding, given the relatively limited height and the separation distances provided there will be limited, if any, shadowing impact on adjacent properties and no overlooking or overbearing impact.

7.3. Policy RH 9 of the County Development Plan 2017-2023

- 7.3.1. The first reason for refusal in the planning authority decision states that, notwithstanding compliance with local need criteria, Policy RH 9 ensures that normal siting and design considerations, including the capacity of the area to absorb further development, will also be assessed. The planning authority considered the proposed development, in conjunction with the level of existing development in the vicinity, would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities and would contravene Policy RH 9.
- 7.3.2. The existing level of development in the vicinity has been cited as a reason for refusal in both of the applicants' previous applications where a decision was made and also in earlier planning applications on site. The planning authority has been consistent in its consideration of applications on site in this regard. The planning authority Planning Report states there are over 40 no. houses within a 350 metres radius of the site. The applicants consider this site is an infill site and is in keeping with the development pattern of the area. I do not consider that a development on a site of this size and on the junction of two roads can be considered an infill development. I consider it would result in the coalescing of development and further erosion of the rural character of the area.
- 7.3.3. I consider that the provision of an additional house at this location would further contribute to a proliferation of houses in the rural area, would exacerbate the erosion of the rural character and would be contrary to the provisions of Policy RH 9.

7.4. Policy RH 12 of the County Development Plan 2017-2023

- 7.4.1. The second reason for refusal in the planning authority decision states that the capacity of the area to absorb any further development has been exhausted and the proposed development would exacerbate ribbon development in the area, contrary to Policy RH 12. Ribbon development is also referenced in subsection (iv) of Policy RH 9 so there is a degree of overlap between the first two reasons for refusal in the planning authority decision.
- 7.4.2. Policy RH 12 defines ribbon development as five or more houses along 250 metres of road frontage. The policy outlines a number of aspects that will be considered in assessing a proposal in this regard. The applicants do not consider ribbon

development is applicable because the house fronts onto the lane and is screened from the main road and therefore should not be counted with development on the main road. They also note that the 250 metres rule has been seriously contravened previously, and I acknowledge that substantial ribbon development exists in the area.

7.4.3. The proposed house would be the fifth house on this side of the minor road over a 250 metre distance. There are approx. six houses within 250 metres on the main road to the west on the same side of the road. I consider the proposed development would exacerbate existing ribbon development as defined in the Plan. In terms of the aspects to be considered, as set out in the policy, I do not consider the applicants comply with rural housing policy, it is not an infill development due to the size and location of the site, it would coalesce currently separate lines of ribbon development and ribbon development has been cited in the reasons for refusal in the previous applications made by the applicants.

7.4.4. Having regard to the foregoing, I consider the development would exacerbate ribbon development in the area contrary to Policy RH 12.

7.5. Wastewater Treatment

7.5.1. Both the Environment Section and the Environmental Health Officer reports on the application recommended further information in relation to the wastewater treatment element of the application though the Environmental Health Officer's report was not referenced in the planning authority's Planning Report. Concern over wastewater treatment comprised the first reason for refusal under P.A. Reg. Ref. 18/1036 as well as also being included in reasons for refusal in earlier applications. The applicants state that extensive drainage works were carried out on site in June 2018.

7.5.2. The submitted Site Characterisation Form states that the aquifer category is locally important with moderate vulnerability. In the 2.1 metres deep trial hole, the water table was at a depth of 1.0 metre. Towards the top of the trial hole the soil conditions were brown and grey clay and silt. Table B.2 (Response Matrix for On-Site Treatment Systems) of the Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) published by the Environmental Protection Agency indicates that the site falls within the R1 response category where an on-site system is suitable subject to normal good practice.

- 7.5.3. The T-test result was 50. A P-test was also carried out and this gave a result of 39. Table 6.3 of the Code of Practice indicates that a site is suitable for a secondary treatment system with polishing filter at ground surface or overground where there is a P test result of $3 \leq P \leq 75$. Section 5 (Recommendation) of the Site Characterisation Form recommends a wastewater treatment system and raised sand polishing filter. No detail of the proposed system has been submitted. An imported soil mound is to be used which has a T value of 29. This is referenced in a separate document submitted, 'Report on Soil Characterisation Test & Imported Soil Mound for Effluent Treatment'.
- 7.5.4. Given the relatively substantial site area I consider that the separation distances set out in Table 6.1 (Minimum Separation Distances in Metres) of the Code of Practice can be achieved, and the site layout plan indicates this. As there is no public wastewater system in place, all houses in the vicinity are served by on-site systems.
- 7.5.5. The proposed soil polishing filter is designed based on a water table level of 1.0 metre. It is proposed to use imported soil (soil mound) with a T-value of 29 to provide a base of 0.3 metres of soil above ground level, below the raised sand polishing filter. However, the Environmental Health Officer's report states that water was encountered at a level of approx. 0.6 metres below ground level. On my inspection, the ground was damp and there were some reeds on site on inspection. Water was encountered at a depth of approx. 0.3 metres below ground level in the trial hole.
- 7.5.6. Having regard to the foregoing, I do not consider that the effluent treatment system has been shown to be acceptable, having regard to prevailing site conditions. I consider that to permit the development as proposed would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

7.6. **Appropriate Assessment**

Preliminary Screening

- 7.6.1. The site comprises a field surrounded on three sides by substantial drains. The drain along the northern boundary is culverted under the vehicular entrance on the eastern boundary and in the south east corner it joins the drain along the southern boundary and flows under the road in an easterly direction along the main local road. It appears this drain discharges to the River Liffey approx. 3.4km, hydraulically, to the south east.

The Liffey flows into Dublin Bay where South Dublin Bay and River Tolka Estuary SPA, South Dublin Bay SAC, North Bull Island SPA and North Dublin Bay SAC are present. Given the approx. 50km hydrological distance to Dublin Bay any possible pollutant would have dissipated to negligible quantity by the time it reached a European site.

- 7.6.2. The site is not in or immediately adjacent to a Natura 2000 site. The closest Natura 2000 site is Mouds Bog SAC approx. 1.3km to the south. The hydraulic route of the drain from the site to the Liffey is not in proximity to any European site. Therefore, I am satisfied that the potential for impacts any European site can be excluded at the preliminary stage due to the separation distances from this and other sites and the absence of an ecological and hydrological pathway.

Preliminary Screening Conclusion

- 7.6.3. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, remote from any 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 that the planning application be refused for the following reasons and considerations.

9.0 Reasons 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 and Midland Regional Assembly Regional Spatial and 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 applicants do 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 applicants have 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. In the absence of any identified locally-based need for the house, the development would contravene local, regional and national housing policy objectives and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would contribute to urban generated residential sprawl in this area, would contribute to existing ribbon development along this section of roadway, would contribute to the encroachment of random development in this rural area, would militate against the preservation of the rural environment and would lead to an inefficient and uneconomic demand for the provision of services in this rural area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of this area.
3. Having regard to the ground conditions and high water table, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a wastewater treatment system and raised polishing filter. The proposed development would, therefore, be prejudicial to public health.

Anthony Kelly

Planning Inspector

09.12.2020