



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308810-20

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<b>Development</b>	New house with garage, treatment system and percolation area, well, site entrance and all associated site works.
<b>Location</b>	Cappakeel, Emo, Portlaoise, Co. Laois
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	20/320
<b>Applicant(s)</b>	Shane & Ailish Mooney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party v Grant of Permission
<b>Appellant(s)</b>	Thomas Milner
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13.04.2021
<b>Inspector</b>	Anthony Kelly

## **1.0 Site Location and Description**

- 1.1. The site is located approx. 3km south east of Emo and approx. 8km north east of Portlaoise in north east Co. Laois.
- 1.2. The site is located in the northern part of a larger field where cattle were grazing on inspection. The north/side boundary adjoins a two-storey detached house. There are other one-off houses in the vicinity. The site is on a relatively straight stretch of local road. Ground levels rise slightly from the roadside towards the rear of the site.
- 1.3. The site has an area of 0.4 hectares.

## **2.0 Proposed Development**

- 2.1. Permission is sought for a house with attached garage, treatment system and percolation area, well and site entrance.
- 2.2. The proposed house and attached garage had a floor area of 472sqm and a height of 9.335 metres. The structure is to be externally finished in render with a blue/black slate roof.
- 2.3. Further information was submitted in relation to justification for the design of the house and attached garage, sightlines and addressing issues raised in the third party submission such as a reduction in the height of the house to 8.36 metres, relocating the house footprint further south on site, the building line, shadowing and landscaping.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Permission was granted by Laois County Council subject to 15 no. conditions relating to, inter alia, effluent treatment, water supply, surface water, the vehicular entrance and sightlines, external finishes, landscaping, construction practices, a seven-year occupancy condition and development contributions.

### 3.2. **Planning Authority Reports**

3.2.1. Two Planning Reports form the basis of the planning authority decision. The second report considers that, having regard to its nature, extent and location, the development would be compliant with the Laois County Development Plan 2017-2023 and with the proper planning and sustainable development of the area.

### 3.2.2. **Other Technical Reports**

None.

### 3.3. **Prescribed Bodies**

None.

### 3.4. **Third Party Observations**

One observation was received by the planning authority from Thomas & Claire Milner who live in the property adjacent to the north. The main points made can be summarised as follows:

- No objection to the construction of a house.
- Concern about the house design in terms of width, height, attached garage, setting in the landscape.
- Shadowing and overbearing impact.
- Building line.
- House footprint on site.
- Landscaping.
- Ribbon development.

## 4.0 **Planning History**

None.

## 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 Assembly 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 (RPOs) 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. **Laois County Development Plan 2017-2023**

5.4.1. Section 2 (Development Plan Strategy (Core Strategy)) includes Section 2.6 (Rural Housing Strategy). The site is in an 'Area Under Strong Urban Influence' as set out in Figure 7 (Rural Area Designations). Table 6 sets out the definition of this area, along with 'Strong Rural Areas' and 'Structurally Weak Rural Areas'. The Plan considers that continued high levels of single rural houses in a 'Rural Area Under Strong Urban Influence' would inhibit the growth of the County's urban areas and cause further deterioration of rural amenities. The key objective is to facilitate genuine housing requirements.

5.4.2. The 'Criteria' of Table 6 sets out how a genuine rural housing need can be demonstrated:

(a) The application is being made by a long-term landowner or his/her son/daughter seeking to build their first home on family lands; or

(b) The applicant is engaged in working the family farm and the house is for that persons own use; or

(c) The applicant is working in rural activities and for this reason needs to be accommodated near their place of work; or

(d) The application is being made by a local rural person(s) who have spent a substantial period of their life living in the local rural area, and, who for family and/or work reasons need to live in the rural area.

5.4.3. Development management standards are set out in Section 8.5 of the Plan.

5.4.4. Appendix 7 (Rural Design Guidance) of the Plan is relevant to the proposed development.

## 5.5. Natural Heritage Designations

- 5.5.1. The closest Natura 2000 site is River Barrow and River Nore SAC (002162) approx. 6.1km to the south east. The closest heritage area is Derries Wood pNHA approx. 1.4km to the north east.

## 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

The grounds of appeal are submitted by Thomas Milner, Cappakeel, Emo who lives adjacent to the north of the site. The main point made can be summarised as follows:

- The further information response refers to the revised site layout plan (Drg. No. 2118/FI/02/A) which the applicants state shows the building line revised to match the neighbouring house. However, the appellant's porch is omitted and the addition of two non-structural rectangular boxes to both sides of the applicant's porch leads to confusion as to the alignment of the buildings. The appellant has submitted his own drawing showing his property correctly represented and requests the application be amended to have the two main blocks of both properties aligned. The correct alignment is extremely important by reason of the scale and depth of the proposed house and its impact on the appellant's living and sleeping areas and it is very important this inconsistency is corrected.

## 6.2. Applicants' Response

The main points made can be summarised as follows:

- The applicants do not agree with the basis of the appeal and feel it should be dismissed.
- Following a meeting with the appellant changes were made to the application in the further information response to alleviate concerns i.e. building line brought forward, house footprint moved further to the south and reduction in height. No further submission was received by Laois County Council.
- The Board is asked to dismiss the appeal so the applicants can proceed with building.
- The applicants returned from living abroad in August 2020 and are currently living with their three children with Ailish Mooney's mother.

## 6.3. Planning Authority Response

None.

## 6.4. Observations

None.

## 6.5. Further Responses

None sought.

## 7.0 Assessment

Having examined the application details and other documentation on file, including the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Compliance with Rural Housing Policy – New Issue

- Site Layout & House Design
- Impact on Adjacent Residential Amenity
- Roads & Sightlines
- Wastewater Treatment
- Appropriate Assessment

## 7.1. Compliance with Rural Housing Policy – New Issue

- 7.1.1. A core issue with every application for a one-off house is an applicant's compliance with the rural housing policy. The planning authority considered that the applicant Ailish Mooney (who is referred to as 'the applicant' in this subsection) complies with the policy. Shane Mooney is from Co. Wexford. The planning authority's rural housing policy is set out in Section 2.6 of the County Development Plan 2017-2023. Three criteria arise: the applicant must come within the definition of a 'Local Rural Person', the site must be within their 'Local Rural Area' and the applicant must have a 'Local Rural Housing Need'.
- 7.1.2. The section of the planning authority's Planning Report which considers the applicant's compliance with the rural housing policy is brief. It states 'Supporting information has been submitted with the application to demonstrate that the applicant meets the local need criteria ...' A brief cover letter was submitted with the application which stated that the applicants had been living in Luxembourg for six years and they have three children. The applicants' response to the grounds of appeal states they returned to Ireland in August 2020 and have been living with the applicant's mother approx. 500 metres to the north east. The site is part of the family farm which is owned by the applicant's brother. The applicant's birth cert has been submitted, which gives her father's address as Cappakeel, Emo. Separate letters were submitted from Emo National School stating the applicant attended and that two of the applicants' children are enrolled from August 2020. A letter from the Emo parish priest and a marriage certificate showing the applicants were married in Emo have also been submitted. I consider it has been established that Ailish Mooney complies with the rural housing policy as set out in the Laois County Development Plan 2017-2023.



7.1.3. While the applicant may satisfy the rural housing policy as set out in the County Development Plan 2017-2023, I do not consider that current national or regional policy in relation to rural housing has been met. The NPF and the RSES require that, in rural areas under urban influence or rural areas under strong urban influence, single housing in the countryside shall be provided based on the core consideration of demonstrable economic or social need to live in a rural area. The site is an 'Area Under Strong Urban Influence' in Map 1.2.3/Figure 7 (Rural Area Designations) in the County Development Plan 2017-2023. The applicants have not demonstrated any economic or social need to live in this rural area. According to the further information response, Shane Mooney works in the banking sector. The applicants' marriage certificate states Ailish Mooney's occupation is/was 'Quality Assurance'. In relation to a social need, Ailish Mooney grew up in the rural area. However, I do not consider that this alone is sufficient to require a house in a rural area under Strong Urban Influence given regional and national policy supports the revitalisation of smaller towns, villages and rural settlements such as, within approx. 8km of the site, Emo, Monasterevin, Portarlinton, Portlaoise and Stradbally.

7.1.4. Having regard to the foregoing, I consider that no demonstrable economic or social need to live in the rural area has been set out. To permit the development would therefore contravene national and regional policy in relation to rural housing and would have a detrimental impact on the viability of smaller towns, villages and rural settlements and I consider permission should be refused on this basis. As the planning authority considered the applicant complied with the rural housing policy and as it was not raised in the grounds of appeal, I consider that this is a new issue. I would draw the Board's attention to this fact and, as such, the Board may wish to seek the views of the parties.

## **7.2. Site Layout & House Design**

7.2.1. Site layout and house design are issues for consideration as part of an application for housing in the rural area. Appendix 7 (Rural Design Guidance) of the Plan is relevant to the proposed development.

### Site Layout

- 7.2.2. The site is located in the northern part of a larger field with existing boundaries along the roadside and north/side with the adjoining property. There are no physical on-site boundaries to the proposed rear/west or south side boundaries. Ground levels increase slightly from the roadside to the rear. The house footprint was relocated in a southerly direction on site as part of the further information response. The further information response also included a landscaping layout showing trees to the front area of the site and 1.2 metres high beech hedging inside the site boundaries. The two non-structural rectangular boxes to both sides of the applicant's porch referred to in the grounds of appeal are indicated on the Landscaping Plan as planting areas. The planning authority considered the site layout to be acceptable.
- 7.2.3. The site is on relatively low-lying ground, similar to the adjacent property and there are other residential sites in the vicinity. It is in a 'Lowland Agricultural Area' as set out in Appendix 6 (Landscape Character Assessment) of the County development Plan 2017-2023. I do not consider the site location to be particularly sensitive from a visual amenity perspective. Though the proposed house is relatively large, I consider the site area, at 0.4 hectares, has adequate area to accommodate it without resulting in a sense of overdevelopment, notwithstanding the revised location closer to the southern boundary of the site.
- 7.2.4. I consider the site layout to be generally acceptable.

### House Design

- 7.2.5. The proposed house is a relatively large two-storey house with an attached garage. The height of the house was reduced as part of the further information response with a minor amendment to the link between the house and garage. The planning authority considered the house design to be acceptable.
- 7.2.6. The adjacent house to the north is a relatively substantial two-storey detached house, not dissimilar to the proposed house and garage as can be seen on the Site Section drawing submitted as part of the further information response. The front elevation of the proposed house is relatively simple and proportional with similar style windows with vertical emphasis, a render finish and a straight gable. The house is a double two-storey house as described on Page 19 of Appendix 7. There is substantial glazing on the south side and rear elevations. The house is clearly dominant over the attached

garage and the garage is to be finished in similar materials. I do not consider the proposed house would be unduly visually obtrusive or incongruous in the landscape.

- 7.2.7. Having regard to the site location, site layout and the similar nature and scale of the adjacent house to the north, I consider the proposed house design to be acceptable.

### Conclusion

- 7.2.8. I consider the site layout and house design to be generally acceptable.

### **7.3. Impact on Adjacent Residential Amenity**

- 7.3.1. Impact on adjacent residential amenity is an issue raised in the grounds of appeal.
- 7.3.2. There are no first floor north/side elevation windows proposed so no undue overlooking would occur. Having regard to the height of the proposed structure and the separation distance to the party boundary I do not consider there would be any shadowing or overbearing impact. A shadow study drawing was submitted as part of the further information response in this regard.
- 7.3.3. The main issue raised in the grounds of appeal relates to the building line. Given the separation distances between both existing and proposed houses I do not consider that the building line as proposed would result in any undue impact on the amenity of the adjacent property. The site layout submitted at further information response stage shows the proposed porch area in line with the main body of the existing house. I consider the proposed building line to be acceptable and unambiguous. However, should the Board consider the issue raised to have an impact on the appellant's property as set out in the grounds of appeal, bringing forward the proposed building line to align with the adjacent house would only comprise a minor alteration to the development.
- 7.3.4. In conclusion, I do not consider that the proposed development as permitted would have any undue impact on adjacent residential amenity.

### **7.4. Roads & Sightlines**

- 7.4.1. Roads and sightlines are issues for consideration as part of an application for housing in the rural area.

- 7.4.2. The site is located on a relatively straight stretch of local road and there are grass verges to each side. The front boundary fence of the property to the north is set back and the area adjacent to the road is grassed. Sightlines of 120 metres to the north were shown on a sightline layout submitted with the original planning application with sightlines of 90 metres to the south. The Planning Report considered that 120 metres sightlines are required as it is a local primary road.
- 7.4.3. Sightlines of 120 metres in both directions were shown on a Proposed Sightline Layout Plan submitted as part of the further information response. A 40 metres length of adjacent hedgerow to the south is to be cut back to achieve 120 metres in that direction. A letter of consent has been submitted from the landowner in this regard, Ailish Mooney's brother. It is stated that the maximum cut back required is 800mm with the hedgerow being 2 metres deep. While it appears works are required to achieve sightlines, the adjacent hedgerow can be retained.
- 7.4.4. The planning authority had no significant concern with the sightline issue. From a site inspection, I consider the development would be acceptable from a traffic safety perspective.

## 7.5. **Wastewater Treatment – New Issue**

- 7.5.1. Wastewater treatment is also an issue for consideration in applications for rural houses.
- 7.5.2. The site is in an area with a regionally important aquifer of moderate vulnerability. Groundwater was encountered at a depth of 2.0 metres, with water ingress at 1.4 metres, and bedrock was not encountered in the 2.5 metres deep trial hole. The soil was clay. Table B.2 (Response Matrix for On-Site Treatment Systems) of the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses, 2009, identifies an R1 response category i.e. acceptable subject to normal good practice.
- 7.5.3. The T-test result was 57.50. A P-test was also carried out giving a result of 18.31. I consider the results to be consistent with the ground conditions observed on site. Section 3.2 of the Site Characterisation Form stated brown/dark brown/grey colour clay was found in the trial hole. Though the trial hole and percolation test holes had been filled in the site comprises a grassed agricultural field with no indication of, for

example, rushes or water ponding. Table 6.3 (Interpretation of Percolation Test Results) of the Code of Practice states that, based on the T-test result, the site is not suitable for the development of a septic tank system but may be suitable for a secondary treatment system with a polishing filter at the depth of the T-test hole. Based on the P-test, the site is suitable for a secondary treatment system with a polishing filter at ground surface or overground. Section 5.0 (Recommendation) of the Site Characterisation Form recommends installation of a packaged wastewater treatment system and polishing filter discharging to groundwater via either pumped discharge or gravity discharge.

- 7.5.4. In terms of separation distances, I note that Section 1 (General Details) of the Site Characterisation Form states that there are 4 no. double bedrooms proposed giving a maximum number of residents/design population equivalent of 6. However, there are 5 no. double bedrooms proposed giving a design population equivalent of 7. The 300sqm surface area for the polishing filter as set out in Section 6 (Treatment System Details) is inaccurate. This area was calculated 'using T values of 51-75 for 6 DPE'. As the incorrect number of bedrooms were cited, the area proposed appears to be undersized and an area of  $\geq 350$ sqm is required. This may have implications for separation distances etc. given the size of the site.
- 7.5.5. Should the Board seek the views of the parties in relation to compliance with the rural housing policy, it may be appropriate to also refer to the size of the polishing filter and whether the increased size required can be accommodated within the boundary of the site having regard to all relevant separation distances.

## 7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, remote from and with no hydrological pathway to 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

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 an area identified as being an 'Area Under Strong Urban Influence' (Figure 7 – Rural Area Designations) in the Laois County Development Plan 2017-2023, to Regional Policy Objective RPO 4.80 of the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019-2031, and to National Policy Objective 19 of the National Planning Framework which seeks to facilitate the provision of single houses in the countryside in areas under urban influence based on the core consideration of demonstrable economic or social need to live in a rural area, it is considered that the applicants do not come within the scope of the housing need criteria as set out for a house at this location. It is considered that the applicants have not sufficiently 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 proposed development would be contrary to regional and national housing policy and objectives and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Anthony Kelly

Planning Inspector

31.05.2021