



An
Bord
Pleanála

Inspector's Report ABP-309609-21.

Development	Construction of fully serviced dwelling house and garage and associated site works.
Location	Boolabaun, Davidstown, Enniscorthy, Co. Wexford.
Planning Authority	Wexford County Council.
Planning Authority Reg. Ref.	20201551.
Applicants	Angela Mernagh and Timothy McCann.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant	Maurice O'Carroll
Observer	John Carroll and others.
Date of Site Inspection	8 May 2021.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is located in a rural area outside of the villages of Clonroche and Davidstown and the nearby town of Enniscorthy. The nearest settlement is the village of Davidstown where there is a national school, public house, a community hall and other facilities.
- 1.2. The local road adjacent the site is known as Boolabaun lane and it serves to provide access to a significant level of rural housing and a GAA facility. The lane / local road which serves the site is well surfaced but is narrow and there is a reasonably sharp bend close to the subject site. The subject site is at one end of the lane and close to a link road which connects to the N30.
- 1.3. Across the road from the site is a row of dwellinghouses. The site itself is at a slightly higher level than these dwellinghouses.
- 1.4. The subject site which is of stated area of 0.375 ha is located in one corner of a very large field which is under a cereal crop. The site is defined at two of its boundaries by mature hedgerows including a hedgerow at the boundary with the local road.

2.0 Proposed Development

- 2.1. Permission is sought to develop a single-storey dwelling house, entrance and all other necessary services including a wastewater treatment system.
- 2.2. The stated area of the proposed dwelling house is 238.5 m² and of the garage is 39.96 m².
- 2.3. The house design is single-storey and external finishes of the front elevation include a mix of plaster finish and selected natural stone finish.
- 2.4. The application drawings include the site plan which shows the location of all septic tanks and percolation areas and drinking wells serving the houses across the road. It also shows a 65m sight line in both directions from the entrance.
- 2.5. Documentation attached with the planning application includes:
 - A number of documents relating to the personal circumstances of Angela Mernagh testifying to her attendance at the local national school and involvement in community activities.

- A letter from the applicants indicating changed circumstances including the fact that they are now resident with Ms Mernagh's parents and both working on a part-time basis at the stud.
- A letter of registration from her post as a nurse in Temple St Hospital is enclosed. Angela will now be working on the farm and caring for her parents on a full-time basis.
- A letter is enclosed from a medical practice regarding the applicant's mother's complicated medical conditions and ongoing difficulties. Criteria for individual rural housing includes exceptional health and/or family circumstances.
- The applicant's father's letter indicates that he asked his daughter and her husband to come home to Coolamurray stud and farm and carry on and continue the horse breeding enterprise.
- The applicants have not owned a house and previously resided with the McCanns at Kilpedder Co Wicklow.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to conditions including:

- The works to provide the required sightlines shall be carried out prior to commencement of the proposed dwelling house.
- Section 47 agreement to be entered into and shall provide that the applicants will use the property as their primary permanent residence for a period of five years from commencement of occupation.
- Financial contributions.
- Septic tank and percolation area requirements to comply with EPA Code of Practice.
- Interceptor drainage to be provided across the entrance gates and surface water shall not discharge onto the public road.
- Detailed condition relating to the planting of all new side and rear boundaries.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The environmental matters and traffic and access matters are addressed in the relevant reports.
- The site was assessed under the previous application as being in a Stronger Rural Area. The Board determined that it was in an area under Strong Urban influence and is considered in this regard for the purposes of this application.
- Policy objective RH01 is to facilitate the development of individual houses in the open countryside in such areas in accordance with the criteria in table 12.
- The applicants have provided significant supporting documentation. The applicant is considered to be a local rural person and the site is within the area of the applicant's homeplace. The applicant has a housing need.
- The applicants are considered to have a social need to live in close proximity to the family homeplace for the purposes of healthcare/family support.
- The applicant has a need to live in very close proximity to assist in the running of the family farm/equine business.
- The village of Davidstown is a short distance from the family farm and Enniscorthy is 6 to 7 km away. There are very few properties available in Davidstown and Enniscorthy is a significant distance for the purposes of livestock/equine care.
- A single dwelling house in a rural area for a local person who has social and economic need, and which does not form part of a linear/ribbon development does not put excessive pressure on the environment, local services and therefore does not constitute overdevelopment.
- The applicant has addressed the reason for refusal and demonstrated economic and social reasons to satisfy the requirements of National Policy Objective 19 and policy objective RH01 table 12 and section 4.3 of the development plan.
- The dwelling house and garage have been previously assessed to be acceptable in terms of siting and design, planting, transport and access,

drainage, effluent treatment and provision of services. There are no significant changes in this regard.

3.2.2. Other Technical Reports

Roads :

- 65m sightlines are required and are available. Works to achieve sightlines to be completed prior to other works commencing.
- All surface water to be collected and disposed of within the curtilage of the site.

Environment Section:

- ABP agreed on certain aspects of the previous application at this site.
- It is therefore recommended that permission be granted subject to conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Ms Elizabeth Cullen:

- Boolabaun lane has too much traffic.
- Surface water has flowed across the road.
- Proximity of entrance to a dangerous bend.
- In conjunction with the GAA another entrance would be dangerous.

Catherine Galan O Carroll:

- As joint owner of a property with Maurice O'Carroll I have no objection.

Maurice O'Carroll:

- A refusal of permission under Reg ref 2020 0199 is a precedent. The decision to refuse permission for a house for the applicants is the second precedent.

- The applicant's brother farms the land and resides in Coolamurry. The family has sold lands including most of the out-farm in Boolabaun. When permission is granted the remainder of the land in Boolabaun will be transferred.
- At Coolamurry there is extensive road frontage and the land is within the 50kph limit and the village of Davidstown.
- The land is impervious and surface water overflows onto the local road. Photographs attached.
- The Board has previously refused permission. The environmental information presented in this appeal supports this refusal.

John Carroll

- Overdevelopment of this narrow road with already over 35 houses and traffic from the GAA facility.
- Severe impact on well water supply as the site is elevated.

Stephen Hatton

- I regularly use Boolabaun lane to gain access to my land with large agricultural machinery. The road is very dangerous due to the exceptionally high density of development and its narrow nature.
- The refusal should be upheld.

Seamus Cullen

- The road is very dangerous due to the exceptionally high density of development and its narrow nature.
- Previous refusal should be upheld.

Cllr Bridin Murphy:

- Letter of support. The applicants are resident at Angela's homeplace where she is working part-time on the farm and caring for her parents.

The applicant submitted a letter in response:

- The objections include some from people not immediately resident in the area.

- The objections contain irrelevant and factually incorrect information and are motivated by personal animosity.
- Our circumstances have changed and therefore there is no precedent.

4.0 Planning History

- 4.1. PL26.307811 refers to a previous application by Angela Mernagh and Timothy McCann for a dwelling house at this site. The decision of the Board was to refuse permission for the reason summarised below:

Having regard to the stated provisions of the Sustainable Rural Housing Guidelines and the National Planning Framework, noting the proximity of the site to existing settlements, having regard to the documentation submitted including the lack of a functional need to live in the rural countryside by reason of the nature and location of the employment of the applicant, the Board is not satisfied that the applicants have established a demonstrable economic or social need to live at this specific site in this rural area or that their housing needs could not be satisfactorily met in an established town or other settlement.

The proposed development would contribute to the encroachment of random rural development in the area, would militate against preservation of the rural environment and the efficient provision of public services and infrastructure and be contrary to the Ministerial Guidelines and the overarching provisions of the National Planning Framework.

- 4.2. Further planning history related to the area is outlined under file ABP – 307811 – 20.

5.0 Policy Context

5.1. National policy

National Planning Framework, 2018

- 5.1.1. Under National Policy Objective 19 it is policy to facilitate the provision of single housing in the countryside based on the core consideration of a demonstrable

economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements.

Sustainable Rural Housing Guidelines for Planning Authorities, 2005

- 5.1.2. Under the indicative map the site would be as being in a Stronger Rural Area.
- 5.1.3. The document in certain areas sets limits for urban generated housing.
- 5.1.4. It sets out guidance to ensure that where rural housing is permitted there will be minimal impacts on the environment.
- 5.1.5. The document aims to ensure that planning authorities will provide information and assistance to applicants in identifying suitable sites where they will be able to obtain planning permission.

5.2. Development Plan

- 5.2.1. Under the **Wexford County Development Plan 2013-2019** in 'Areas under Strong Urban Influence' objective RH01 is to facilitate the development of individual houses in the open countryside in accordance with criteria set down in table 12 subject to compliance with the normal planning and environmental criteria and the development management standards. In such areas housing for local rural people building permanent residences for their own use who have a definable housing need and are building in their local rural area is permitted. The local rural areas defined as within a 7 km radius of where the applicant has lived. It is stated also that a housing need is generally a reference to people who have never owned a rural house.
- 5.2.2. The Draft County Development Plan has not yet been finalised.

5.3. Natural Heritage Designations

- 5.3.1. The following European sites and Natural Heritage Areas are in the general area:
 - The Slaney River Valley Special Area of Conservation (Site Code: 000781), approximately 2.7km southwest of the site.
 - The Killoughrum Forest Proposed Natural Heritage Area (Site Code: 000765), approximately 4.5km north-northwest of the site.

- The Slaney River Valley Proposed Natural Heritage Area (Site Code: 000781), approximately 5.0km east of the site.
- The Wexford Harbour and Slobbs Special Protection Area (Site Code: 004076), approximately 6.3km east of the site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the development proposed, the location of the site outside of any protected site and the nature of the receiving environment, the habitat and low level ecological value of the lands and the separation distance from the nearest 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 at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the third-party appeal include:

- The Inspector determined under the previous appeal that the application should be assessed as being located in an Area under Strong Urban Influence.
- Various policy extracts are quoted including from the Wexford County Development Plan 2013 – 2019 (extended), the Sustainable Rural Housing Guideline and the National Planning Framework.
- The proposed development was previously granted by the planning authority and extracts from the planner's report are quoted.
- The economic need to live at this specific location is not demonstrated. The policy provides that part-time occupations can be considered where it is demonstrated that this is the predominant occupation, which has not been demonstrated. No information has been provided with respect to the extent of the farming practice or the number of family members supported and no

attempt made by the planning authority to quantify the extent to which the applicant's part-time contribution to farming practice as a predominant occupation is genuine.

- The applicants have failed to demonstrate that the site is the most suitable location/preferable site and failed to examine alternative sites. The farmstead is within the 50 kph speed limit zone of Davidstown village and the main entrance to the farm is located opposite the village national school. Following on from the Inspector's report, which is quoted, the planning authority should have been prompted to request details of the extent of the family holding and to explore the potential for a shared access arrangement and clustering of buildings closer to the farmstead.
- There are more suitable lands to meet the stated requirements of the applicants namely to live close to the farm in order to work part time and care for the applicant's mother. An enclosed map refers.
- The proposed development constitutes random rural development and is contrary to the overarching principles of the NPF.

6.2. Applicant Response

The applicant has submitted the following comments:

- The validity of the appeal is questioned as only one receipt of observations is enclosed, although the appeal is described as being on behalf of the objectors and Maurice O' Carroll. The appeal is vexatious.
- The majority of the issues raised in the appeal are repetitive and have already been adjudicated upon by the Board. In objecting to issues related to lack of public services, percolation, public health, damage to wells, traffic issues and surface water issues the applicant shows contempt for the decision of the Board.
- We enclose a letter from Temple St, Hospital confirming Angela's resignation. We would like to be contacted if there are any questions relating to our circumstances including our working duties on the farm.

- Our testimonials demonstrate close involvement in the community for generations.
- The applicant has made unwarranted and unhelpful remarks relating to personal circumstances.
- We have no issue with the condition attached by the planning authority requiring a S47 covenant.
- Angela is now working full time as a carer for her parents and on the farm.
- The matter of the most locational the preferable site available was addressed in the previous appeal. It was pointed out to the Board before that the site was selected as the most practicable and economically viable in the context of a fully operational equine stud farm.
- The most effective use of an enterprise of this nature is essential to maximise productivity including good animal husbandry. Valuable mares and foals require a spacious environment close to the centre of operations. Releasing foals into far off corners would be negligent of the operators and a poor reflection to potential purchasers of bloodstock. Leaving thoroughbred animals without close supervision, especially during foaling, would also have insurance implications. Putting a new house and associated site works in the centre of these operations would be foolish.
- Reference is made to other family members are totally unwarranted intrusion into the private lives of people who are not party to the proposals.
- The planning authority taking into account the submitted information determined that it was sufficient to fulfil the requirement to establish the applicant to be a local rural person and to establish sufficient economic need.

6.3. Planning Authority Response

The planning authority in response states:

- The applicant is a local rural person and for reasons outlined is considered to have sufficient housing need to comply would policy.

- It would not be possible to quantify the hours working on the farm / equine facility and for that reason the planning authority did not request such details.
- Regarding alternative sites no pre-application discussions were requested by the applicant after the Board's decision and the planning authority was not in a position to request/discuss alternative sites on the family lands for that reason.
- The applicant did not submit details of the family landholding as part of the planning application. It was detailed that it was not practical to bequeath a site around the family farm for practical implications relating to the running of the business and therefore the planning authority did not consider it appropriate to request such information.
- The referenced application is not a relevant precedent.
- There are not a significant number of suitable properties for sale in Davidstown village and surrounding areas. There are no housing estates or similar under construction at present. The town of Enniscorthy it is considered too distant for attending to equine emergencies.
- The planning authority reiterates that the proposed development does not constitute overdevelopment.

6.4. Observations

The observation submitted by John Carroll, Seamus Cullen and Stephen Hatton includes the following points:

- This is the fifth planning application granted for a single dwelling on the family lands. Much of the land at Boolabaun has recently been sold.
- The proposed development would contravene national policy and guidance and represents unsustainable urban generated rural housing.
- Four houses served by their own wells are opposite the site. These wells are interconnected by an underground stream. The subject site is much more elevated. The land is practically totally impermeable. Very heavy rain is common and the roads are impacted and drinking water wells endangered.

- A precedent case reg ref 2020 0199 refers. The distance from the percolation area to the well was two and half times greater in that case (150 m) but it was refused.
- The applicants have available a large variety of alternative sites that would be more suitable.
- In line with tradition the site will be gifted. The brother of the applicant farms full-time.
- There are 36 houses along this narrow rural county lane as well as the GAA facility. Landowners including farmers have difficulty accessing the lane. We do not believe that the sightlines can be achieved given changes in land ownership.
- Enclosed folio map's and photographs of flooding on road.

7.0 **Assessment**

7.1. My assessment of the issues in this case is set out in two sections below. The first addresses settlement policy and site selection, which constituted the material issues identified in the Board's previous decision. In the second section I provide a brief overview of some of the technical considerations.

7.2. **Policy**

7.3. The primary issue identified in the Board's previous refusal of permission relates to the character of the area in settlement policy terms and to the core consideration of demonstratable economic or social need to live in a rural area. The previous appeal was decided on 4 November 2020. There has been no policy change in the interim and in particular the development plan has yet to be adopted. The applicant's submissions set out some change in circumstances relating to place of residence and employment. I propose to assess the settlement policy aspect of this appeal in terms of these criteria.

7.4. I first address the development plan policy. I consider that it is clear that the applicant would be defined as a local person under the settlement policy outlined in the development plan. She and her family have farmed the land centred on

Coolamurray stud for generations and the applicant spent her childhood there and remains well known in the locality as testified by a range of submissions. The Inspector in considering the previous appeal stated that the applicant would appear to satisfy the definition of a local rural person building a dwelling house for her own occupation in her local rural area and thus satisfy the requirements of table 12 of the County development plan.

- 7.5. The Inspector under ABP – 307811 – 20 suggested that it would be desirable if some further clarity was provided relating to the applicant’s current housing circumstances including whether the parties had previously owned a dwelling house, which is a relevant matter under the development plan considerations. This matter is addressed in the application submissions in the current case and it is clarified that they have not previously owned a house.
- 7.6. At the time of considering the previous appeal the Inspector expressed uncertainty based on the evidence presented in relation to the applicant’s current place of residence at the time and their housing circumstances as well as employment. At the time they were resident with Mr McCann’s parents who have now submitted a letter to testify that the applicants resided at their home in Co Wicklow for a short period and that they now reside with Ms Mernagh’s parents.
- 7.7. A significant change in circumstances in addition since the last appeal is the resignation of Ms Mernagh from her employment as a specialist nurse with Temple Street hospital and her engagement now on a full-time basis working on the family farm and as a carer for her parents. Mr McCann is employed as an underwriter in County Wexford.
- 7.8. I consider that the information presented is sufficient to comply with the requirements of the development plan policy.
- 7.9. I now refer to the Sustainable Rural Housing Guidelines. I note that the planning authority acknowledge having regard to the Board’s previous decision that the merits of this case should be assessed under the policy pertaining to Areas under Strong Urban Influence. This is appropriate and reasonable in my opinion having regard to the level of development in the area, and the proximity to the N30. The assessment of the planning authority is that the applicants would still meet all requirements based on an assessment that the area is so defined. I accept that there is some merit to

this case, but I consider that the Sustainable Rural Housing Guidelines, while facilitating local housing needs also demand that such needs be accommodated on suitable sites. In this regard I refer for example to the comments relating to removal of hedgerow boundary for instance as one of the criteria which would be taken into account in relation to the suitability of sites selected within a holding.

- 7.10. Therefore, the matter of the suitability of the selected site needs to be demonstrated, having regard to the guidelines as well as to the Board's previous decision. In this respect I consider that there is an absence of new information which would be considered to be sufficient to justify the siting of the house at this location. The planning authority did not investigate the matter on the basis that there had been no pre-application consultation. The appellant refers to a range of matters in relation to which no conclusion can be drawn including with respect to the planning history of the overall holding or the limits of the holding. What is clear is that the entrance to Coolamurray stud where the applicant's parents reside and where the main equine buildings are concentrated is effectively within the village limits. Clearly there is an evident and strong case to be made with respect to the suitability of a site at this location both in terms of proper planning and compact development, traffic safety and to prevent a proliferation of housing in rural areas as well as for convenience to serve the stated functional need to reside in the area in order to work with and be available for emergencies relating to the stud and to be close by in order to care for the applicant's parents.
- 7.11. The applicant's father has addressed this matter. He states that Angela will inherit some land, animals and stables and that she and her husband have been very active on the farm. He states that currently there is in excess of 70 horses on the farm, 20 of these are breeding mares. Each time a mare is due to foal it requires in accordance with good stud farm practice that somebody be present to assist in the foaling. The proposed site for this house is 2.5 km by road and Angela and Tim would be able to assist during this time. I am unable to offer my daughter any other sites near the farm as this would adversely impact on the day-to-day running and maintenance of the stud farm. The latter point has been reiterated in the applicant's response to the appeal which I have outlined earlier.
- 7.12. The Board's previous decision referred to the core consideration set out under NPO 19 to facilitate the provision of single housing in the countryside based on the core

consideration of demonstrable economic or social need in areas under urban influence and noted the proximity of the site to existing settlements including the rural settlement of Davidstown. The decision indicated that the Board is not satisfied that the need to live 'at this specific site in this rural area' is demonstrated. I consider that the current appeal and the information now available does strengthen the applicant's case with respect to an economic or social need, but it does nothing in my opinion to strengthen the case to reside at the specific site.

7.13. I consider that the subject site is of isolated nature in relation to the centre of the family farm and that there is no functional social or economic need for development at this site. The issue cited in the Board's previous decision remains relevant namely that the proposed development would contribute to the encroachment of random rural development in the area and militate against the preservation of the rural environment and the efficient provision of public services and infrastructure.

I recommend that the Board refuse permission as set out below.

7.14. **Other issues**

7.15. I briefly reference a number of other issues which have been raised in third-party submissions. In general, these issues were set out also in the previous appeal. I note however that none of these matters were referenced explicitly in the decision of the Board under the previous case.

Wastewater treatment

7.16. The subject site was assessed as being most suitable for a secondary treatment unit and a pump discharge to a raised soil polishing filter. The houses in this area are all served by private wells and the proposed wastewater treatment unit would be over 68 m from the closest of these wells as shown on the site plan drawing number 1.003.

7.17. I note that a third-party letter of objection and the observation refer to a precedent case in relation to which the planning authority refused permission for development comprising a percolation area located 150 m from an existing water supply. It states that the Council have two different sets of standards in this respect. The subject site is stated to be totally impervious as evidenced by the surface water run-off during periods of heavy rain.

I consider that there are no evident major issues with respect to potential proliferation of septic tanks / wastewater treatment units. In this respect I note the location of such facilities to the rear of existing houses and the groundwater flow direction as well as the contents of the site suitability assessment submitted.

- 7.18. I note the comment with respect to another planning case which is stated to be a precedent. I consider that each site must be assessed on its own merits in view of the unique characteristics relating to site suitability.

Roads and traffic.

- 7.19. Following inspection, I would have some sympathy with the concerns raised relating to the level of development on this narrow local road as well as the sightlines. However, I would accept that the sightlines can be achieved albeit with the possible need to remove a mature tree along the roadside frontage.

- 7.20. I do not consider that a refusal of permission for reasons of roads and traffic would be reasonable.

- 7.21. I consider that the issues raised in relation to surface water discharge are relatively minor matters and should not influence the Board's decision.

7.22. Appropriate Assessment:

- 7.23. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, I am satisfied that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. I recommend that permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

The Board considered the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005, which seek to distinguish between urban generated

housing and rural generated housing need and the need for identification of suitable sites and noted national policy as set out in National Policy Objective 19 of the National Planning Framework, 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 viability of smaller towns and rural settlements.

Noting the proximity of the site to existing settlements and the availability of other family lands and having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicants have established a demonstrable economic or social need to live at this specific site in this rural area.

The proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would be contrary to the Ministerial Guidelines and to the overarching provisions of the National Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Mairead Kenny
Senior Planning Inspector

09 May 2021