



An
Bord
Pleanála

Inspector's Report

ABP-309897-21

Development	Construction of 3 no. 2 storey dwellings, 3 no. Aswaflo SBR wastewater treatment system.
Location	Woodstock North , Athy , Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2167
Applicant(s)	PJ Lawler
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	PJ Lawler.
Observer(s)	None
Date of Site Inspection	30 th of June 2021
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is located to the west of Athy town. It is positioned in a rural area along the main road to Stradbally, Co. Laois from Athy which is the Regional Road R428). It is located along a realigned section of the road.
- 1.2. The site area is 0.4219ha, and it is regular shape, relatively flat and it not in use. It has with an existing access out onto the realigned section of the regional road. Immediately east there are two dwellings served by a single access, and immediately west there is a dwelling, all three dwellings are bungalows. The site has mature hedging along all boundaries, and it is overgrown.
- 1.3. The Regional Road fronting the site is governed by 80kmp/hour speed limit. As the site is located on a realigned section of the R428, the site is setback considerably from the roadside boundary.
- 1.4. A large steel container was noted on the western boundary of the site with some debris and stockpiles.

2.0 Proposed Development

- 2.1. The proposed development consists of 3No. two storey dwellings with 3 No tertiary treatment systems, and a sand polishing filter and ancillary site works.
- 2.2. A single access and internal road will serve the three dwellings.

3.0 Planning Authority Decision

3.1. Decision

Kildare Co. Co. refused the proposed development for 4No. reason:

1. The proposal is located on a Regional Road where the 80km/hr speed limit applies. The three new dwellings would endanger public safety by reason of a traffic hazard and obstruction to road users due to the movement of extra traffic generated.
2. Policy RR2 of the Kildare County Development Plan 2017-2023 states it is the policy of the Council to Restrict New Access onto Regional Roads where

80kmph speed limit is applicable, except in exceptional circumstances where the proposal does not comply. The proposal would reduce the capacity of the road and reduce the free flow of traffic along it.

3. The applicant has failed to demonstrate an appropriate water supply.
4. The site is located remote and isolated from consolidated residential developments and is not in line with the orderly expansion of Athy. It has no public services and is a considerable walking distance from the town, where there is no footpath or public lighting, the proposal represents a disorderly approach to the expansion of the town.

3.2. **Planning Authority Reports**

3.2.1. ***Planning Reports***

- The planning authority has serious concerns regarding the proposal having the National Planning Framework and Regional Policy (Regional Spatial and Economic Strategy 2019-2031 for Eastern and Midland Regions) . There should be a sequential and co-ordinated approach to residential development.
- The site is located outside of the defined boundary of Athy town, and is not located within the boundary of the Draft LAP.
- The site has no services and is not within a reasonable walking distance of the town.
- Changes would be required to the design to achieve a better proportioned house on each site.
- Serious concerns regarding an access for 3No. dwellings off the Regional road. Section 6.6.3 of the Plan states restrict new access onto regional roads where 80kmph applies.
- Transportation Department recommends a refusal.
- Refusal recommended.

3.2.2. ***Other Technical Reports***

Athy Municipal District :- Refusal recommended as it contravenes section 6.6.3 of the development plan.

Housing section - 5-6houses should be provided on the site, and Part V would apply

EHO – Water table was high at the time of site inspection.

Environment – grant with conditions

3.3. Prescribed Bodies

None

3.4. Third Party Observations

There were 2no. submissions, and the concerns expressed were as follows:

- Overlooking and impact on privacy
- Contravenes Section 17.4.5 and 17.2.5
- The dwellings are out of character with existing dwellings and break building line
- Drawings are inaccurate
- 3No. additional treatment plants public health concerns
- Traffic
- Lack of services
- Urban Sprawl

4.0 Planning History

Planning Reference 08/300010

Planning permission granted by Athy Town Council on 25/02/2009 for 3No. bungalows with a two storey element, 3No. treatment plants, access road and ancillary site works on the subject site.

Planning Reference 13/300033

Planning permission was granted to extend the appropriate period of Ref. 08/300010 to 23rd of February 2019.

Planning Reference 19/249

Planning permission for 3No. dormer bungalows and treatment systems at on the subject site was subsequently withdrawn.

5.0 Policy Context

5.1. Development Plan

Kildare County Development Plan 2017-2023 (as varied)

Chapter 2 (Core Strategy), Chapter 3 (Settlement Strategy), Chapter 4 (Housing), Chapter 15 (Urban Design Guidelines) and Chapter 17 (Development Management Standards) of the Plan are relevant to the application. Athy is designated as a 'Self-Sustaining Growth Town' in the Plan. These are towns with a moderate level of jobs and services, which adequately cater for the people of its service catchment with good transport links and capacity for continued commensurate growth.

Variation No. 1 of the Plan states that Kildare County Council will prepare a Local Area Plan for Athy to provide more detailed planning policies for the area. This has not been carried out to date though a Draft Plan has been prepared.

Section 6.6.3 Regional Roads Policies

It is the policy of the Council to:

RR 1 Maintain and improve the capacity, safety and function of the regional road network (as finance becomes available) and to ensure that it is planned for and managed to enable the sustainable economic development of the county and wider area while encouraging a shift towards more sustainable travel and transport in accordance the Core Strategy, the Spatial Planning and National Roads Guidelines (2012) and the Transport Strategy for the Greater Dublin Area 2016-2035.

RR 2 Restrict new access onto regional roads where the 80km per hour speed limit currently applies, except in the following exceptional circumstances:

- Developments of strategic, local, regional or national importance, where there is a significant gain to the county through employment creation or other economic benefit.
- Where applicants comply with Table

4.3 Schedule of Local Need Criteria (see Chapter 4), are proposing to build a home on their family landholding and cannot provide access onto a nearby county road. In this instance, applicants will only be permitted to maximise the potential of existing entrances. The onus will be on the applicant(s) to demonstrate that there are no other accesses or suitable sites within the family landholding (Refer to Policy RH 15).

- Where it is proposed to demolish an existing dwelling and replace with a new dwelling, where there is an existing entrance onto the regional road.

Athy Town Development Plan 2012- 2018 (as Varied)

The site is within the Town Development Boundary. The site is zoned New Residential, C22 which provides for low residential densities. Residential development is permitted in principle under this zoning. It is only the subject site area that is zoned C22

Draft Athy LAP 2021/2027

The new Draft LAP for Athy is at an advanced stage and past the consultation period. The subject site is located outside of the Draft LAP development plan boundary. It is located in a rural area, and the policies of the Kildare County development Plan 2017-2023 (as Varied) would be applicable.

5.2 National Planning Policy

The following are relevant to this appeal:

The National Planning Framework includes a specific Chapter, No. 6 - '*People Homes and Communities*' which is relevant to this development. This chapter includes 12 objectives (National Policy Objectives 26 to 37) and the following are key to this development:

- **National Policy Objective 33** seeks to '*Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location*'.

Sustainable Residential Development in Urban Areas (Cities, Towns & Villages)
(DoEHLG, 2009)

Quality Housing for Sustainable Communities (DoEHLG, 2007).

5.2. Natural Heritage Designations

The River Barrow and River Nore SPA is located 1km to the east of the subject site.

Other Natura 200 sites within 15kms of the subject site include:

Rye Water/ Carton Valley SPA

Pollardstown Fen SAC

Ballynafagh Lake SPA

5.3. EIA Screening

Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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 at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Farry Town Planning Ltd has taken the appeal on behalf of the applicant Mr. Pj Lawlor. The relevant grounds of the appeal are summarised below.

6.1.1 Land Use

The subject site was zoned for new residential in Athy Town Development Plan 2006 and is currently designated for housing in the Athy Town Development Plan 2012. Kildare Co. Co. granted permission for 3No. dwellings on the subject site under planning references 08/300010 and 13/300033.

6.1.2 Residential density

The planning authority accepts the tract of land can accommodate 3No. detached dwellings from previous decisions. The zoning C22 provides for low residential density. The proposal meets with current policy.

6.1.3 Site Layout

The site layout reflects the previously permitted layout on the site. None of the reasons for refusal relate to the layout.

6.1.4 Dwelling Design

The proposed dwellings are more modern than the previously permitted dwellings on the subject site. It is acceptable at the subject location.

6.1.5 Sewage Treatment

Environmental issues are acceptable.

6.1.6 Road Safety

The site could have been developed for residential development for housing purposes up until 2019 and it is difficult to understand the rationale for the first reason for refusal. The Roads Department did not comment on the planning application. The Planning Report focused exclusively on the entrance provisions of the County Development Plan and did not identify any particular deficiency would support the opinion that is unsafe.

The access is in the same position that was permitted under Reg. No. 08/3000010 and re-endorsed under Ref. 13/300033, and the Council's concern on public safety cannot reasonably stem from the location of the feature.

There is 150metres sightlines available in both directions along the Regional Road. There is no deficiency in the access arrangements but instead relates to the need to restrict the number of entrances onto regional roads. This issue does not actually indicate that the proposed access arrangements would prejudice public safety and it's the view the proposed dwellings are acceptable.

6.1.7 Access Policy

(a) The second reason for refusal relies on Policy RR2 of the Kildare County Development Plan 2017-2023 which states to restrict new accesses onto regional roads where the 80km per hour speed limit currently applies.

Policy RH 6 of the former County Development Plan 2011 states where safe accesses can be provided onto the Regional Road certain criteria will apply. The planning authority refrained from using this policy and is being inconsistent in its approach and there is no reason to apply replacement provisions in this instance.

(b) Planning practice establishes that a particular principle or policy should be applied in circumstances where harm of a practical nature would result from non-compliance with such a provision reference to section 7.15 of the Development Management Guidelines. At no point does the wording of the reason for refusal suggest a departure from development plan policy RR2 of the County Development Plan, that the proposal would result in some form of environmental or planning harm and by applying the provision of section 7.15 of the development management guidelines, the planning authority was unreasonable to refuse the proposal on this basis.

(c) The planning authority's concern relating to Policy RR2 of the County Development Plan 2017 stems solely from the positioning of the speed limit poles which is about 300metres from the appeal site, and it is entirely axiomatic that simple repositioning of the sign to appoint east of the site would result in a completely different policy compliance.

The site has been zoned residential for sixteen years and it would not cause any adverse effect if it would be resolved through the efforts of two part time county council staff over a period of 30minutes. The second reason for refusal does not warrant withholding consent and to impose a Grampian condition if appropriate that no development can take place until the speed limit signs are relocated.

6.1.8 Water Supply

The application form stated the proposed development would be served by one well. The applicant was not given an opportunity to address the EHO concerns about an appropriate water supply and that the proposal could be prejudicial to public health. There was no objection raised by the Environment Section or the Water Division. Should the Board impose a condition requiring details of the proposed water supply to be agreed between the parties, it would be the applicants intention to address the EHO's concerns, the issue of potable water is capable of being addressed.

6.1.9 National Policy

The fourth reason for refusal seems to question the policies of the County Development Plan 2017-2023, and this raises the legal question of the correct provisions to apply to individual applications. In the court case Brophy and Nulty v An Bord Pleanala the High Court held that compliance with local policy trumped adherence to national policy.

The Planning Officer's Report indicates that lands zoned should be closest to the core should be development first, and that logical sequential approach is applicable, there is also stated policy that a strong emphasis should be placed on encouraging infill opportunities. The site should be treated as an infill site.

Unlike other planning instruments, The Athy Town Development Plan 2012 does not stipulate that sequential development must be followed, planning reference APB - 308137 is cited, in particular the Inspector's Report on the case relating to the sequential approach.

The proposal does not run counter to national policy, in that it will provide for compact growth of the town., Objective 3 of the National Planning Framework seeks to deliver 30% of all new homes that are targeted in settlements other than five cities and their suburbs within existing built-up footprints. It logically follows that the instrument envisages that more than two third of development should be located outside the built-up envelop of the existing town.

The planning report also infers there should be a higher density than three dwellings in the site.

6.1.10 Conclusion

There is a massive shortage of housing nationwide especially in the Greater Dublin area. New dwellings should be provide don zoned lands, and the site has been zoned residential for sixteen years. There has been no objections to the sewage arrangements, and the proposal will not impact upon the amenities of the neighbouring dwellings.

Given that the first reason for refusal flies in the face of common sense, there is extensive visibility at the entrance, and the third reason for refusal can easily be resolved by condition, that local policy overrides national policy and the speed limits

can be moved 200metres east, there is no reason to refuse the previously permitted development on the site.

6.2. **Planning Authority Response**

There were no further comments to make on appeal.

7.0 **Assessment**

Having examined the appeal file, carried out a site inspection, and having regard to the relevant local, regional and national planning policies and guidance, I consider the main issues of the appeal are as follows:

- Zoning
- Site Design and Layout
- Planning History
- Services
- Roads
- Appropriate Assessment

7.1 **Zoning**

7.7.1 The proposed development is located in an area zoned for new residential use (C22). Residential development is permitted in principle under this zoning in the Athy Town Development Plan 2012-2018. The principle of development is therefore acceptable, subject to the detailed considerations below.

In the new Draft Athy LAP 2021-2017, the site is located outside of the plan's development boundary and is unzoned.

7.2 **Site Design and Layout**

The proposed development consists of three detached dwellings on the subject site served by a single access road and access off the R428 Regional Road. The dwellings are part two storey and part single storey with a simple modern design. Each dwelling has an individual wastewater treatment system. There are three

developments either side of the subject site, typical of one-off rural houses. The proposal includes a communal open space area and a footpath.

Basically the proposal is a low density suburban design, which does not follow the existing pattern of development in the immediate area, which consists of the linear type developments. Although the site is zoned residential in the current development plan for the area, the location is essentially rural, with no infrastructural services or footpath links to the urban area.

The applicant refers to the site as an infill site. I do not agree with this description. The site is located in an undeveloped area with three adjacent one-off houses. The term infill, its more associated with an urban and built-up setting.

Notwithstanding the planning history of the site, which is discussed below, I consider the overall design and layout of the proposed scheme to be more suburban including a shared access road, access and communal open space area serving multiple dwellings. The lands are not serviced. I would consider the receiving environment to be a rural and not an urban area. There are expansive tracts of farmland to the north south, east and west of the site.

I accept there are two bungalows to the immediate east of the site served by a single road and single entrance, however it would appear to me this layout is the result of a realignment of the Regional Road, and that the two existing dwellings predate the realignment.

The entrance to the subject site is off a realigned section of the Regional Road. There are mature trees along the road frontage that will screen the bulk of the development from public view. The proposed open space provision and the footpath are inappropriate at this rural location, the proposed footpath links to nothing, and will look out of place along the road frontage.

In my opinion, the proposed layout and design is inappropriate at this location and has been determined by the planning history on the site. Unfortunately, the 0.4219Ha site area, is zoned for new residential in the current development plan for the area. The subject site is the only plot of land in the general vicinity which is governed by the C22 zoning objective, and in my opinion, this form of pocket haphazard zoning does not follow regular land use zoning principles. Furthermore, I consider, the current zoning objective for the site is unreasonable and does not follow the guidance in the National Planning Framework to consolidate and create

compact urban forms. The random pocket of zoning on unserviced lands is unsustainable, and will lead to unviable demands for public infrastructure a considerable distance from the urban building envelop. In spite of these planning constraints, the Board must have regard to the zoning objective effective for the site, and therefore in my opinion the Board is precluded from refusing the proposal for its suburban design and layout in an unserviced rural area.

Whilst I agree in principle with the planning authority's fourth reason for refusal, whereby it states the proposed development would result in the disorderly expansion of the town of Athy, it is an unreasonable reason for refusal given the planning authority had granted planning permission for three dwellings on the site on two occasions and the planning authority zoned the site area, a small pocket of land, for new residential development in the current development plan. There is blatant inconsistency from the planning authority in the fourth reason for refusal, in addition to a blatant contradiction to the implementation of current development plan policy. On balance, in terms of fairness and rationality, I consider the Board cannot uphold the fourth reason for refusal, even though I would agree with its underlying thinking.

7.3 Planning History

The applicant Mr. PJ Lawler obtained planning permission for 3 No. bungalows on the subject site under planning reference 08/300010 on the 25th of February 2009. The permission was not executed. In 2013, under planning register number 13300033, an extension of the duration of planning permission 08/300010 was granted planning permission for a further 5 years. The extension of the permission was not executed.

The applicant claimed under planning register number 13300033, compliance with Section 42(a)(ii) of the Planning and Development Act 2000, whereby he was unable to secure finance to develop the site during the statutory period.

Furthermore, a new development plan for Athy was adopted in 2012 and the subject site was zoned C22 – New Residential, and the proposed development was considered to be consistent with local, regional and national planning guidelines and policies at the time. Therefore, planning permission was granted for a further five years, with planning permission expiring on 23rd of February 2019.

In my opinion, the Board is not tied to the planning history of the site, as it expired over two years ago, and remained outstanding with planning permission, for ten

years since 2009. There are new National Planning Guidelines in place since the decision in 2013, a new Kildare County Development Plan adopted, and a new Draft Athy LAP currently at an advanced stage. Planning policy has evolved considerably since the parent permission was granted on the site in 2009, and yet it's rural setting has remained unaltered. In my opinion, the Board should have regard to the relevant planning issues currently in situ, and not be tied to the planning history of the site. The Board should note the new Draft Athy LAP 2021 2-2027 includes policies and zonings which appear to be influenced by the National Planning Framework Document and not the current development plan for the town.

In my opinion, the proposed development does not comply with Objective **National Policy Objective 33** which seeks to *'Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location'*. However, the problem arises in that the current zoning objective for the site conflicts with this policy, therefore, I do not consider it appropriate for the Board to refuse the proposed development on this basis.

7.5 **Services**

The Site Characteristic Form states the proposed dwellings will use public water mains, however the application form and site layout plan indicate it is a single well to provide water supply for all three dwellings. As there is no public sewerage or public mains to serve the site, the proposal requires individual private treatment plants and individual private wells to serve each dwelling. There are amendments required to the overall design of the scheme to include the services on site in line with the EPA Guidelines and having regard to adjoining wells and treatment systems. This issue formed the third reason for refusal. I am surprised the applicant did not offer a revised design indicating compliance with the Environmental Health Officer's requirements. The grounds of the appeal state the issue is capable of being addressed, and yet does not substantiate this claim by providing technical drawings. I consider the Board is precluded from granting planning permission in the absence of technical information.

7.6 **Roads**

In my opinion, this issue is the crux of the appeal. The subject site has direct access onto the Regional Road, therefore Section 6.6.3 of the Kildare County development Plan is applicable. The Plan emphasises it is important for the sustainable economic and social development of the county that the carrying capacity of the regional routes is preserved. There are seven policies in the development plan relating to Regional Roads, the policy relevant to this appeal is RR2:

RR 2 *Restrict new access onto regional roads where the 80km per hour speed limit currently applies, except in the following exceptional circumstances:*

- *Developments of strategic, local, regional or national importance, where there is a significant gain to the county through employment creation or other economic benefit.*
- *Where applicants comply with Table 4.3 Schedule of Local Need Criteria (see Chapter 4), are proposing to build a home on their family landholding and cannot provide access onto a nearby county road. In this instance, applicants will only be permitted to maximise the potential of existing entrances. The onus will be on the applicant(s) to demonstrate that there are no other accesses or suitable sites within the family landholding (Refer to Policy RH 15).*
- *Where it is proposed to demolish an existing dwelling and replace with a new dwelling, where there is an existing entrance onto the regional road.*

The Regional Road fronting the site, R428, has a continuous white line at the proposed entrance. The site is governed by the 80km per hour speed limit (the argument on appeal that the speed limit could be moved 300metres to accommodate the site in a slower limit, is unacceptable). The 80 km per hour is the maximum national speed limit for regional roads. The sightlines at the existing entrance are acceptable as they exceed 150metres in both directions.

I did note during my inspection the traffic along the Regional Road, which is the Athy-Stradbally Road, travels at considerable speed fronting the site. Traffic turning movements into and out of the site could cause a hazard in traffic safety terms as the entrance is to serve multiple dwellings, therefore generating a considerable level of traffic, and creating stoppage along the road where the 80kmph speed limit applies. Furthermore, the proposal does not comply with the three criteria set out in RR2,

therefore the proposal materially contravenes the stated development plan policy, and should be refused on this basis.

7.7 Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site

8.0 Recommendation

- 8.1. I recommend the planning authority's decision to refuse the proposed development be upheld by the Board.

9.0 Reasons and Considerations

Having regard to the nature, scale and extent of the proposed development which includes three dwellings served by a single entrance and the vehicular movements which would be generated by the proposed development directly onto the Regional Road (R428) at a point where the maximum speed limit applies, it is considered that the proposed development fails to comply with the relevant policy of the Kildare County Development Plan 2017-2023 relating to Regional Roads, and the traffic turning movement movements associated with the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

13th of July 2021