



An  
Bord  
Pleanála

## Inspector's Report ABP-310696-21

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<b>Development</b>	Demolition of remains of house and outbuilding. Construction of replacement part single/part two-storey dwelling house
<b>Location</b>	Hacketstown, Portlawn, Co. Waterford
<b>Planning Authority</b>	Waterford City & County Council
<b>Planning Authority Reg. Ref.</b>	21/292
<b>Applicant(s)</b>	Jimmy Morrissey
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party -v- Decision
<b>Appellant(s)</b>	Jimmy Morrissey
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	24 <sup>th</sup> May 2022
<b>Inspector</b>	Hugh D. Morrison

## Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	4
5.0 Policy and Context.....	5
5.1. National Planning Guidelines .....	5
• Sustainable Rural Housing Guidelines .....	5
5.2. Development Plan.....	5
5.3. Natural Heritage Designations .....	6
5.4. EIA Screening .....	6
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Planning Authority Response .....	8
6.3. Observations .....	8
6.4. Further Responses.....	8
7.0 Assessment.....	8
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15
10.0 Conditions .....	<b>Error! Bookmark not defined.</b>

## 1.0 Site Location and Description

- 1.1. The site is located 5.5km to the west of the roundabout on the N25 and R680 adjacent to Ballyduff and 3.7km to the south of Portlaw. This site lies on lands that rise progressively along the line of the L4026, which runs westwards from its junction with the R680 in Newtown. It is situated within an existing cluster of buildings on either side of the local road.
- 1.2. The site itself is of regular shape and it extends over an area of 0.21 hectares. This site has been largely cleared of the building that was formerly upon it. Concrete bases remain in-situ, as does a small lean-to element in a roadside position. This element is accompanied by a short roadside front boundary wall with a pedestrian gate set between pillars. A further single pillar denotes the western end of the former vehicular access to the site. Elsewhere, the site is overgrown, and its boundaries are denoted by hedgerows.
- 1.3. The site adjoins farmland to the east and south. A Dutch barn lies to the east, too. To the west lies a bungalow and to the north, on the opposite side of the local road, lie three bungalows on sites that are lower than this road.

## 2.0 Proposed Development

- 2.1. The proposal would comprise the following elements:
  - The lean-to element on the site, with a floorspace of 10 sqm, would be demolished. It was formerly part of a dwelling house (171 sqm). The remainder of this dwelling house has already been demolished.
  - A new replacement four-bed/eight-person dwelling house (364 sqm) would be constructed of two-storey form with single storey elements. This dwelling house would have an integral double garage and a front gabled feature over a first-floor balcony. Its main roof would resemble a pyramid in shape. The dwelling house would be sited slightly to the west of centre on the site and in a position that would be more recessed than its predecessor.
  - The existing vehicular site entrance would be formally laid out with piers, wing walls, and gates. A short drive-in/turning area would accompany the integral

garage, which would be accessed via double doors in the eastern side elevation of the dwelling house.

- The dwelling house would be served by a rear patio and gardens on either side of it. A soakaway would be sited in the eastern side garden and a packaged wastewater treatment system and a polishing filter would be sited in the western garden.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission was refused for the following reasons:

1. No discernible habitable dwelling on the site and so the proposed dwelling would not be a replacement dwelling under Section 7.5 of the CDP.
2. The site lies in a stronger rural area and yet the applicant has failed to demonstrate a genuine need for housing in this location as required under Policy SS5 and Section 4.10 of the CDP.
3. Due to the scale, bulk, and design of the proposed dwelling and its siting and context, this dwelling would out of character with the area and seriously injurious to its amenities.

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

##### **3.2.1. Planning Reports**

See decision.

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

None

### **4.0 Planning History**

Pre-application consultation (pq2020487) occurred on 15/01/21.

## 5.0 Policy and Context

### 5.1. National Planning Guidelines

- National Planning Framework

Objective 19:

*Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:*

- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.*

- Sustainable Rural Housing Guidelines

### 5.2. Development Plan

Under the Waterford County Development Plan 2011 – 2017 (CDP), the site is shown as being located in a stronger rural area, for the purpose of rural housing, and in a landscape area that is deemed to be of “normal” sensitivity.

Policy SS5 is of relevance. It states the following:

*To cater for the housing requirements of members of the local rural community who have a genuine local housing need in Stronger Rural Areas as set out in the Criteria in Section 4.10.*

The Criteria cited is as follows:

- A farm owner<sup>1</sup> or an immediate family member (son, daughter, mother, father, sister, brother, heir) wishing to build a permanent home for their own use on family lands;
- A favoured niece, nephew or heir (maximum of 2 persons per farm owner) of a farm owner with no children wishing to build a permanent home for their own use on family lands;
- Persons working fulltime or part-time on a permanent basis, in a specific rural area who by the nature of the work need to be close to the workplace;
- A son or daughter of an established householder (who has lived in the area for three years or more) wishing to build a permanent home for their own use to live immediately adjacent to their elderly parents to provide care;
- Persons who were born and lived for substantial parts of their lives (three years or more) in a specific rural area, who then moved away and who now wish to return to their home places to reside near other family members, to work locally, to care for elderly family members or to retire; and
- Persons who because of exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation may require to live in a particular rural area or close to family support (or vice versa).

Under Section 10.19 of the CDP, as revised by Section 7.5 of Variation 1 of the CDP, a habitable structure is defined as being “a dwelling that is serviced by electricity and water, has four intact walls and a roof, and the last use of which was residential.”

### 5.3. Natural Heritage Designations

- Lower River Suir (002137)
- Lower River Suir (Portlaw, Coolfinn) (000399)
- Portlaw Woods pNHA (000669)

### 5.4. EIA Screening

Under Item 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2022, where more than 500 dwelling units would

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<sup>1</sup> Landowners are considered to be persons who have owned the land prior to the 4<sup>th</sup> of March 2004.

be constructed the need for a mandatory EIA arises. The proposal is for the development of 1 dwelling. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall well below the relevant threshold, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

In relation to the first reason for refusal:

- There has been a house on the site for over 200 years and the site is fully serviced and accessed.
- The house has been largely demolished, due to its poor state of repair and the collapse of its thatched roof. A lean-to element remains and the concrete floor of the main body of the house. Rebuilding could have taken place.
- Had the applicant been advised at the pre-planning stage to do so, he could have applied for the retention of demolition of the existing house. Regrettably, such a stage did not materialise even though it was requested, and so the case planner is incorrect to say that Section 7.5 of the CDP was referred to.
- Exception is taken to the categorisation of the proposed dwelling as a new one that would contribute to ribbon development.

In relation to the second reason:

- The applicant and a local councillor have submitted letters that testify to the applicant's local housing need. Information in this respect was not previously submitted, as it was not considered to be necessary/relevant.
- The site has an established residential use, and the proposal is effectively for a change of house type on this site.

In relation to the third reason:

- The design of the proposed dwelling is site specific. This dwelling would be set further back on the site than its predecessor and so it would facilitate enhance sightlines at the entrance/exit. It would respect the privacy and pre-existing views of neighbours.
- Photographs of other similar dwellings in the locality of the site of have been submitted.

## 6.2. **Planning Authority Response**

None

## 6.3. **Observations**

None

## 6.4. **Further Responses**

None

## 7.0 **Assessment**

7.1. I have reviewed the proposal in the light of Objective 19 of the National Planning Framework (NPF), the Waterford County Development Plan 2011 – 2017 (CDP), the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) The basis of the proposal,
- (ii) Rural housing policy,
- (iii) Ribbon development,
- (iv) Visual amenity,
- (v) Access,
- (vi) Water, and
- (vii) Appropriate Assessment.



**(i) The basis of the proposal**

- 7.2. The description of the proposal refers to the proposed new dwelling house as being a replacement one. It adds, "The remains of the existing partially demolished house and outbuilding will be removed to make way for the new house."
- 7.3. Under Section 10.19 of the CDP, the Planning Authority addresses the replacement of a habitable dwelling, which is defined as being "a dwelling that is serviced by electricity and water, has four intact walls and a roof, and the last use of which was residential." It states that such replacement maybe allowed where the existing habitable dwelling is deemed to be of little or no architectural or historical merit and it envisages that an assessment of merit or otherwise will be made at the pre-application consultation stage.
- 7.4. The applicant states that the former dwelling house on the site, which was there for over 200 years, was largely demolished before any pre-application consultation stage. Indeed, he states that "The house was mostly demolished by the previous owner due to its bad state of repair and the building had a thatched roof which was collapsing. He was advised at the time by an engineer that it was best to demolish it and rebuild it." A photograph of the exterior of this thatched cottage taken from the roadside has been submitted with the applicant's grounds of appeal. Likewise, a photograph taken from within the former bedroom next to the retained lean-to structure has been submitted. *Prima facie* the thatched cottage thus depicted may have been an example of vernacular architecture which, under Section 10.19, the Planning Authority would have wanted to explore the feasibility of retaining/restoring.
- 7.5. During my site visit, I observed that concrete bases remain in-situ, as does the aforementioned small lean-to structure, which extends over an area of 10 sqm. I also observed that this structure is served by an electricity connection and the completed application forms indicate that it is served by the public water mains. Notwithstanding these connections, in the light of the CDP's definition of a habitable dwelling, the lean-to structure, which comprises a single small room, is incapable of affording accommodation of a size and range that would constitute a dwelling. I, therefore, agree with the Planning Authority's conclusion that the lean-to structure is not a dwelling and so the proposed dwelling house is not a replacement dwelling house

but simple a new one, albeit on a site whereon there is historic precedent for having a dwelling house.

7.6. I conclude that, as there is no dwelling on the site, the proposed new dwelling house would not be a replacement one but a wholly new one.

**(ii) Rural housing policy**

7.7. Under the CDP, the site is shown as being located in a stronger rural area and so Policy SS5 is of relevance. Under this Policy, the Planning Authority undertakes “To cater for the housing requirements of members of the local rural community who have a genuine local housing need in Stronger Rural Areas as set out in the Criteria in Section 4.10.”

7.8. Due to the basis upon which the applicant submitted his application, the need to demonstrate a genuine local housing need was not addressed. Instead, the applicant contends that the site has an established residential use. However, as there is no longer any habitable dwelling on this site, this use has been abandoned.

7.9. Notwithstanding the aforementioned contention, the applicant has begun, at the appeal stage, to address the question of genuine local housing need. In this respect, he has submitted a letter from a local councillor, which cites the fifth criterion of the criteria cited in Section 4.10. This criterion cites the following: “Persons who were born and lived for substantial parts of their lives (three years or more) in a specific rural area, who then moved away and who now wish to return to their home places to reside near other family members, to work locally, to care for elderly family members or to retire.” By way of supporting evidence, the following information is set out:

- The applicant was born and raised in Ballyshunnock (a neighbouring townland to Hacketstown wherein the site lies),
- He was baptised in Newtown,
- He attended Portlaw National School and Kilmacthomas Secondary School, and
- He played for the local GAA club in Portlaw.

- 7.10. I note the above supporting evidence. I note, too, that the criterion cited envisages an applicant who moved away and now wishes to return to their home place for one or more of a variety of reasons. *Prima facie* the supporting evidence indicates that the locality of the site is where the applicant is originally from. However, he has not stated in any of his submissions where he may have moved to and his reason(s) for wanting to return to his home place. Accordingly, the supporting evidence falls short of demonstrating that the selected criterion is applicable. Additionally, the other criterion in Section 4.10 would not be satisfied by this evidence *per se*.
- 7.11. The Sustainable Rural Housing Guidelines make a distinction between urban and rural generated housing need. Accordingly, it is important that an applicant state whether their residency has shifted from a rural area to an urban area at any time. Normally, this matter is explored under a supplementary application form. In this case, the applicant has not completed such a form and the information that he has submitted at the appeal stage does not cover it.
- 7.12. I conclude that, notwithstanding the information submitted at the appeal stage, the applicant has yet to demonstrate that he has a genuine local housing need.

**(iii) Ribbon development**

- 7.13. The case planner raised the question of ribbon development. Under the Sustainable Rural Housing Guidelines, such development is judged to occur “where five or more houses exist on any one side of a given 250m of road frontage.” The site lies on the southern side of the L4026. At a short remove to the east lies a bungalow and, likewise, to the west lies an adjacent bungalow. Further to the west lie a row of four bungalows and opposite the site to the north lies a row of three bungalows. If the site frontage is included within the 250m dimension, then the proposed dwelling house would represent the addition of either a third or fourth house on the southern side of the local road. Accordingly, I conclude that it would not represent ribbon development.

**(iv) Visual amenity**

- 7.14. The Planning Authority has published “Rural Housing Pre-Planning Advice Notes”, which includes advice on siting and design. The Notes require that proposals be accompanied by a design statement, and they address traditional rural design and the principles of such design, which should inform modern house design.

- 7.15. The applicant submitted a brief design statement, which emphasises that the proposed dwelling house would be sited further back on the site than its predecessor. It refers to its siting, which is intended to capitalise upon views, while respecting the existing views of the bungalows opposite. It also refers to the roofscape of the proposed dwelling house, which would comprise a pitched hipped roof over the two-storey portion and a green flat roof over the single storey rear portion.
- 7.16. The Planning Authority's third reason for refusal critiques the siting and design of the proposed dwelling house and concludes that it would be out of character with the area and seriously injurious to amenity. Specifically, notwithstanding the increased set back of this dwelling house, its siting would still only be c. 8m back from the roadside. Furthermore, its depth of over 26m would militate against any greater set back on the site. The dwelling house would extend over a floorspace of 364 sqm (232 sqm at ground level and 132 sqm at first floor level). Its design would incorporate a large portico to the front, which would encapsulate a balcony above the front door, projecting and recessed flat roofed elements, and a main roof of virtually pyramid shape with a projecting element connecting with the portico to the front and a subsidiary element to the rear. Fenestration would, likewise, display considerable variation.
- 7.17. The applicant has responded to the Planning Authority's critique by reiterating the points made in his design statement and by submitting photographs of large modern dwelling houses elsewhere in the locality.
- 7.18. During my site visit, I observed that the existing dwelling houses within the vicinity of the site are all bungalows. While I also observed two-storey dwelling houses, they were further away from the site than the bungalows. The applicant has submitted a contextual elevation of the proposed dwelling house, which shows it in relation to the Dutch barn to the east, which is accompanied by lean-to elements on either side, and the bungalow to the west. This dwelling house would be "in scale" with this barn, an agricultural building, rather than this bungalow, another dwelling house. Additionally, it would be considerably more prominent, as the barn is set back c. 30m from the roadside and the bungalow c. 16m.

- 7.19. The size and complexity of the design of the proposed dwelling house would run contrary to the traditional rural design principles set out in the Planning Authority's Advice Notes cited above, which emphasise the importance of simplicity, restraint, and good proportion.
- 7.20. In the light of the foregoing comments, I conclude that the size, siting, and design of the proposed dwelling house would cause it to be unduly prominent and out of character with the immediate area, which comprises only bungalows. I also conclude that its complex design would contravene the traditional rural design principles for modern house design set out in the Planning Authority's "Rural Housing Pre-Planning Advice Notes".

**(v) Access**

- 7.21. The site is served by an existing vehicular access point from the L4026. Under the proposal, this access point would be widened in a westerly direction and formally laid out as a site entrance with piers, wing walls, and gates. This entrance would serve a drive-in and turning area, which would adjoin the proposed integral double garage.
- 7.22. The submitted site layout plan shows the proposed gates set back 3.5m from the edge of the carriageway. To achieve a vehicle refuge forward of these gates, this set back would need to be deepened to between 4 and 6m.
- 7.23. The submitted site layout plan also shows sightlines of 90m in either direction along the L4026, which is of relatively straight horizontal alignment, although vertically it rises at a gentle gradient to the east. The local road is subject to a speed limit of 80 kmph as it passes the site and so this is the appropriate "y" dimension. However, the depiction of this "y" dimension does not tie it to the nearside road edge. During my site visit, I observed that the grass verge to the west, which extends to the frontage of the adjacent bungalow afforded reasonable visibility. To the east this verge was overgrown by a hedgerow and a utility pole was prominent within it. This hedgerow extends along the road frontage to the neighbouring Dutch barn and so I anticipate that the consent of the landowner would be needed to ensure that it is cut back sufficiently to ensure the needed visibility. This matter has not been addressed by the applicant.
- 7.24. I conclude that the proposal would be capable of being served by a satisfactory means of access, provided the proposed gates allow for a vehicle refuge forward of

them and provided the requisite sightlines can be achieved. The consent of the neighbouring landowner may be needed to secure this latter objective.

**(vi) Water**

- 7.25. The completed application forms indicate that the site is served by an existing connection to the public water mains and an existing septic tank. The submitted site layout plan shows that this septic tank would be upgraded and accompanied by a polishing filter, which would be sited to the west of the proposed dwelling house. It also shows a soakaway to the east of this dwelling house, which would handle surface water run-off from hard surfaces.
- 7.26. Under the OPW's flood maps, the site is not shown as being the subject of any identified flood risk.
- 7.27. The submitted site characterisation form concludes that a septic tank would not be appropriate and so a packaged wastewater treatment system and polishing filter is recommended. However, this recommendation has not been depicted in the above cited site layout plan and so the applicant has yet to demonstrate that it would be capable of being installed to the west of the proposed dwelling house in accordance with the EPA's relevant Code of Practice. Insofar as the polishing filter is depicted, it would, at 3.5m, be too close to this dwelling house, i.e., 10m is the minimum separation distance.
- 7.28. Returning to the site characterisation form, it sets out the following information:
- The aquifer is regionally important and of high vulnerability. The groundwater protection response is R1.
  - Local groundwater flows from south to north.
  - The trial hole was dug to a depth of 2.2m. Water was not encountered. The topsoil is composed of clay/silt and the sub-soil is composed of silt/clay.
  - The "T" and "P" test results were 71.51 min/25mm and 43.05 min/25mm. These results are consistent with what would be expected of the soil types in question.
- 7.29. In the light of the above information and the relatively compact size of the site, the assessor recommends that a packaged wastewater treatment system and polishing

filter be installed. The applicant proposes to install the two chamber Batchpur system and a 15 sqm sand filter set within a 54 sqm stone base attenuation area.

7.30. I conclude that the site would be capable of being serviced by the public water mains and an on-site soakaway. I also conclude that the existing septic tank would need to be replaced by a packaged wastewater treatment system and polishing filter. The applicant has not demonstrated how such a system and filter could be installed in accordance with the relevant EPA site layout requirements.

#### **(vii) Appropriate Assessment**

7.31. The proposal is for a new dwelling house only on a site that is neither in nor near to a European site. I am not aware of any source/pathway/receptor route between this site and any European site and so no Appropriate Assessment issues arise.

7.32. Having regard to the nature, scale, and location of the proposal, the nature of the receiving environment, and the proximity of the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the proposal would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **8.0 Recommendation**

That permission be refused.

### **9.0 Reasons and Considerations**

1. Having regard to:

- Objective 19 of the National Planning Framework,
- The Sustainable Rural Housing Guidelines, which distinguish between urban and rural generated housing need,
- The location of the site in a stronger rural area, and
- Section 10.19, Policy SS5, and Section 4.10 of the Waterford County Development Plan 2011 – 2017, as revised and extended,

It is considered that, due to the absence of an existing habitable dwelling on the site, the proposed dwelling would not be a replacement one. In these

circumstances, it is incumbent upon the applicant to demonstrate that he has a genuine local housing need in accordance with Policy SS5 of the Development Plan. This he has failed to do and so, in the absence of such demonstration, the proposed new dwelling house would contribute to the encroachment of random rural development in the area, which would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to national and local planning objectives and to the proper planning and sustainable development of the area.

2. Having regard to:

- The size of this part two-storey/part single storey dwelling house relative to the area of the site and the presence of bungalows in the vicinity,
- The siting of the proposed dwelling house adjacent to the roadside, and
- The design of the proposed dwelling house, in the light of the Planning Authority's "Rural Housing Pre-Planning Advice Notes",

It is considered that the scale, prominence, and complexity of the proposed dwelling house would cause it to be out of character with the pattern of development in the surrounding area and seriously injurious to the visual amenities of properties in its vicinity. As such, it would fail to reflect the design guidelines set out in the above cited Advice Notes. The proposal would, therefore, be contrary to the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

3<sup>rd</sup> June 2022