



An
Bord
Pleanála

Inspector's Report ABP-311025-21

Development	Construction of house, garage, waste water treatment system, percolation area.
Location	Rathdaniel, Tinure, Co Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	21707
Applicant	John Carton
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant	John Carton
Date of Site Inspection	9 th December 2021
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located in a field north-west of Tinure, Co Louth, west of the M1 about 2km north west of junction 11 (Monasterboice) and 3.5km south-west of junction 12 (Dunleer). Tinure (Monasterboice) is a small crossroads settlement, (level 4 per the development plan) which, in addition to low density housing includes a church and some services. The site is located about 0.5km from the village.
- 1.1.2. The field in which the site is located is a narrow linear shape (narrow axis along the road), widening slightly, and rising slightly as it extends west from the local road. Running along the north of the field is a thick hedge and a stream. Through the first half/two thirds of the field near the northern side there is a partly constructed access road, which currently serves several, large, detached houses completed or under construction. The sites are rectangular portions of the field between the road and the southern field boundary. One house faces onto the local road and the remainder face towards the access road. Other appeals before the Board are in respect of sites between existing dwellings along the partly constructed access road. The subject site is within the field beyond the access road. Going by the proportions of the sites submitted, there is another vacant site along the access road, and another vacant site east of the subject site; which would represent in total 8 sites as far as the subject site. The linear field extends beyond the subject site.
- 1.1.3. The site is given as 0.464ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the construction of a house, garage, waste water treatment system and polishing filter percolation area. The two storey house is 309m² in area, the detached garage 58m². Water supply is to be by private well.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority (PA) decided to refuse permission for the following reasons:

1 Policy SS 19 of the Louth County Development Plan 2015-2021 requires that applicants for one-off rural housing demonstrate compliance with the local needs qualifying criteria as set out in section 2.19.1 of the Plan. The applicant has failed to demonstrate to the satisfaction of the planning authority that he has resided within 6 kilometres of the site for a minimum of 10 years. As such the development is contrary to Policy SS 19 of the Plan and contrary to the proper planning and sustainable development of the area.

2 The proposed development, by reason of its location would constitute an inappropriate and suburban form of piecemeal development and would result in a further intrusive encroachment of physical development into the open rural landscape. The proposed development would militate against the preservation of the rural environment and would set an undesirable precedent for other such development in the vicinity in this rural area. Such development would be contrary to Policy SS 25 of the Louth County Development Plan 2015-2021 which requires consideration to be given to the cumulative visual impact and pattern of development of existing houses and permissions granted in the vicinity of the site. The proposed development would, therefore be contrary to the proper planning and sustainable development of the area.

3 Having regard to the location of the application site along a substandard laneway and the lack of detail within the application regarding proposals to upgrade this lane, it is considered that the proposed development would endanger public safety by reason of a traffic hazard and would be contrary to the proper planning and sustainable development of the area.

4 The applicant has failed to demonstrate that percolation test results and ground conditions are adequately suitable to accommodate the required packaged waste water treatment system and polishing filter. Accordingly, in its current form, the proposed development is contrary to Policy SS 65 of the Louth County Development Plan 2015-2021. The proposed development would therefore be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planning report recommending refusal includes:

- Reference to recent planning applications – ref. 21/280 and ref 21/581.
- No pre-planning consultation.
- Citing local policies from the 2015-2021 development plan, (now superceded).
- AA- there is a stream c 60m to the north of the site which runs into the White River and would provide a hydrological link to Dundalk Bay SAC/SPA. Having regard to the request for further information from the Environment Section in relation to supervised percolation tests and the Infrastructure Section in relation to surface water disposal, the potential impact of the proposed development on European sites cannot be established at this juncture.
- Rural Housing Needs Criteria – the applicant is proposing to qualify under criteria 2 – that he has lived in the area for a minimum period of 10 years, has a housing need, does not already own a house or have owned a house within the rural area for a minimum of 5 years prior to making an application.
 - The applicant has submitted the following in support of the application:
 - Completed Qualifying Criteria form for one-off rural housing which outlines that he currently lives at Balgathern, the Eircode given shows the address as 5.2km south of the subject site, within development zone 2.
 - Self declaration from the applicant to confirm that he has not owned a house in the rural area within the previous 5 years prior to making this application.
 - Letter of consent from landowner.
 - Copy of invoice addressed to the applicant at Balgathern, Tullyallen, dated May 2021.
 - Bank statement addressed to the applicant at Balgathern, Tullyallen dated May 2021.

- Letter from Louth Leader Partnership addressed to the applicant at Balgathern, Tullyallen, dated September 2021, certifying employment Oct 2016-Sept 2017.
- Credit Union statement addressed to the applicant at Balgathern, Tullyallen, covering the period Dec 2019 – Jan 2020.
- Letter to applicant's parents, at Balgathern, Tullyallen, dated May 2010.
- Birth Certificate which provides 11 Congress Avenue, Drogheda as the address at the time of the applicant's birth in 1994.
- He states that he currently resides at Balgathern, Tullyallen, Co Louth at the family home. A review of the planning register confirms permission in Feb 1998 to J & G Delaney, not matching the applicant's parent's names. In 1997 permission for an extension to the dwelling at 11 Congress Avenue, Drogheda was granted in the name of the applicant's father.
- The location some 380m from the public road would result in an undesirable form of development which would result in an intrusive encroachment of physical development in the open rural landscape and in conjunction with the concurrent planning applications for dwellings (Ref No 21/581 and Ref No 21/707) would further exacerbate the adhoc, piecemeal development of suburban form at this location and would militate against the preservation of the rural environment and would set an undesirable precedent for other such development in the vicinity in the vicinity. Not acceptable in principle.
- The report raises no concern regarding the design, scale or landscaping of the proposed development or the impact on residential amenity.
- Traffic and transportation considerations – the site is accessed via a private laneway which serves the subject site and a number of adjoining properties. The applicant has demonstrated that the required sightline visibility at the junction of the private lane with the public road can be provided. The Infrastructure Section has requested further information in relation to written proof that the applicant has permission to use the private laneway. The planning report remains concerned regarding the substandard nature of the laneway and it is not clear from the

information submitted if the laneway will be improved as part of the proposed development and that this should be a reason for refusal.

- Re. proposals for wastewater treatment and disposal the Environment Section has requested further information. It is considered that this should be a reason for refusal.
- Re. surface water the Infrastructure Section has requested further information in relation to disposal within the site rather than discharge to the White River. Planning report does not think a further information request appropriate.

3.2.3. Other Technical Reports

3.2.4. Infrastructure Directorate:

The entrance to the proposed development is via an existing private access laneway located on the public road L6270-17. The applicant has shown 3m x 75m sightlines available. In the event that the number of dwellings equals and or exceeds 6, the 6th and subsequent dwellings will be required to provide visibility sightlines of 4.5m x 75m per development plan.

Further information:

Written proof that all necessary rights and permissions have been obtained from third party landowner(s) for provision of access.

Soakaway has been designed for 1 in 100 years return period. The PA accepts 1 in 50 years. The applicant to review the proposed design report and revise the soakaway design based on 1 in 50 years return period should they so wish. Gravel driveways can be considered as permeable, therefore inclusion of the surface area for gravel driveways does not need to be included in soakaway design calculations. The PAs preference is for all surface water to be disposed of within the development site, subject to soil infiltration rates, water table levels and appropriate design. Discharge to the White River would be the least preferred option for disposal of surface water.

3.2.5. Environmental Compliance Section:

Further information:

- a) Confirm the name of person who will supervise the installation of the treatment system and percolation area..
- b) Supervised percolation tests required.

4.0 Planning History

4.1.1. None stated.

From the PA's on-line mapping:

01371 to Liam McGowan No 6 Five Oaks, Drogheda permission for a dormer bungalow and garage, granted 11th August 2001.

Condition no 11 – re. connection to public sewer.

05708 permission consequent granted 4th October 2005 to Liam McGowan construction of dormer dwelling BAF sewerage treatment system, percolation area, proposed entrance and all associated siteworks. Commencement date 30th January 2006.

5.0 Policy Context

5.1. County Development Plan

5.1.1. Louth County Development Plan 2021-2027, adopted 11th November 2021, is the operative plan and supercedes the Louth County Development Plan 2015-2021, referred to in the planner's report.

5.1.2. Relevant provisions include:

5.1.3. Regional Spatial Economic Strategy (RSES) for the Eastern and Midland Region 2019-2031 recognises that in planning for rural areas, a balance is required between managing urban generated demand and supporting the sustainable growth of rural communities and economies. The Strategy highlights the significant levels of growth experienced in rural areas close to large urban settlements and the need to manage the level of growth in these locations. There is an acknowledgement that support for housing and population growth within rural towns and villages would provide a viable alternative to one-off rural housing. This is confirmed in the policy objective supporting the development of a 'New Homes in Small Towns and Villages' initiative

in Development Plans included in the Strategy 3, Sustainable Rural Housing, Guidelines for Planning Authorities, published in 2005, which advocates that Planning Authorities should take an analytical and plan led approach to enable Development Plans to respond to the challenges facing rural areas. They require the needs of rural communities to be identified in the development plan process and that residential development is accommodated at appropriate locations necessary to sustain rural communities.

The site is located in rural policy zone 2, as shown on map 3.2.

Local need requirements set out in section 3 of the plan include:

Local Rural Area: The radius of 6km from the qualifying family residence. Qualifying

Landowner: A person who owns a landholding of at least 1.5 hectares and has owned the land for a minimum of 15 years.

Qualifying Criteria Rural Policy Zone 2 – Area Under Strong Urban Influence, includes:

Landowners including their sons and daughters who have demonstrable social or economic ties to the area where they are seeking to build their home. Demonstrable social or economic ties will normally be someone who has resided in the rural area of Louth for at least 18 years prior to any application for planning permission. Any applicant under this category must demonstrate a rural housing need and shall not own or have sold a residential property in the County for a minimum of 10 years prior to making an application.

A person who is seeking to build their first house in the area and has a demonstrable economic or social requirement to live in that area. Social requirements will be someone who has resided in the rural area of Louth for at least 18 years prior to any application for planning permission. Any applicant under this category must demonstrate a rural housing need and shall not own or have sold a residential property in the County prior to making an application.

No more than three houses (exclusive of the family home) shall be permitted on the landholding.

13.9.6 Backland Development - the Planning Authority will not generally favour proposals which involve development located to the rear of established buildings, located along a private lane off public roads and which introduce a piecemeal form of

backland development. This type of development results in a scattered arrangement of housing or clustered to the rear of existing properties and often long laneways to reach the properties. It is not respectful of the traditional settlement pattern, creates a built-up appearance thereby eroding the rural character and further fragmenting agricultural lands, reduces residential amenity standards and can have an impact on traffic safety. Backland Development will only be considered in Rural Policy Zones 1 and 2 where the applicants' site has been owned by the family for at least 15 years and the landholding is at least 1.5 hectares. Only one dwelling will be permitted per landowner (as defined above).

5.2. National Framework Plan

5.2.1. National Policy 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.

5.3. RSES for the Eastern and Midland area.

5.3.1. 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.

5.3.2. In terms of population distribution within the Region, 94% of the EMRA's total population lives within areas under urban influence. Within the Eastern SPA, 91% of the population lives in areas under urban influence whilst in the Midlands SPA this figure is 72.9%. Local authorities' rural housing planning policy should be evidence based and accommodate rural generated housing consistent with the settlement framework contained in this Strategy and the DEHLG Sustainable Rural Housing Guidelines, 2005, or any successor thereof, and should be accommodated within the

Housing Needs Demand Assessment, reflecting the housing needs of the county as a whole. The NPF and RSES make a distinction between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and rural areas outside these catchments. In such areas a more flexible approach based primarily on siting and design will apply. Core strategies for county development plans shall identify areas under strong urban influence in the hinterlands of settlements and set the appropriate rural housing policy response to avoid ribbon and over spill development from urban areas, support revitalised towns and villages, achieve sustainable compact growth targets, sustainably address rural decline and protect the rural resource for rural communities.

5.4. Natural Heritage Designations

- 5.4.1. The nearest protected site is the Proposed Natural Heritage Area Mellifont Abbey Woods (site code 001464), 1.5km to the west.
- 5.4.2. The nearest natura sites are: Boyne Coast and Estuary SAC (site code 001957) c10km straight line distance south east, and Dundalk Bay SPA (site code 004026) and Dundalk Bay SAC (site code 000455) c10km straight line distance north-east and further downstream.

5.5. EIA Screening

- 5.5.1. Having regard to nature and scale of the development comprising an infill residential development and the urban location of the site 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

- 6.1.1. The appeal against the refusal, is submitted on behalf of the first party by Foresight Design and Planning, it includes:

- The house is for John Cannon 5.22km from his parent's house and his place of residence since birth.
- The landowner Liam McGowan had a pre-planning meeting with Lough County Council under planning file reference number 203A (Orange Meadow) dated 19/10/2018. In that meeting he was informed that Louth County Council would consider at least 4 additional houses at the site location. The decision is therefore unfair.
- Local need – the applicant has provided the council with the required paperwork proving he lives with his parents at Balgathen and has shown a map of the house relative to the site. He would be happy to furnish any further proof considered necessary to the Council. The information submitted has been considered acceptable in the past.
- Suburban development – to call this suburban development is inaccurate. It is located off a rural road / lane and cannot be visually linked to the other houses around due to the topography. It will not be seen from the public road.
- Laneway – the road has not yet been completed due to the construction traffic for any additional houses. He is happy to lodge the specification and proposed road details. It is planned to finish the surface with tarmac to match the first section. The refusal reason is unreasonable.
- A percolation test was carried out on site by Hydrocare Environmental and a waste water treatment system and polishing filter designed as per EPA code of practice. If the council had a question re. same he would have been happy to facilitate a supervised retest or any other additional measures.
- The grounds is accompanied by a letter from the appellant and maps with notation in relation to other development in the general area.

6.2. Planning Authority Response

6.2.1. The planning authority has responded to the appeal. The response includes:

- The applicant indicated in question 18 of the standard planning application form that preplanning did not take place, notwithstanding that preplanning is

advice only and the suitability of a proposal can only be assessed on receipt of an application. The development is unacceptable in principle.

- Local need – Adequate information was not submitted to demonstrate compliance with local need. It was unclear when the applicant's family moved to the current family home. This could have been requested through further information, as the principle of development was not considered acceptable, it was not appropriate to request further information.
- Suburban development – it remains the view of the PA that given the location some 380m from the public road would result in an undesirable form of development which would result in an intrusive encroachment of physical development in the open rural landscape. Such development is contrary to Policy SS25 of the development plan. In addition the applicant has submitted a layout map illustrating the layout of future dwellings along this laneway thus confirming that it would result in a suburban development if granted.
- Supervised percolation tests – as the principle of development was not considered acceptable, it was not appropriate to request further information.

6.3. Observation

- 6.3.1. An observation has been received from Cllr Pearse McGeough, which includes that the landowner attended a pre-planning meeting in 2018 which he felt was positive, with Louth County Council saying they would consider at least 4 additional houses at the site. The house would not be visible from the road or impact on aesthetics of the area.

7.0 Assessment

- 7.1.1. Having examined the application details and all other documentation on file, including all of 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: appropriate assessment, servicing and drainage, and rural housing policy, and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

- 7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

7.3. Servicing and Drainage

- 7.3.1. The proposed development is located in an unserviced rural area where the proposed water supply is by bored well and the effluent disposal is by on-site wastewater treatment system and a polishing filter.
- 7.3.2. It is noted that in 2001 when planning permission was granted for a dwelling in this area to Liam McGowan (of No. 6 Five Oaks Drogheda) a condition of the permission was that the development would be connected to the public sewer.
- 7.3.3. Connection to the public sewer is not part of the current proposal and none of the dwellings in this area are connected to the public sewer. Neither are they connected to a mains water supply.
- 7.3.4. The site characterisation report identifies this area as being located on a poor bedrock aquifer which is generally unproductive except for local zones. The issue of multiple adjoining dwellings deriving their water supply from bored wells would require further examination in this location were the Board minded to grant permission.
- 7.3.5. The site characterisation report states that the site is suitable for a packaged wastewater treatment system and polishing filter but not suitable for a septic tank system or a septic tank and filter system. The Environmental Compliance Section recommended further information to confirm the name of person who will supervise the installation of the treatment system and percolation area, and requested supervised percolation tests. In the context of the concentration of on-site systems and the reliance on bored wells, were the Board minded to grant permission, this would require further examination.
- 7.3.6. The Infrastructure Directorate report recommended a further information request regarding the soakaway design, noting the planning authority's preference for all

surface water arising from the proposed development to be disposed of within the site subject to soil infiltration rates, water table levels and appropriate design. A further information request did not issue and this were the Board minded to grant permission matter would require further examination.

7.4. Rural Housing Policy

- 7.4.1. The site is located in rural policy zone 2, as shown on map 3.2 of the county development plan. Local need requirements set out in section 3 of the plan include: a location within a radius of 6km from the qualifying family residence; a qualifying landowner is a person who owns a landholding of at least 1.5 hectares and has owned the land for a minimum of 15 years.
- 7.4.2. The relevant landholding is in excess of 1.5ha.
- 7.4.3. The plan states that no more than three houses (exclusive of the family home) shall be permitted on the landholding. It is not clear when the landholding was acquired and whether or not all the dwellings permitted or constructed on these lands were then part of the landholding. The application details state that at a pre-planning under planning file reference number 203A (Orange Meadow) dated 19/10/2018 the applicant's father was informed that Louth County Council would consider at least 4 additional houses at the site location and that two houses have already been granted along the access road under planning file reference numbers 19366 and 19365 both granted in October 2019.
- 7.4.4. The local needs policy in the current plan requires that the applicant has lived in this rural area for at least 18 years. The applicant currently resides at Balgathern, Tullyallen, close to the north west of Drogheda.
- 7.4.5. The planner's report notes a permission in 1997 for an extension to the dwelling at 11 Congress Avenue, Drogheda, the applicant's birth address, granted in the name of the applicant's father, suggesting that the applicant has lived in this rural area less than the requisite 18 years.
- 7.4.6. This is a rural area under strong urban influence, and the pressure for rural housing in this area will continue to grow because of its accessibility to the M1 with interchanges a short distance to the north-east (junction 12 (Dunleer) 2km away) and south-east (junction 11 (Monasterboice) 3.5km away).

7.4.7. I am not satisfied that the applicant's housing needs could not be satisfactorily met in an established town, village or urban settlement area. Given that the proposal would comprise an urban generated rural house and that the applicant does not demonstrate an economic or social need to live in this rural area, it is my view that the proposed development would be contrary to the Sustainable Rural Housing Guidelines for Planning Authorities (2005) and National Policy Objective 19 of the National Planning Framework and the county development plan. This is a reason for refusal.

7.4.8. In addition to restricting the development of rural housing, the development plan seeks to restrict development along private lanes, off public roads because such development is not respectful of the traditional pattern of development. This is a reason for refusal.

8.0 Recommendation

8.1.1. In accordance with the foregoing I recommend that permission should be refused, for the following reasons and considerations.

9.0 Reasons and Considerations

- 1 It is the policy of the planning authority that development outside of designated urban centres should be strictly limited to local need. This is set out in the current Development Plan for the area, where it is the settlement policy to direct new residential development to designated development centres and to protect existing rural settlements outside these centres from urban overspill. The proposed development, which does not cater for locally derived housing needs, would conflict with the policies of the Development Plan and would be contrary to the proper planning and sustainable development of the area.
- 2 The proposed development would constitute random housing development in a rural area lacking certain public services and community facilities and served by a poor road network. The proposed development would, therefore, give rise to demands for the provision of further public services and

community facilities and would accordingly be contrary to the proper planning and sustainable development of the area.

Planning Inspector

20 December 2021

Appendices

Appendix 1: photographs

Appendix 2: Louth County Development Plan 2021-2027, extracts

Appendix 3: Regional Spatial Economic Strategy (RSES) for the Eastern and Midland Region 2019-2031, extracts