



An
Bord
Pleanála

Inspector's Report ABP-311821-21

Development	House with attached garage, septic tank, percolation area and associated site works.
Location	Raheenabrogue, Ballyroan, Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	21571
Applicant(s)	John Carroll
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Michael Chawke
Observer(s)	None
Date of Site Inspection	11 th January 2022
Inspector	Alaine Clarke

1.0 Site Location and Description

- 1.1. The site is located in the rural area of County Laois, approximately 1.6km southwest of Ballyroan village and 2.2km north-east of Abbeyleix. The site is accessed via a local road. This local road joins the R425 approx. 300m to the east which connects Ballyroan with Abbeyleix.
- 1.2. The site is rectangular in shape, has a stated area of c.0.4ha and forms part of a larger field which measures c. 0.4 ha. There is a mature hedgerow interspersed with trees along the western boundary. There is a single wire fence along the southern boundary embankment and the embankment is sown with saplings. The southern boundary is curved reflecting the road alignment. There is a level difference between the road and the field; the site is higher than the road and this is more pronounced towards the south-western corner of the site. There are no physical boundaries along the eastern and northern site boundaries. The site is used for tillage purposes.
- 1.3. The site rises considerably to the north, by c.5.9m (according to the submitted site layout plan) from the lowest point along the road frontage.
- 1.4. There is a dwelling and associated equestrian farm located to the west. There are agricultural structures between the site and the dwelling to the west. There is also a mobile home located immediately west of the south-western site boundary and within the equestrian farm complex. There are number of paddocks and horse exercise areas west of the site boundary.
- 1.5. A 400kv line traverses in a north-east / south-west direction c.51m to the east of the site.
- 1.6. There are three known archaeological monuments proximate to the site, one to the north-east and two to the west. The closest is 350m to the northwest, a moated site, SMR no. LA024-019.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - A dormer dwelling with attached garage with an overall height of c.7.4m and a combined gross floor space of 209sq.m.

- A new entrance to the east of the site frontage with sightlines of 90m in either direction;
- A septic tank and percolation area located to the front of the dwelling;
- Cutting into the land by c.1.48m (as indicated on drawings) to lower the ground level of the site to accommodate the proposed house.

3.0 Planning Authority Decision

3.1. Decision

On the 6th October 2021, Laois County Council issued a Notification of Decision to GRANT permission subject to 15 no. conditions. The following are relevant:

- Condition no. 2(a) – occupancy clause restricting occupation of the dwelling to the applicant, members of the applicant’s family or their heirs for a period of seven years unless prior written agreement is consented by the planning authority for its occupation by other persons in the same category of housing need;
- Condition no. 3 – restricting use of the garage to a purpose incidental to dwelling;
- Condition no. 4 – effluent disposal shall comply with the EPA Code of Practice: Waste Water Treatment and Disposal Systems Serving Single Houses 2009;
- Condition no. 9(b) – sightlines of 3m x 90m shall be provided at the site entrance.
- Condition no. 13 – relates to landscaping. Site boundaries to be planted with native species.
- Condition no. 15 – development contribution levy required.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report of the Planning Officer notes the location of the site and sets out the relevant national and development plan policy. The report notes, with respect to local need, that the site is located in an area designated as a 'Stronger Rural Area' and states on the basis of information provided that the applicant has demonstrated compliance with local need criteria.
- The report notes that the siting and design of the proposed house is acceptable; that the ground level to the rear of the proposed dwelling continues to rise which will lessen the visual impact of the dwelling. On the issue of overlooking, the report notes existing agricultural buildings will screen the proposed development from the existing farmhouse to the west.
- The report notes that permission has been granted to John Carroll for a dwelling and training centre 440m southwest of the site.

3.2.2. Other Technical Reports

- Roads Office, Portlaoise Municipal District – access is onto local secondary road L6717, sightlines of 3m x 90m are required, surface water run-off onto the public road shall be restricted.

3.3. Prescribed Bodies

- Irish Water – no response returned;
- Environmental Health Officer – no response returned.
- Development Applications Unit, Department of Housing, Local Government and Heritage, the National Parks and Wildlife Service – no response returned.
- The Heritage Council – no response returned.
- An Taisce – No response returned.

3.4. Third Party Observations

The Planning Authority during the course of their determination of this application received two third party observations, as follows:

- Michael Chawke, the appellant in this appeal case, objects to the proposed development as it would invade his privacy by virtue of the windows on the western elevation and the elevated position of the proposed house.
- Cllr. Mary Sweeney advises that the applicant is a local businessman involved in employment in Ballyroan.

4.0 Planning History

4.1. Appeal Site

- There is no planning history on the site.

4.2. Adjacent Sites

- To the west of the site, permission was granted under LCC planning reg. ref. 97/666 to renovate and extend a dwelling house.
- C. 440m to the south west of the site:
 - LCC reg. ref. 98/472: John and Denise Carroll grant permission granted to erect 2-storey house, garage and septic tank;
 - LCC reg. ref. 02/1049: retention permission granted to John Carroll to retain septic tank in a different location from that granted under planning ref. no. 98/742. Permission was also granted to retain change of use from garage to plant and scaffolding training centre and directional signage.

5.0 Policy Context

5.1. National Policy Context

5.1.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

- National Policy Objective 19 refers to the necessity in rural areas not under urban influence to 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 settlement.

5.1.2. Sustainable Rural Housing Guidelines (2005)

- The Sustainable Rural Housing Guidelines issued by the Department of the Environment Heritage and Local Government, April 2005, are based on the presumption that people who are part of the rural community should be facilitated by the planning system in all rural areas.

5.1.3. EPA Code of Practice (CoP) on Wastewater Treatment and Disposal Systems serving Single Houses (updated March 2021)

- The 2021 CoP replaces an earlier version, published in 2009. The updated version applies to the proposed development.
- The most significant changes relate to:
 - Additional options in low permeability soils;
 - Willow bed evapotranspiration systems;
 - De-sludging calculator.

5.2. Laois County Development Plan 2017-2023

5.2.1. Section 2.6.1 of the Plan deals with rural area types and states that the Council recognises the needs of local rural people who wish to live or work in the area in which they grew up. The following three criteria apply for developing a dwelling in a rural area:

- The applicant must come within the definition of a 'Local Rural Person'.
- The proposed site must be situated within their 'Local Rural Area'.
- The applicant must have a 'Local Rural Housing Need'.

5.2.2. Figure 7 Rural Area Designations in Volume 1 of the Plan indicates that the site is in a 'Strong Rural Area'.

5.2.3. Table 6 in Volume 1 of the Plan identifies the criteria for consideration for a rural house according to the rural area type. With respect to Strong Rural Areas, the plan states:

- *It is an objective to recognise the individual housing needs of people intrinsic to the rural area located within the rural areas defined as strong rural areas. It*

is an objective of the Council to permit single houses in the strong rural areas to facilitate those with a rural housing need in the area. In order to demonstrate a rural housing need, any of the following criteria should be met:

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

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

c) the application is being made by a local rural person(s) who for family and/or work reasons wish to live in the local rural area in which they have spent a substantial period of their lives and are seeking to build their first home in the local rural area.

5.2.4. The following relevant footnotes are included after Table 6:

- An applicant who satisfies a 'Local Rural Housing Need' is defined as a person who does not or has never owned a house in the 'local rural area' and has the need for a permanent dwelling for their own use in the rural area.*
- Rural activities will normally encompass persons involved in full time farming, forestry, in land waterways or related occupations as well as part time occupations where the predominant occupation is farming/ natural resource related. Such circumstances could also encompass persons whose work is intrinsically linked to rural areas such as teachers in rural schools or other persons whose work predominantly takes place in rural areas.*
- A 'Local Rural Person' is a person who is living or has lived in the local rural area for a substantial period of time prior to making the planning application.*
- The 'Local Rural Area' for the purpose of this policy is defined as the area generally within a 10km radius of the applicant's family home.*

5.2.5. Policy CS44: Ensure that the provision of rural housing will not detract from the county's natural and built heritage, economic assets and environment, and policy CS48 promotes good rural design and refers to the rural design guidance.

5.2.6. Section 8.5 Development Management Standards, Table 32 Development Management Standards includes standards for rural dwellings.

- 5.2.7. Appendix 6 refers to Landscape Character Areas and Map no. 6 appears to indicate that the site is within the 'Lowland Agricultural Area'; the map lacks clarity.
- 5.2.8. Appendix 7 refers to Rural Design Guidance. With respect to topography, the Guidance advises that 'the position of a new dwelling in undulating and hilly areas needs to be carefully considered to achieve a practical design which does not look out of place', in particular, it recommends to:
- 'select naturally-occurring shelves or the gentlest part of a slope so as to minimise earth moving and to avoid excessive scarring of the landscape'

5.3. Natural Heritage Designations

River Barrow and River Nore SAC, site code 002162 – 4.8km

River Nore SPA, site code 004233 – 5.2km

Ballyprior Grassland SAC, site code 002256 – 13.3km

River Nore / Abbeylisk Woods Complex, proposed NHA, site code 002076 – 4.8km

Shanahoe March, proposed NHA, site code 001923 – 4.8km

Timahoe Esker, proposed NHA, site code 000421 - 7.6km

Ridge of Portlaoise, proposed NHA, site code 000876 – 8.9km

5.4. EIA Screening

Having regard to the limited nature and scale of the proposed development, the nature of the receiving environment, and proximity to the nearest sensitive locations, 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

One third party appeal was received from Michael Chawke, owner/operator of the horse stud to the west of the site. The grounds of the appeal can be summarised as follows:

- Overlooking: loss of privacy by virtue of proximity of proposed dwelling to their property with five windows addressing their site boundary;
- Three of the five windows are at first floor level;
- No condition attached regarding the elevation of the site;
- Regarding condition no. 13(b), sycamore trees are poisonous to horses.

6.2. Applicant Response

The applicant's response to the appeal comprises a submission from his agent and can be summarised as follows:

- Reiterates the report of the Planning Officer which concludes that the existing outbuilding [on Mr. Chawke's property] screens any undue overlooking of the private amenity spaces associated with Mr. Chawke's dwelling.
- Submits a drawing and photograph to demonstrate that of the five windows on the western elevation:
 - Three are at ground level and face an existing hedge with an average height of 5.5m;
 - One is a velux window at 1.6m above floor level;
 - One is in bedroom no. 3 facing west into a field.

The applicant's response includes photographs, stated to be taken at a height of 3.1m above ground level, of the hedge along the western boundary. The response states that the appellant's house is fully screened by the existing hedge and farm building and that the site was chosen to provide privacy to the appellant. The

response includes a site layout plan indicating distances from proposed house to appellant's house.

6.3. Planning Authority Response

None received.

6.4. Observations

None received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the appeal and response to same, and having inspected the site and having regard to the relevant local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Compliance with Rural Housing Policy
- Siting and Layout
- Residential Amenity
- Other Issues
- Appropriate Assessment.

7.2. Compliance with Rural Housing Policy

7.2.1. The current settlement strategy for County Laois is set out in the County Development Plan (2017-2023) and summarised in section 5.2 above. The site is located within a 'Strong Rural Area'. It is an objective of the county development plan to permit single houses in strong rural areas to facilitate those with a rural housing need provided one of the following criteria is met:

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

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

c) the application is being made by a local rural person(s) who for family and/or work reasons wish to live in the local rural area in which they have spent a substantial period of their lives and are seeking to build their first home in the local rural area.

A 'Local Rural Person' is defined as a person who is living or has lived in the local rural area for a substantial period of time prior to making the planning application, defined as the area generally within a 10km radius of the applicant's family home.

7.2.2. According to details on file, the applicant purchased the land in 1992. The application includes a map indicating the location of his place of work, a training centre, located approx. 440m southwest of the site. The applicant's place of work coincides with Laois County Council planning reg. ref. 98/742 and 02/1049, where John Carroll was granted permission for a house and latterly a training centre, refer to section 4.0 above. The applicant indicates that his personal circumstances have changed, that he has moved from his family home and that he is presently residing in his parental home, and that this situation is due to change, as this house is in another's family member's ownership. The applicant contends that he has a need to be close to his place of employment and close to his family, who reside in the family home.

7.2.3. Assessing the applicant's local need, under category a) the applicant is not a son/daughter of a landowner seeking to build their first home on family lands, having acquired the land himself in 1992; nor is it his first home in the rural area. The applicant therefore does not qualify for further consideration for a rural house under category a).

7.2.4. Under category b) I note the requirement for an applicant to work in rural activities and for this reason needs to be accommodated near to their place of employment. Rural activities are defined in the development plan as a predominant occupation in farming or natural resource related. Such circumstances could also encompass persons whose work is intrinsically linked to rural areas such as teachers in rural schools or other persons whose work predominantly takes place in rural areas. While the applicant's employment, in my opinion, does not amount to a rural activity, his place of employment could be considered to be intrinsically linked to the rural area. I note the qualification in the development plan that 'local rural housing need' is

defined as a person who does not or has never owned a house in the 'local rural area' and has the need for a permanent dwelling for their own use in the rural area. Notwithstanding the applicant's place of employment in the local rural area, having regard to the development plan definition of local need and the applicant's ownership of a house in the local rural area, I consider that the applicant does not qualify for a house in this rural area under category b).

- 7.2.5. Under category c) of the relevant local need criteria, I note the requirement for applicants to demonstrate that they are local rural person(s) who for family and/or work reasons wish to live in the local rural area in which they have spent a substantial period of their lives and are seeking to build their first home in the local rural area. In this regard, I am satisfied that the applicant is a 'local rural person' and that the site is within the 'local rural area' of his family home in accordance with the stated criteria of the development plan. I also note, however, development plan policy specifically requires that applicants are seeking to build their first home. In the absence of development plan policy to cater for additional categories of housing need, I am satisfied, having regard to the fact that the applicant has previously secured permission for a house in the local rural area, that he does not qualify for a (second) house in this rural area under category c).
- 7.2.6. I note that the Laois County Development Plan 2017-2023 designates the site as being in a 'strong rural area' as distinct from an area 'under strong urban influence' and that National Policy Objective 19 of the National Planning Framework states that a more flexible approach, primarily based on siting and design, will be applied to rural housing in areas that are not subject to urban development pressure. I also note that the Rural Housing Guidelines, 2005, state that the development plan should make clear that subject to satisfying normal planning considerations relating to siting and design, the planning authority will look favourably upon an applicant's proposal for an individual house in a rural area where that applicant comes within the development plan definition of need. I note too that the development plan pre-dates the National Planning Framework. I consider, therefore, that the applicant complies with national rural housing policy, having regard to the site's present local status not being within an 'area under strong urban influence', meaning that the principle of dwelling at this location is presently acceptable, subject to siting and design considerations.

7.2.7. In conclusion, the site is in a 'strong rural area' and is not an area under strong urban influence according to the development plan. Rural housing in strong rural areas is open to three categories of applicant subject to having a local rural housing need. The development plan defines rural local housing need as not owning or having previously owned a house in the local rural area. In my opinion the applicant cannot satisfy the requirements of the development plan, irrespective of changed family circumstances, because he owned/owns a house in the local rural area. The National Planning Framework, however, requires a more flexible approach be given to rural housing in areas outside areas of urban influence; that single housing in the countryside should be facilitated subject to siting and design criteria. I consider, therefore, that the principle of development is therefore generally acceptable subject to siting and design considerations.

7.3. Siting and Layout

- 7.3.1. The appellant has raised concerns regarding the siting of the proposed dwelling, particularly with regard to proximity to their property and potential for overlooking. I note that the planning authority was satisfied with the proposed siting and considered that lowering the ground level at the location of the proposed house together with the continued rising of the land to the rear (north) of the site will lessen the visual impact of the dwelling and would not be visually dominant on the wider area.
- 7.3.2. I note that the site appears to be located within the 'Lowland Agricultural Area' as identified on Map 6 Landscape Character Areas, Appendix 6, of the County Development Plan, although the map is difficult to decipher as it lacks clarity. The 'Lowland Agricultural Area' adjoins the 'Hills and Uplands' designation approximately at the location of the site. Having inspected the site, and given the context of the site on a rolling hill, I consider that the site more comfortably falls to be considered within the 'Hills and Uplands Area'. Notwithstanding the site's landscape classification, the site is clearly hilly and is part of a larger field that is undulating and rolling.
- 7.3.3. I note the development plan policies, CS44 and CS48, which seek to ensure that rural housing will not detract from the county's natural heritage and environment and promote good rural design through the implementation of the Rural Design

Guidance. The Guidance notes that the position of new dwellings in undulating and hilly areas needs to be carefully considered and should be avoided where hilly sites may break the skyline when viewed from a distance. The Guidance also recommends minimising earth moving / cutting to avoid excessive scarring of the landscape (page 9). The cross-section drawing submitted with the application indicates that the site levels would be lowered on site by c.1.5m at the location of the proposed house. The proposed finished floor level, following cutting, at 103.45m would be c.3.5m above the adjoining road level.

- 7.3.4. The proposed dwelling is located c.72m from the edge of the adjoining road at a considerably elevated location which is exposed to the south and east. Notwithstanding the presence of the apex of the hill to the north, there is no evidence presented, in the form of cross-sections of the site and encompassing the apex of the hill, that the proposed two-storey house would not break the skyline. In my opinion, having visited the site, I consider that the proposed house would break the skyline and would be visually imposing when viewed from the adjoining public road.
- 7.3.5. On balance, I consider that the scale and siting of the proposed house set well back from the adjoining public road on an elevated and exposed site and in a hilly and undulating landscape would be such as to comprise a visually dominant element in the local landscape. I therefore consider that the proposed development would be contrary to the policies of the development plan which seek to promote good rural design and would be contrary to the Rural Design Guidance of the County Development Plan and would therefore negatively impact on the visual amenity of the area.

7.4. Residential Amenity

- 7.4.1. The appellant has raised concerns in relation to the impact of the proposed development on the private amenity of their property to the west, particularly regarding overlooking which would encroach on their privacy.
- 7.4.2. I note that the appellant's dwelling is c.100m south-west of the proposed house and that existing agricultural buildings, belonging to the appellant, are located between the appellant's dwelling and the proposed house. The Planning Officer's report notes that the existing outbuildings screen the neighbouring dwelling and prevent any

undue overlooking of the private amenity space associated with the dwelling and determined that the proposed development would not have an adverse impact on the amenities of the adjoining property by way of overlooking or overshadowing.

- 7.4.3. I note that the appeal makes no specific reference to residential privacy and rather refers to overlooking of property and invasion of privacy, which in its totality also refers to the commercial equine interests of the property and not just the residential use of the property.
- 7.4.4. I note the applicant's submission in response to the first party appeal in particular the screening of the appellant's property afforded by the existing hedgerow, which I agree from my site inspection, is significant even during winter months. Such was the extent of hedgerow; the appellant's dwelling was not visible and the intervening agricultural buildings were barely visible through the hedgerow.
- 7.4.5. I also note the applicant's submission detailing the distance of the proposed house to the appellant's dwelling and the stated use of the five windows on the western elevation of the proposed house. Having regard to the distance of the proposed house from the appellant's dwelling and associated agricultural building together with the existing mature intervening hedgerow and having inspected the site and that of the appellant's property, I have no concerns that the proposed development would cause undue overlooking or loss of privacy on the appellant's property.
- 7.4.6. Consideration must also be given the mobile home on the site of the appellant located immediately adjoining the south-western corner of the site. The mobile home is neither referenced in the Planning Officer's report nor indicated on the site layout plan submitted in the application documentation. I note that the ground works to the front of the entrance serving the mobile home look recent. It is not known if the mobile home is occupied or indeed if it is used for some other purpose. I note that the appellant makes no reference to this mobile home in his appeal. If the mobile home were to be in use for residential purposes, I would consider that the layout of the access road serving the proposed dwelling could give rise to overlooking and/or a loss of privacy as the existing hedge at the most south-western corner of the site is not as heavily planted, but only marginally so, as it is further to the north along the western boundary. As no detail exists as the use of the mobile home I cannot

conclude that the proposed development would impact on the privacy and amenity of the mobile home.

7.5. Other Issues

7.5.1. Traffic and sightlines

The proposed development will access / egress onto a local road. I am satisfied that adequate sight distances are available at the proposed entrance such that a grant of permission would be acceptable in terms of road and traffic safety

7.5.2. Planting and site boundaries

The appellant, in his appeal, states that sycamore trees are poisonous to horses. I note condition no. 13(b) requires that boundaries shall be planted with native species, including sycamore. Should the Board be minded to grant permission, a suitable condition can be attached that restricts planting of boundary hedgerows to native species other than sycamore.

7.5.3. Wastewater

The proposal entails installation of a septic tank and percolation area. A Site Suitability Assessment, carried out by Laois County Council, was submitted in support of the application. The trial hole test notes that the water table level was not encountered in the 2.3m deep trial hole. The percolation tests result for T tests carried out by the standard method and for deep subsoils and/or water table as well as P tests by the standard method for shallow soil/subsoils and or/water table, indicate percolation values that are within the standards what would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. I consider that the conditions observed at the time of my site inspection are consistent with the results of the Site Suitability Assessment. The drawings submitted meets the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries). Based on the information on file and subject to appropriate conditions requiring compliance with the EPA Code Practice, I would consider that the proposal would be acceptable in the context of public health.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment and distance to the nearest European sites (identified at section 5.3 above), 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 that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. The site of the proposed development is in a 'Strong Rural Area' (as distinct from an area under 'Strong Urban Influence') as identified in the current Laois County Development Plan for the area. National Policy Objective 19 of the National Planning Framework states that a more flexible approach, primarily based on siting and design, will be applied to rural housing in areas that are not subject to urban development pressure and the importance of designing with the landscape and the siting of development to minimise visual intrusion is emphasised in the current Laois Rural House Design Guidance, the content of which is considered to be reasonable. Having regard to the topography and visually prominent nature of the site, the design and scale of the proposed dwelling and its elevated positioning, it is considered that the proposed development would form an obtrusive feature on the landscape at this location such as would seriously injure the visual amenities of the area and would set an undesirable precedent for other such prominently located development in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

Alaine Clarke
Planning Inspector

4th February 2022