



An
Bord
Pleanála

Inspector's Report ABP311889-21

Development

Proposed dwelling house, domestic garage, connection into existing public sewer, new vehicular entrance onto access road, use of existing vehicular entrance onto public road and all associated site development works.

Location

Callystown, Clogherhead, Co. Louth.

Planning Authority

Louth County Council.

Planning Authority Reg. Ref.

21888.

Applicant(s)

C. McEvoy and C. Jasper.

Type of Application

Permission.

Planning Authority Decision

Grant subject to condition.

Type of Appeal

Third Party.

Appellant(s)

Neil Kelly.

Observer(s)

Cllr. Tom Cunningham

Date of Site Inspection

24.05.2022.

Inspector

Mary Mac Mahon.

1.0 Site Location and Description

- 1.1. Clogherhead is located circa 12 km northeast of Drogheda and 30 km southeast of Dundalk on the Louth coastline. The village is a coastal tourist town. St. Michael's Church is located on the R166, circa 500 metres from the village boundary. The church is served by footpaths from the village. The road is curving in its alignment. There are a row of houses located on the south side of the road, in the 60kph speed limit zone.
- 1.2. The site is located off a private lane, which accesses the R166, just outside the 50 kph speed limit zone, where the 60kph speed limit applies. The private lane serves seven dwellings, as well as providing access to the former wastewater treatment pumping station. The fall in the laneway is gradual from the R166, until it turns towards the coast, when it falls more rapidly.
- 1.3. The site is located between two existing dwellings. The first dwelling is on a high point and is visible when seen from the R166. The second dwelling is at a lower level and the roof is only visible from certain locations. A watercourse adjoins the eastern boundary which connects to the sea. The site is stated as 0.3725 ha in area.

2.0 Proposed Development

- 2.1. The proposed development is a dwelling house and garage. The dwelling house is single storey and split into two wings, set at oblique angles. The roof profile provides for a high roof ridge height (45 degree angle). The gross floor area of the house is stated as 208 square metres and the garage is stated as 62 square metres.
- 2.2. Water supply is from a private well. Sewerage is discharged to the public mains.

3.0 Planning Authority Decision

3.1. Decision

Grant subject to 10 no. conditions, which includes a Section 47 agreement to limit occupation for seven years.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The site is located in Development Zone 3. The applicant is a son of a qualifying landowner and comes within the scope for a rural dwelling house at this location. An observation has been lodged by the third party, the contents of which are considered. The site is 1.9km from Clogherhead SAC. No screening report has been submitted. However, there is sufficient information to conclude that the proposed development will not give rise to pollution. Disturbance is not likely to arise due to the separation distances.

The design, scale and form of the proposed development will not have a negative effect on the visual or residential amenities of the area and will sit neatly into this infill site. A landscaping plan has been proposed. The proposed dwelling house is in accordance with development plan guidance in terms of ratio of gross floor area to the size of the site.

The sight visibility lines at the junction of the private lane and the regional road are limited and are over third party lands. As per the previous application on the lane, a sightline requirement of 65 metres from a setback of 2.4 metres must be achieved. Further Information is recommended to deal with the traffic and surface water issues.

The Further Information received included revised site boundaries to provide for an upgrade to the laneway serving the site to a point where it meets the main section of the lane. Road drainage is proposed by way of a filter trench along the length of the upgraded section. Surface water from this drain is collected into the watercourse with the confines of the revised site boundary. Two no. 600mm DIA pipes will convey the surface water to the existing culvert under the lane to a ditch which conveys the water to the sea. The catchment area is stated as 7.75 ha. The 100 year fluvial rate has been calculated, including for 20% climate change allowance. The soakaway designed for the 30 year storm. It included a letter of consent from landowner to undertake the works to connect to the manhole. The requested sight lines were provided at 65metres from a setback of 2.4metres. The application was re-advertised and another observation was lodged by the third party.

The proposals were deemed acceptable.

3.2.2. Other Technical Reports

Infrastructure Directorate – questions the capacity of the watercourse running along the site for additional flows from 100 year storm event. The watercourse is piped. The existing watercourse should be cleaned, taking cognisance of ERFB recommended methodology.

IW – condition.

4.0 Planning History

On site:

08745 – permission consequent granted for a house for Fergus McEvoy – 26.06.2008.

07270 – outline permission granted for a house for Fergus McEvoy – 27.02.2007.

In the adjoining field to the north:

19282 – permission granted for a house for Warren McEvoy 23.08.2019.

15764 – application for a house for Warren McEvoy withdrawn.

1542 – application for a house for Warren McEvoy incomplete.

In the adjoining field to the south:

02407 – permission granted for a house for J. Anderson 11.06.2002.

02336 – application for house for J. Anderson incomplete.

001078 – permission granted for a house for J. Anderson 28.02.2001

5.0 Policy and Context

5.1. National Policy

5.2. *Project Ireland 2040: The National Planning Framework (2018)*

5.3. *National Policy Objective 15 Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas*

that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

- 5.4. *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; 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.*
- 5.5. *Regional Spatial Economic Strategy (RSES) for the Eastern and Midland Region 2019-2031 (2019)*
- 5.6. It notes on page 94 that:

“A key challenge is to ensure that in planning for rural places, responses are uniquely tailored to recognise the balance required between managing urban generated demand in the most accessible rural areas, typically in proximity to Dublin and other towns, whilst supporting the sustainable growth of rural communities and economies, including those facing decline. In general, those rural places in proximity to large urban centres have experienced significant growth and urban generated pressures and require levels of growth to be managed in order to ensure that there is a requisite service level for the existing population.”

“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.”

- 5.7. RPO 4.80 states that:

“Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision

of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and settlements.”

Guidelines for Planning Authorities: Sustainable Rural Housing (2005)

5.8. *Persons who are an intrinsic part of the rural community*

Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence.

5.9. **Development Plan**

The *Louth County Development Plan 2021-2027* applies. Clogherhead is described as a self-sustaining town, of circa 2,145 persons. The headland to the east of the town is designated an Area of Outstanding Natural Beauty. It is considered a fishing and tourism town and also a commuter town. There has been little demand for housing in recent years and capacity of the water supply and the wastewater plant are limited. Both coastal and pluvial flood risk are issues. There is a housing allocation of 129 units over the development plan period. This includes for single houses in the country. Since 2015, 12 permissions for dwellings have been granted. The development plan states none have been completed, but the dwelling to the north of the site is now nearly complete.

The environs of Clogherhead are classified as a Rural Category 1 Area – an Area Under Urban Influence. It comes within Rural Policy Zone 1. The Qualifying Criteria for a house in this zone includes:

2. *“A son or daughter of a landowner (see definition above) who is/are seeking to build a first home for permanent occupation. A qualifying landowner is defined as a person who owns a landholding of at least 1.5 hectares and has owned the land for a minimum of 15 years. Any applicant under this category must demonstrate a rural*

housing need and have a demonstrable social or an economic need to live in the area and shall not have previously owned a dwelling. No more than three houses (exclusive of the family home) shall be permitted on the landholding. Any application will be subject to the appropriate siting and consideration of proper planning and sustainable development.”

“5. Residents who have demonstrable social ties to the area and are providing care for an elderly person(s) or a person(s) with a disability who lives in an isolated rural area and who does not have any able bodied person residing with them. Any application shall demonstrate why the existing property cannot be extended or modified to provide residential accommodation for the carer. One house only will be allowed on this basis and the site must be adjacent to the dwelling in which the elderly person(s) or person(s) with the disability resides.”

HOU 44 To attach an occupancy condition of 7 years in the form of a Section 47 agreement in respect of all planning permissions for new dwellings in rural areas and Level 5 Settlements restricting the use of the dwelling to the applicant, or to those persons who fulfil the criteria set out in Tables 3.4 and 3.5.

ENV 56 To protect the special character of the coast by preventing inappropriate development, particularly on the seaward side of coastal roads. New development, wherever possible, shall be accommodated within existing developed areas and be climate resilient in their design.

Clogherhead is designated an Area of Outstanding Natural Beauty.

NBG 36 To protect the unspoiled natural environment of the Areas of Outstanding Natural Beauty (AONB) from inappropriate development and reinforce their character, distinctiveness and sense of place, for the benefit and enjoyment of current and future generations.

There is a general statement in the plan, at 7.10, that the number of new accesses and the intensification of existing accesses are restricted on regional roads. The plan identifies the roads where such restrictions apply. The R166 in this area is not subject to the restriction, applies to the R166 from Drogheda to Termonfeckin.

At 13.16.5.1, it states:

“In transitional zones where the speed limit is 60 km/h before reducing to 50km/h an access may be considered in limited circumstances, however, would require the preparation of a road safety audit in accordance with the requirements of TII or the Infrastructure Section of the Council.

Works on National and Regional Roads shall be carried out in accordance with the TII Design Manual for Roads and Bridges (DMRB) or the Design Manual for Urban Roads and Streets (DMURS), whichever document is applicable.”

5.10. Natural Heritage Designations

There are 8 Natura 2000 sites within 15 km radius of the proposed development.
There are:

Site	Distance	Nature	Connection	Further Investigation
Clogherhead SAC (001459)	1.9km	Cliff top vegetation, dry heath and shoreline vegetation	Y – Indirect	Y
Boyne Coast and Estuary (001957)	3.97km	Tidal, intertidal and sand dunes	Y – Indirect	N – volume, distance, dilution
Boyne Estuary SPA (004080)	5.56km	River, intertidal	N	N – volume, distance, dilution
Dundalk Bay SAC (004232)	7.34km	Estuary, tidal	N	N – volume, distance, dilution
Dundalk Bay SPA (000455)	9.8km	Intertidal	N	N – volume, distance, dilution

River Boyne and River Blackwater SAC (002299)	9.45km	Estuary, sand dunes, tidal	N	N – volume, distance, dilution
River Boyne and River Blackwater SPA (004232)	9.45km	River, estuary and coast	N	N – volume, distance, dilution
Stabannon and Bragonstown SPA (004091)	14.7km	Alluvial plain	N	N- no physical connection

All bar Clogherhead SAC (001459) and Clogherhead pNHA (NH1459) can be discounted because of either absence of any physical connection, or due the volume, dilution and dispersal in the sea ensures that there are no effects on the other Natura 2000 sites.

Clogherhead SAC (001459) and Clogherhead pNHA (NH1459) are circa 2 km from the site. The Qualifying Interests for the SAC are:

1230 Vegetated sea cliffs of the Atlantic and Baltic coasts

4030 European dry heaths

The Conservation Objective for the site is to maintain the Qualifying Interests in favourable condition.

There is no direct connection between the site and the SAC. There is an indirect connection via the pumping station. I note that there is capacity in the pumping station. The quality of the bathing water in 2020 in Clogherhead beach is described as excellent. No Appropriate Assessment issues therefore 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.

5.11. EIA Screening

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment and so it can be concluded from a preliminary screening, that an Environmental Impact Assessment can be ruled out.

6.0 The Appeal

6.1. The appeal is submitted by the appellant's agent, Studio B Architects Ltd. The grounds of the appeal are summarised below.

6.2. Grounds of Appeal

- The site is located in an Area of Outstanding Natural Beauty in a cluster of 7 no. houses. An additional house will significantly impact on the visual character of the area.
- Lack of contextual information provided.
- The position of the house and ridge height will break the skyline.
- The loss of the sea view of the appellant will diminish his residential amenities.
- The sight visibility line impacts on the appellant's property. The road is heavily used as it provides access to the pump station and the beach.
- The sight visibility lines at the junction with the regional road are also short.
- Maintenance works to the roadside drain cannot be undertaken as these are in the appellant's property.
- The catchment area of the ditch has been significantly underestimated – 8ha instead of 4.75ha.

6.3. Applicant Response

The applicant's agent, Foresight Design and Planning, have responded and include relevant appendices and drawings:

- One of the applicants is the son of a local landowner and the other has a relative with a medical need, for whom she cares for, so both qualify as appropriate persons;
- The proposed dwelling has been designed to sit comfortably on the contours of the land and completes the road frontage;
- There is limited impact on the third party's view;
- There is no right of way to the beach;
- Disputes the party boundaries;
- The speed limit on the regional road is 60kph so sight lines are adequate and DMURS standards apply;
- All landowners are required to maintain their own drainage ditch, unless part of the OPW statutory drainage scheme;
- Even if the catchment is increased to 8 ha, there is adequate capacity in the surface water pipes.

6.4. **Planning Authority Response**

No further comment.

6.5. **Observations**

Cllr. Tom Cunningham

- The site is an infill site and so have limited impact on the Area of Outstanding Natural Beauty.
- The design of the proposed development will integrate into its surroundings.
- Sight visibility lines are acceptable;
- The applicants are a local couple, who contribute to their area.

7.0 Assessment

7.1. The main issues in this appeal are:

- Compliance with rural housing policy;
- Traffic safety;
- Drainage / surface water;
- Visual impact.

7.2. The site is located on the seaward side in an Area of Outstanding Natural Beauty, outside the development boundary for Clogherhead. The site is located between two existing houses, so there is a degree of absorption available at this particular juncture in this sensitive landscape. For a house to be positively considered at this location, the applicants must comply with the development plan requirements for a house.

7.3. The site is located within Rural Housing Policy Zone 1. The applicant must be the child of a landowner, (the holding being in excess of 1.5 ha, having owned the land in excess of 15 years), demonstrate a rural housing need and have a social or economic need to live in the area and not having owned a property previously. No more than 3 no. houses are permitted, excluding the family home. There is another policy that allows persons with social ties to the area and who providing care to a person with a disability who does not have any able person living with them. In that case, evidence has to be provided why the house cannot be changed to facilitate the carer. Only one house is allowed under this policy and must be adjacent to the person with disabilities.

7.4. I note that the application was accompanied by information required under the previous development plan and the detail of some of the information required has subsequently changed in the current development plan. I am satisfied that Cian McEvoy is from the area and has long established social and family ties to the area. The family home is circa 3km from the site. Fergus McEvoy is the landowner of the site. I note that permission for a dwelling was granted on the lands in 2007 and 2008, when Fergus McEvoy was the applicant. It would appear that Fergus McEvoy has owned the lands in excess of 15 years.

7.5. The extent of land ownership is however, unknown – 1.5 ha is the required minimum in the current development plan and no more than 3 no. houses are allowed overall

on the landholding. The site area is stated as 0.37 ha. Should the Board be minded to grant planning permission, I recommend that information be sought confirming that the landholding is in excess of 1.5 ha and no more than 3 dwellings, other than the family home have been permitted on the landholding.

- 7.6. I note that the information provided by the second applicant, Courtney Jasper, does not comply with the medical needs policy in the development plan, but I accept that it adds to the case that both applicants are local persons with social and familial ties to the area.
- 7.7. In relation to traffic safety, the key issue is the junction of the private lane with the Regional Road. The applicant provided sight lines of 65 metres, from a location set back from the road edge of 2.4 metres at Further Information stage, which run along the road side of the existing hedge. No letter of consent is necessary as the hedgerow is unaffected in these circumstances. The sight visibility line to the west is limited due to the curving horizontal alignment of the road. At appeal stage, sight visibility lines of 75 metres are provided, inside the line of the hedgerow. The previous application (Reg. Ref. 19282) was granted planning permission with a sight visibility line of 65 metres.
- 7.8. In my opinion, the junction is located at a place where traffic into the village would be slowing as it about to enter the 50kph speed limit. The appellant suggests that traffic leaving Clogherhead would be speeding up to 60kph. This is logical. However, I would suggest that due to the curving alignment of the R166, past the junction with the private lane, would naturally limit the speed of traffic on this side of the carriageway. Therefore, I am satisfied that the proposed sight visibility lines are acceptable.
- 7.9. In relation to the intensification of turning movements at this junction, I do not consider that the volume of turning movements likely to arise from one additional house would significantly increase the risk of a traffic accident at this location.
- 7.10. In relation to the sight visibility lines at the entrance to the site, given that there is only one house further north and access to the pump station, and the speed at which traffic would be travelling, that no significant traffic hazard arises.
- 7.11. An open surface water drain runs through the appellant's property, before entering the site, which is then culverted under the access road as it crosses to a ditch on the opposite side of the road. In the proposed development, the ditch is culverted under

the entrance to the site. The access road to the site is to be upgraded and a new filter drain provided along the length of the upgraded road surface. The discharge from the filter drain enters the open ditch and is collected into two concrete pipes, of 600mm diameter.

- 7.12. The appellant states that there is no entitlement for the applicant to maintain the ditch within the appellant's property. I would concur with this statement. The maintenance of drainage ditches is the responsibility of the landowner or occupant through which lands they pass and this is a civil matter. The additional surface water that arises from the upgrading of the access road (312 square metres of road, as stated by Hydrocare Environmental Ltd.) will be collected in the site, before entering the proposed culvert.
- 7.13. The volume of surface water from the road and the proposed dwelling house has been calculated, allowing for 100 year storm event and a 20% allowance for climate change. The flow is estimated to be 577.66 l/s if the catchment area is 0.0475 km². The capacity of the pipes is stated as 860 l/s. If the catchment area is 8 ha – 0.08km², Hydrocare Environment state that the additional areas are greenfield and so would be permeable. Greenfield run off is suggested to be 100 litres per second for 8 ha. This would be likely to give rise to an additional 48.75 litres per second, allowing for climate change. This would still be well within the capacity of the pipes and should not result in water being held back and giving rise to flooding of the lands to the south.
- 7.14. The final issue is the visual impact of the proposed development. The proposed dwelling house is attractively designed in the vernacular style. It has been designed to provide a narrow frontage to the road, to minimise its visual impact to the R166 and to appear as two separate cottages. The detached garage is at a lower level. The R166 is circa 18.6m OD. The Finished Floor Level of the living room wing and entrance is 13.7m OD, while the bedroom wing is 13.45m OD and the garage is 12.2m OD. The roof ridge height is circa 5.75m, which would indicate a roof ridge height of 19.2mOD. This would have very limited visibility from the R166.
- 7.15. No information has been provided on the Finished Floor Levels of the dwellings to the south and north. No contiguous elevations have been provided, as required under the Planning and Development Regulations, 2001 as amended. No visual impact assessment has been provided. However, having regard to the position of the proposed dwelling house, it will be in line with the existing dwelling house to the north,

which has a limited impact on the seaward side of the R166. For much of the R166 from the church to the town, only the roof of the existing dwelling house to the south is visible. The dwelling house to the north is not visible for this section. The proposed development will be visible from the east of the R166, but the visual impact of the proposed development would be limited and acceptable in the context of an infill development.

- 7.16. The proposed development is circa 50 metres from the dwelling to the north and a similar distance to the dwelling to the south. There is no issue of overlooking or overshadowing in relation to residential amenities. The appellant has indicated that the main issue regarding residential amenity is the loss of sea view, which the house has been designed to maximise (acknowledging that there is no right to a view). The roof ridge height is circa 6.2 metres (the land is falling at this point) and provides for roofs of 45 degree angle. The steepness of the angle adds to the height of the proposed development, which in turn increases impingement of the views of the appellant. However, the pitch of the roofs is an integral part of the design of the proposed development. The traditional approach of the roof assists in integrating the proposed development into the landscape.

8.0 Recommendation

- 8.1. In the absence of the new information relating to the family landholding arising from the current development plan and the absence of contiguous elevations, I recommend that planning permission be refused for the proposed development for the reasons set out below. Should the Board consider the first a new issue in the appeal, the Board may consider that a Section 137 notice be issued to the applicant.

9.0 Reasons and Considerations

1. Having regard to the provisions of the current development plan, *Louth County Development Plan 2021-2027*, which requires that the son or daughter of a qualifying land owner seeking to build a first home for permanent occupation, is a person who owns a landholding of at least 1.5 hectares and has owned the land for a minimum of 15 years. The Board is not satisfied that sufficient

information has been provided that demonstrates that the extent of the landholding complies with this requirement and has been in the ownership of the qualifying land owner for 15 years. In the absence of this information, the Board is not satisfied that the applicants come within the scope for a rural house at this location. The proposed development, would therefore be contrary to the proper planning and sustainable development of the area.

2. The application has failed to provide for contiguous elevations, contrary to Article 23 (d) of the Planning and Development Regulations, 2001, as amended. In the absence of this information, the Board is not satisfied that the application is compliant with the requirements of the Planning and Development Regulations, 2001 as amended. The proposed development, would therefore be contrary to the proper planning and sustainable development of the area.

Mary Mac Mahon
Planning Inspector

17 June 2022