



An
Bord
Pleanála

Inspector's Report ABP-311920-21

Development	Construction of a house, garage, proprietary effluent treatment system/percolation are along with new vehicular access from the public road and the ancillary site development works.
Location	Corstown, Dunleer, Co. Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	21838
Applicant(s)	Ian Reilly & Rebecca Finegan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	James Tiffney
Date of Site Inspection	12 th February 2022

Inspector

Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.3647, is located a short distance to the north east of Dunleer in the rural area. The appeal site is located on the southern side of the L-2239-0 Class 1 Local Road. The appeal site is part of field area. The site is part of the north western corner of the field. There is an existing shed adjacent the eastern boundary of the site that is within the field the site is taken from and a vehicular entrance to the field. The site is relatively flat and has established boundaries along its northern (roadside) and western boundaries consisting of trees and hedgerow. There are no established boundaries along the western or southern boundaries as the site is taken from a larger field area. There are a number of one-off dwellings located in the vicinity of the site with the nearest being on the site immediately to the west.

2.0 Proposed Development

2.1. Permission is sought to construct a single-storey house, domestic garage, proprietary wastewater treatment system/percolation area along with a new vehicular access from the public road. The proposed dwelling has a floor area 191.3sqm (garage 56sqm), features a pitched roof with a ridge height of 5.26m and external finishes of nap plaster on the walls and blue/black slates/tiles on the roof. In response to further information a few amendments were made including moving the garage further north on site and closer to the dwelling, and removing a projecting element on the front elevation of the dwelling. Water supply is to be from a private well.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to seven conditions. The conditions are standard in nature.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

Planning report (17/08/21): Further information requiring including revisions to the front elevation and location of the garage, updated soakaway design, demonstration of sightlines at the vehicular entrance, detail of the level of hedgerow to be removed and map showing existing wastewater treatment systems in the vicinity.

Planning report (13/10/21): The proposal was considered to be satisfactory in the context of Development Plan policy, visual amenity, adjoining amenity, traffic safety and public health. A grant of permission was granted subject to the conditions outlined above.

3.2.2. Other Technical Reports

Infrastructure (16/08/21): No objection subject to conditions.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

3.4. A submission was received from James Tiffney, Springvale, Corstown, Dunleer, Co. Louth.

- Validation issues regarding the plans, failure to meet the required sightlines, excessive removal of roadside hedgerow, clarification of landownership, questions about how long the site noticed was in place.

4.0 **Planning History**

No planning history.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Louth County Development Plan 2021-2027. Section 3.17 Housing in open countryside.

The appeal site is within a Rural Policy Zone 2: Area Under Strong Urban Influence.

3.17.4 Rural Generated Housing Need

Applicants will be required to demonstrate to the Planning Authority that they qualify with one of the criteria in the relevant Rural Policy Zone. For clarification any persons from Rural Policy Zone 1 who are native residents of the area and have demonstrated a rural housing need but are not engaged in full time agricultural activities will be deemed to qualify to build on a suitably located site in Rural Policy Zone 2. The application site shall not normally be a distance of more than 6kms from the qualifying family residence.

Qualifying Criteria in Rural Policy Zone 2-Area Under Strong Urban Influence

1. Persons engaged in full time agriculture. This includes livestock, poultry, dairy, and tillage farming, bloodstock and equine related activities, forestry, and horticulture. The nature of the agriculture activity shall, by reference to the landholding, livestock numbers, or intensity of the use of the land, be sufficient to support full time or significant part time occupation. Depending on the activity the documentation available will vary however the onus will be on the applicant to demonstrate the viability of the enterprise. Information to be provided shall include:

- The size of the landholding
- The nature of the operations
- Buildings and storage associated with the operations
- Number of persons employed
- Livestock numbers (if applicable)

i. Participation in government schemes/ programmes e.g. Bord Bia Quality Assurance, Basic Payment Scheme (BPS), GLAS, or any similar or replacement programmes or schemes.

ii. Any other information that would support the application.

Or

2. A person whose business requires them to reside in the rural area. The nature of the operations of the business shall be specific to the rural area. Any application shall demonstrate the viability of the business and clearly set out the nature of activities associated with the business and why it requires the owner to reside in the vicinity.

Or

3. 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.

Or

4. 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.

5.2 **Sustainable Rural Housing Guidelines for Planning Authorities (2005):**

The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those within proximity to the immediate environs or close commuting catchment of large cities

and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

5.3 National Planning Framework – Project Ireland 2040

NPO19 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.

5.4 Natural Heritage Designations

None within the zone of influence of the project.

5.5 EIA Screening

The proposed development is of a class but substantially under the threshold of 500 units to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the development, which is a new dwelling and associated site works, the absence of features of ecological importance within the site, I conclude that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by James Tiffney, Springvale, Corstown, Dunleer, Co. Louth.

- The applicant has failed to demonstrate a rural housing need within the context of NPO 19. The applicant has failed to demonstrate why their housing needs cannot be accommodated for in a settlement and the proposal is contrary Development Plan policy on rural development. The new Development Plan requires that applicant demonstrate they have lived in a rural area consistently for 18 years. The applicant would not meet this criteria.
- The proposal would have an adverse impact on the rural character and visual amenities of the area and is contrary to Development Plan policy.
- The proposal for a new vehicular access would entail removal of hedgerow and is contrary to Development Plan policy and have an adverse impact on rural character.
- The appellant questions where the required visibility (DRMB guidelines) is available at the proposed vehicular entrance.
- The appeal site is in an area of high groundwater vulnerability and is unique in characteristics. The proposal for an additional wastewater system and potential for groundwater contamination is noted. The proposal should be refused on public health grounds.

6.2. Applicant Response

No response.

6.3. Planning Authority Response

Response by Louth County Council.

The applicant has demonstrated compliance with rural housing policy including a demonstrating residence in the rural area for 18+ years, which would be in

compliance with the current Development Plan policy for development in Development Zone 2.

The design and scale was considered to be satisfactory in the context of visual amenity and rural character.

The applicant demonstrated that sightlines of 75m setback 3m in each direction are available without the requirement to remove existing hedgerow.

The site characterisation report demonstrates compliance with the EPA Code of Practice.

7.0 **Assessment**

- 7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Principle of the proposed development/development plan policy

Design, scale, landscape character/visual impact

Traffic

Public health

Appropriate Assessment

- 7.2. Principle of the proposed development/development plan policy

- 7.2.1 One of the main issues raised in the appeal submission concerns compliance with rural housing need policy in terms of local and national policy. The proposal was assessed on the basis that the site is located in an area classified as Development Zone 5 of the Louth County Development Plan 2015-2021 (has been superseded by a new development plan) with the qualifying criteria that the applicant(s) has lived a minimum period of 10 years in the local rural area (including cross-border, have a rural housing need, do not already own a house or have not owned a house within the rural area for a minimum of 5 years prior to making an application. The applicant assessed for the purposes such policy is Ian Reilly with an address of Drumcar Co. Louth.

7.2.2 There is a new County Development Plan with the appeal site located in a Rural Policy Zone 2-Area Under Strong Urban Influence. The criteria for such is outlined above. Criteria 4 appears to be the most relevant with the requirement for residence in the rural area increased from 10 to 18 years under the new Development Plan. The Planning Authority's response indicates that the applicant complies with such.

7.2.3 It was considered that the applicant has demonstrated compliance with these criteria with a number of documents submitted to support such. The applicant has resided long term in the local rural area at Drumcar, which is short distance to the north of the site. Based on the information on file the applicant assessed for rural housing policy is a plumbing contractor. It appears that qualification is purely based on residence in the local rural area. In terms of the Sustainable Rural Housing Guidelines and the NSS Rural Area Types, the appeal site is an Area Under Strong Urban Influence. Based on Development Plan policy under both the previous and current Development Plan, the applicants would appear to comply with the criteria set out. Notwithstanding such consideration must be given to national policy with the site located in an Area Under Strong Urban Pressure. I would consider that in this case that although the applicant has links to the area the applicant has no definable social or economic need to live in the open countryside and would base this on the fact that applicant does not have employment links exclusively to the area (rural area) or have not demonstrated an essential need to live in the rural area. I would also note that national policy set out under the Objective 19 of the National Planning Framework and the guidance set out in the Sustainable Rural Housing Guidelines emphasises the requirement to demonstrate an economic, social or functional need to live in a rural area under strong urban influence such as this. In this case the applicant does not have a defined social or economic need to live in this area of strong urban influence and the development would be contrary to Objective 19 of the National Planning Framework and would be contrary to the guidance set out in the Sustainable Rural Housing Guidelines.

7.2.4 The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserviced area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3 Design, scale, visual and adjoining amenity:

7.3.1 The proposal is for a single-storey dwelling and domestic garage. The appeal site is flat in nature and in an area that is reasonable flat and low level. The site boundaries is defined by existing trees and hedgerow (northern and eastern boundaries). It is proposed to cutback/setback the hedge along the northern boundary and for part of the boundary along the adjacent lands to the west (at the shed, consent provided). It is proposed to provide a hedge of native planting as well as along the new boundaries of the site to the south and west. I would consider that having regard to the low profile scale of the dwelling, that the proposal would not have a significant or prominent visual impact and is modest in height in comparison to existing dwellings on adjoining sites and the existing agricultural shed adjacent the site boundary. The area is not designated as being an area of high amenity or scenic values. I would consider subject to an appropriate landscaping scheme, the proposal is satisfactory in the context of visual amenity.

7.4 Traffic Impact:

7.4.1 The proposal entails the provision of a new vehicular access point. The applicant was revised by way of further information to demonstrate that sightlines of 75m could be provided set back 3m from the road edge. I am satisfied that the sightlines required can be achieved at the proposed entrance and can be achieved although some alteration of boundary hedgerow does appear to be necessary. The level of sightlines is in keeping with the requirement of the DRMB guidelines for a Local Class 1 Road, which is what the public road at this location is. I am satisfied that the

proposed development would be acceptable in the context of traffic safety and convenience.

7.5 Public Health:

7.5.1 The proposal entails the installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation tests. The trial hole test (depth 2.1m) notes that the water table level was encountered at 2m and no major rock detected. P test (for shallow soil/subsoil and/or water table) were carried out with percolation values (standard method) that are within the standards that 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. 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).

7.5.2 Notwithstanding the results of the site characterisation tests indicating that soil conditions on site are suitable for wastewater treatment, the appeal site is in an area classified as having high groundwater vulnerability. In addition the water table is not far below ground level (detected in trial hole). The proposed dwelling is to be served by a well and the adjoining dwellings appear to be reliant on groundwater as their main water supply in the area. I would consider that having to the proliferation of domestic wastewater treatment systems in this rural area, and to the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government 2005 which recommend, in unsewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities, and could not be satisfied, on the basis of the information on files, that the impact of the proposed development in conjunction with existing wastewater treatment systems in the area would not give rise to a risk of groundwater pollution in an area highly dependent on such for water supply. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

8.0 Appropriate Assessment

8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, 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.

9.0 Recommendation

9.1. I recommend refusal of permission based on the following reasons.

10.0 Reasons and Considerations

1. Having regard to the location of the site within an Area Under Strong Urban Influence in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005, National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas under urban influence, seeks to 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, having regard to the viability of smaller towns and rural settlements, the Board could not be satisfied on the basis of the information on the file that the applicants came within the scope of either economic or social housing need criteria as set out in the overarching National Guidelines.

The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserved area, would contribute to the encroachment of

random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Notwithstanding the proposal to use a proprietary wastewater treatment system on site, the Board had regard to the presence of the water table within the trial hole at a shallow level on site, to the proliferation of domestic wastewater treatment systems in this rural area, the fact that that groundwater in the area is classified as highly vulnerable and that the proposed and existing dwellings in the area are highly dependent on groundwater as a source of water supply, and to the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government 2005 which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities. The Board could not be satisfied, on the basis of the information on the file, that the impact of the proposed development in conjunction with existing wastewater treatment systems in the area would not give rise to a risk of groundwater pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Senior Planning Inspector

14th February 2021