



An
Bord
Pleanála

Inspector's Report

ABP-312091-21

Development	Four bedroom single-storey dwelling with detached single-storey garage/shed, a secondary effluent treatment system, a recessed entrance and access driveway, fencing to the northern site boundary and all associated site works,
Location	Blackhall, Clane, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	211300
Applicant(s)	Fintan Lalor & Angela Keigher
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Fintan Lalor & Angela Keigher
Date of Site Inspection	23 rd April 2022

Inspector

Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.43 hectares, is located a short distance to the south of Clane in the rural area. The appeal site is located on the northern side of a public which forms a junction with the R407 to the west of the site. The appeal site is taken from a larger field area (improved grassland). The boundaries of the site are defined by existing hedgerow along the southern, eastern and western boundaries and no defined boundary to the north. Adjoining lands to the north are the remainder of the field the site is take from. To the east and west are existing detached dwellings.

2.0 Proposed Development

2.1. Permission is sought for a single-storey dwelling, a detached single-storey garage/shed, a secondary effluent treatment system, a recessed entrance and access driveway, fencing to the northern site boundary and all associated site works. The proposed dwelling has a floor area of 235.5sqm (garage 29.3sqm) and a ridge height of 4.332. The dwelling features a shallow pitched roof with external finishes of wooden cladding.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on five reasons...

1. It is the policy of the County development Plan 2017-2023, namely policy RH2 to focus provision of one-off housing in the rural countryside to the category of 'local need', subject to compliance with normal planning criteria including siting and design considerations. Based on the information submitted with the application, it is considered that the applicant has not adequately demonstrated compliance with Local Need Criteria, as outlined in Table 4.3(b) of the County Development Plan 2017-2023. The proposed development would therefore contravene materially Section 4.1.3 of the Kildare County Development Plan 2017-2023 and would

therefore be contrary to the proper planning and sustainable development of the area.

2. The design and finishes of the proposed development do not accord with the principles of design of development as detailed in Section 16.4 of the Kildare County Development Plan 2017-2023 in relation to Rural Design. Accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area.

3. Policy RH9 of the Planning Authority, as set out in the Kildare County Development Plan 2017-2023 seeks to ensure that, notwithstanding compliance with local need criteria, applicants comply with all other siting and design considerations, including the capacity of the area to absorb further development. In conjunction with the level of existing development in the vicinity and the extensive planning history within the area, it is considered that the proposed development would exacerbate an excessive density of development in a rural area lacking certain public services and community facilities and would contribute to the increasing suburbanisation of the area. The Development would therefore be contrary to Policy RH9 (iv) and the proper planning and sustainable development of the area.

4. Policy RH10 of the Kildare County Development Plan 2017-2023 is to control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements. It is considered that the proposed development by reason of its location in close proximity to Clane, would further exacerbate the level of development in proximity to Clane where lands are zoned for residential purposes. To further promote development at the location proposed, having regard to the level of existing development in the area and the precedent that the proposed development would set for further development in this area, would contribute to the unsustainable development of this rural area and would not be in accordance with the proper planning and sustainable development of the area.

5. The policy RH12 in the Kildare County development Plan 2017-2023 seeks to discourage ribbon development defined as five or more houses alongside 250metres of road frontage. Taken in conjunction with the existing level of development in this rural area and the proposed location of the new dwelling which would further contribute to an existing ribbon of single houses along a local road, it is considered that the proposed development would give rise to sprawl, suburbanisation and an intensification of ribbon development which would erode the rural qualities of the area. The proposed development would conflict with the provisions of the above policies and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (03/11/21): The proposal was determined to be contrary rural housing policy, unacceptable in terms of design/rural design guidance, contrary development plan policy in terms of rural development, contribute to ribbon development and be contrary to the proper planning and sustainable development of the area. Refusal was recommended based on the reasons outlined above.

3.2.2. Other Technical Reports

District Planning report (22/10/21): No objection subject to conditions.

Irish Water (23/09/21) No objection.

Water Services (23/09/21): No objection subject to conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

No planning history on the site.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Kildare County Development Plan 2017-2023.

RH 2 Manage the development of one off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

4.12.7 Rural Housing Policy

Rural generated housing demand will be managed having regard, inter alia, to the applicant's genuine local need, together with the protection of key economic, environmental, natural and heritage assets, such as the road network, water quality, important landscapes, habitats and the built heritage. In order for an applicant to be considered for a one-off dwelling in the rural area of Kildare, an applicant must.

A) Meet one of the following categories of applicant:

1. A member of a farming family who is actively engaged in farming the family landholding. OR 2. A member of the rural community.

AND (B) Meet one of the local need criteria set out in Table 4.3 (a) and (b) Schedule of Local Need.

RH 9 Ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations (Refer to Chapter 16 for further guidance) including the following:

- (i) The location and design of a new dwelling shall take account of and integrate appropriately with its physical surroundings and the natural and cultural heritage of the area and respect the character of the area. Development shall have regard to Chapter 16 Rural Design Guidelines (and any subsequent changes to these guidelines) and Chapter 17 Development Management Standards.
- (ii) Appropriate landscaping of proposed development using predominantly native species as per Table 17.2 of this Plan.
- (iii) The protection of features that contribute to local attractiveness including; landscape features, hedgerows, trees, historic and archaeological landscapes, water bodies, ridges, skylines, topographical features, geological features and important views and prospects.
- (iv) The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing development in the area, the extent of ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding.
- (v) The ability to provide safe vehicular access to the site without the necessity to remove extensive stretches of native hedgerow and trees. The need for the removal of extensive roadside hedgerow may indicate that the site is unsuitable for development.
- (vi) The ability of a site in an unserved area to accommodate an on-site waste water disposal system in accordance with the EPA Code of Practice for Wastewater Treatment Systems for single houses (2009), the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period.
- (vii) The ability of a site in an unserved area to accommodate an appropriate on-site surface water management system in accordance with the policies of the Greater Dublin Strategic Drainage Study (2005), in particular those of Sustainable urban Drainage Systems (SuDS);
- (viii) The need to comply with the requirements of The Planning System and Flood Risk Management Guidelines for Planning Authorities, DEHLG (200

RH 10 Control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:

- (i) The orderly and efficient development of newly developing areas on the edges of towns and villages;
- (ii) The future provision of infrastructure such as roads and electricity lines; and
- (iii) The potential to undermine the viability of urban public transport due to low density development.

RH 12 Discourage ribbon development (defined as five or more houses alongside 250 metres of road frontage)⁴. The Council will assess whether a given proposal will exacerbate such ribbon development, having regard to the following:

- (i) The type of rural area and circumstances of the applicant;
- (ii) The degree to which the proposal might be considered infill development;
- (iii) The degree to which existing ribbon development would coalesce as a result of the proposed development;
- (iv) Local circumstances, including the planning history of the area and development pressures.
- (v) Notwithstanding the above, special regard will be given to the circumstances of immediate family members of a landowner on single infill sites in a line of existing dwellings with 5 or more houses along a 250 metres of road frontage.

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'.

The site is located in an area classified as an Area Under Strong Urban Influence under Indicative Outline of NSS Rural Area Types.

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.

The proposal was assessed under previous Development Plan, Meath County Development Plan 2013-2019, which has superseded. The rural housing policies are unchanged from the previous plan.

Chapter 16 is the Rural Design guide.

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 first party appeal has been lodged by Fintan Lalor and Angela Keigher, Barrybeg Lodge, Barrybeg, Athlone, Co. Roscommon. The grounds of appeal are as follows....

- The appellants set out the background to the case including connections to the area, reasoning for the proposed dwelling and intentions in terms of future use of lands and business operations in the area.
- The appellants' state that the documentation and information submitted clearly demonstrates compliance with local need policy and that this aspect of the proposal should be reassessed. The appeal submission refers to criteria under Category of Applicant 2, Rural Policy Zoning 1 (ii).
- The appellants note that the design and external finish would be in accordance with the criteria set out under the Rural Design guide (Chapter 16) and refer to Section 16.5.7.
- In relation to pattern of development and Development Plan policies RH9, 10 and 12 the appellant note the site is an infill site and is close proximity to the town (walking distance) and the area is not lacking public services and community facilities, is not haphazard in nature being an infill site and does not constitute ribbon development as defined under the Sustainable Rural Housing guidelines.
- The appellants note that there is lack of provision of new housing and that fitting applications for new housing to fulfil housing need should not be denied.

6.2. Planning Authority Response

6.2.1 Response by Kildare County Council.

- The PA confirms their decision to refuse permission for the reasons stated.

7.0 Assessment

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

Rural Housing policy

Design, scale, pattern of development

Public Health

7.2. Rural Housing Policy:

7.2.1 The proposal was refused on the basis of the applicant failure to comply with rural housing policy. The appeal site is located in Policy Zone 1: Northern, central and eastern areas of the county (along the border with Wicklow) – more populated areas with higher levels of environmental sensitivity and significant development pressure. For the purposes of assessing rural housing, applicant must fall into one of two categories, ‘a member of a farming family who is actively engaged in farming the family landholding’ or ‘a member of the rural community’. The criteria for each category is set out under Table 4.3 (a) and (b) Schedule of Local Need and split into Policy Zone 1 and 2. Based on the appeal submission the applicants/appellants consider they are ‘a member of the rural community’ and fall into the criteria set out under Table 4.3 (b) (ii) for Rural Policy Zone 1...

“(ii) Persons who have grown up and spent substantial periods of their lives (12 years) living in the rural area of Kildare, as members of the rural community who have left the area but now wish to return to reside near to, or to care for immediate family members, seeking to build their home in the rural area on the family landholding or on a site within 5km of the original family home”.

The Planning Authority deemed that the applicant had failed to demonstrate compliance with Rural Housing policy in particular Objective RH2 and would contravene materially Development Plan policy.

7.2.2 Based on the information on file the applicants wish to build on family lands connected to Fintan Lalor, who is originally from the area. The applicant identified three locations where they lived in the area between 1986-2015 with the latest being within 5km of the site, in a rural area between 2003-2015. The applicants wish to move from Roscommon and locate in the area the applicant (Fintan Lalor) is from and has family. The intention is take over a family business (urban based) and breed livestock on the lands the site is taken from acquired by the family in 2018 for such purpose (not currently active in such based on information on the file). I would consider based on the information on file that the applicant may have complied with the criteria set down under Table 4.3 (b) (ii) for Rural Policy Zone 1, however it is notable that the applicants' family home is no longer in the rural area with their immediate family in the area now urban based.

7.2.3 In terms of the Sustainable Rural Housing Guidelines and the NSS Rural Area Types, the appeal site is an area Area Under Strong Urban Influence. Consideration must be given to national policy with the site located in an area under urban influence based on its classification under national policy. 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 applicants (Fintan Lalor) do have some links to the rural area and a desire to reside in the area. I would consider that based on the fact their occupation does not appear to be rurally based and their potential future occupation is mainly urban based and not intrinsically linked to the rural area, 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 and pattern of development:

7.3.1 The proposal was refused based on a number of reason relating to the design failing to accord with the Rural Design guidance outlined in Chapter 16 and non-compliance with polices RH10, RH12. In relation to the design of the dwelling, such is a low profile and contemporary design featuring a shallow pitched roof and timber external wall finish. I would be of the view that the design of the dwelling is satisfactory in the context of a rural location and is a simple and low profile contemporary design that is compatible in a rural location. In terms of use of a timber finish, I would be of the view that such is natural finish and would not be obtrusive in a rural area such as this. The appeal site is a flat site and the low profile design of the dwelling would be acceptable in the context of the Rural Design guidance under Chapter 16 of the County Development Plan.

7.3.2 In relation to pattern of development and Development Plan policy I would reiterate my views set out under Section 7.1. 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.

7.3.3 In relation to ribbon development the appeal site is an infill site between existing dwellings with one dwelling to the east and three to the west. The proposed development if permitted will lead to the provision of 5 dwellings within a distance of 260m at this location.

7.4 Public Health:

7.4.1 The proposal entails the installation of a proprietary wastewater treatment to serve the new dwelling. The site is underlain by an aquifer classified as locally important with groundwater vulnerability indicated as being high. Site characterisation was carried out including trial hole and percolation tests. The trial hole test (2.1m) detected the water table in the trial hole at 1.3m. T tests for deep subsoils and/or water table and P tests for shallow soil/subsoils and/or water table both by the standard method were carried out with percolation values 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).

7.4.2 The issue of wastewater was not a reason for refusal, however I do consider it is relevant issue in assessment of this proposal. I would consider that notwithstanding the proposal to use a proprietary wastewater treatment system on site, that having regard to the proliferation of domestic wastewater treatment systems in this rural area, the high water table as evidenced in the trial hole test, 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, there are potential concerns regarding groundwater. I 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.

8.0 Recommendation

8.1. I recommend refusal based on the following reasons.

9.0 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 come 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 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.

2. Notwithstanding the proposal to use a proprietary wastewater treatment system on site, the Board had regard to the proliferation of domestic wastewater treatment systems in this rural area, the high level of the water table on site, the location of the site above an aquifer classified as locally important with groundwater vulnerability indicated as being high 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

24th April 2022