



An
Bord
Pleanála

Inspector's Report

ABP-313186-22

Development	The construction of a single storey dwelling with loft space, detached garage, wastewater treatment system, bored well and all associated site works.
Location	Augha, Bagenalstown, Co. Carlow.
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	21425
Applicant(s)	Patrick Dillon and Lilly O' Brien
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Joseph Hughes
Observer(s)	None
Date of Site Inspection	16 th March 2023
Inspector	Emer Doyle

1.0 Site Location and Description

- 1.1. The subject site is located in a rural area c. 5km northeast of the village of Bagnelstown in Co. Carlow.
- 1.2. The site, which has a stated area of 0.8 hectares is located at the end of a private laneway off the L3047. There are a number of existing dwellings accessed off this laneway. There is an existing farm building to the west of the site. The southern boundary of the site adjoins a stream which is hydrologically linked to the River Barrow and River Nore SAC.
- 1.3. The laneway in the vicinity of the site is poorly surfaced and very narrow, facilitating one car only, with a need to pull in to facilitate passing cars.

2.0 Proposed Development

- 2.1. The proposed development comprises a proposal for a single storey dwelling with loft space (c.208m²), detached garage (53m²), wastewater treatment plant, bored well, and all associated site works.
- 2.2. Further information was submitted to the Planning Authority dated the 7th of February 2022 which provided for an Appropriate Assessment Screening Report, details confirming right of way to the site, and details in relation to compliance with the rural housing policy.

3.0 Planning Authority Decision

3.1 Decision

- 3.1.1. Permission granted subject to 15 No. conditions. All conditions are of a standard nature for a development of this type.

3.2 Planning Authority Reports

- 3.2.1. Planning Reports

- The planner's report considers that the applicant's had not submitted sufficient documentation to demonstrate that they complied with the Rural Housing Policy of the Carlow County Development Plan 2015-2021. It was also considered that an Appropriate Assessment Screening Report was necessary and documentary evidence was required in relation to a right of way on the laneway serving the site. The initial report dated the 14th of December 2021 required Further Information.
- The second report dated the 3rd of March 2020 considered that the response to the Further Information Request adequately addressed the issues raised and recommended permission subject to conditions.

3.2.2. Other Technical Reports

Fire Officer: No objection subject to conditions.

Environment: No objection subject to conditions.

3.3. Prescribed Bodies

- No reports.

3.4. Third Party Observations

- 3.4.1. One observation was submitted to the Planning Authority. The main concerns raised relate to Appropriate Assessment, traffic safety, and absence of evidence regarding right of way on the laneway serving the site.

4.0 Planning History

- 4.1.1. None relevant.

5.0 Policy Context

5.1. National Policy

- Project Ireland 2040 National Planning Framework (2018)
- Sustainable Rural Housing Guidelines for Planning Authorities (2005)

5.2. Carlow County Development Plan 2022-2028

- 5.2.1. The Carlow County Development Plan 2022-2028 is the relevant Development Plan for the area. The County Development Plan sets out a core strategy in Chapter 2. Bagnelstown is designated as a district town. It is the 3rd largest settlement in the County facing demographic challenges with the town's population declining by 3.8% between 2011 and 2016.
- 5.2.2. It is policy under CSP.8 to promote social and economic development and new homes in District towns in accordance with the requirements of the settlement hierarchy and the aims and population targets of the Core Strategy Table and the Housing Strategy.
- 5.2.3. Section 3.16 sets out the policy for Single Housing in the Countryside. This site is located in a Rural Area under Urban Influence as set out in Section 3.16.1 Rural Area Types.
- 5.2.4. Having regard to:
- The viability of smaller towns and rural settlements in County Carlow; and,
 - The need to protect the County's key economic, environmental, natural resources and heritage assets, such as important landscapes, habitats and built heritage, water quality, and the public road network,
 - The Council shall consider a single house in the countryside for the permanent occupation of an applicant in Rural Areas Under Urban Influence where compliance with the criteria listed for Category 1 **or** Category 2 can be demonstrated as detailed in Table 3.5.
- 5.2.5. Chapter 13: Rural Design Guide
- 5.2.6. Chapter 16: Development Management Standards.

5.3. Natural Heritage Designations

- The River Barrow and Nore SAC (Site Code 002162) is located c. 4.9km west of the site.

- Ballymoon Esker pNHA (Site Code 000797) is located c. 2.6km west of the site.
- Blackstairs Mountains pNHA and SAC (Site Code 000770) is located 11.2km south of the site.
- Slaney River Valley pNHA and SAC (Site Code 000781) is located 12.4km east of the site.

5.4. EIA Screening

- 5.4.1. The proposal is for a new dwelling, to be served by an on-site wastewater treatment system. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows:
- Concerns regarding traffic safety.
 - The lands required to provide adequate sightlines are not delineated in red at the junction of the lane and the public road.
 - The provision of sightlines will require works to lands outside the ownership of the applicant and the Planning Authority did not request legal consent for these works.
 - The proposed development would constitute haphazard backland development and would contravene Section 2.7.7 of the Carlow County Development Plan 2015-2021 which requires that all new developments in rural area must have minimum road frontage of 20m.

6.2. Applicant Response

- 6.2.1. I note that a late response was received by the Board which was returned to the applicants in accordance with the Planning and Development Act 2000, as amended.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority had no further comments and is satisfied that the position of the Planning Authority is addressed in the 2 No. planning reports on file.

6.4. Observations

- None submitted.

7.0 Assessment

- 7.1. The main issues in this appeal are those raised in the grounds of appeal. I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Rural Housing Policy
- Traffic Safety
- Other Issues
- Appropriate Assessment

7.2. Rural Housing Policy

- 7.2.1. The Carlow County Council Development Plan 2022-2028 came into effect on 4th of July 2022. I note that the Planning Authority's assessment of this application was undertaken under the previous Carlow County Development Plan 2015-2021. I assess hereunder the application against the operative Development Plan.
- 7.2.2. The proposed development site is located in a rural area of County Carlow, which is classified in the Development Plan under Map 3.2 as being within 'Rural Housing Policy Zone 1- Rural Areas Under Urban Influence.' The nearest settlement is

Bagnelstown which is identified by the plan as a 'District Town' which is facing demographic challenges with a declining population.

7.2.3. Rural Housing Policy Zone 1 is the relevant policy in this case – Rural Area Under Urban Influence. Category 1 and Category 2 are set out in Table 3.5. Table 3.5 clarifies that under category 1 an applicant must have a functional economic requirement to live in the rural area or under category 2 have a functional social requirement to live in the rural area. In accordance with Category 2 of the rural housing policy in the development plan, a person/persons shall demonstrate they have a functional social requirement to live in this rural area and documentary evidence is required to show a person is living or has lived full time in the local rural area for a minimum of 5 consecutive years at any stage prior to the making of the planning application. 'Local rural area' is defined as a site within an 8km radius of where the applicant is living or has lived.

7.2.4. In response to a Further Information Request, the following information was submitted to the Planning Authority:

- Birth Certificate of Lilly O'Brien to show that she was born c. 4km from the site in the townland of Rathercan.
- Letter from local national school (Newtown Dunleckney N.S.) which states that Lilly O' Brien is a past pupil and attended school from September 1st 1986 to June 1994.
- A map is also included which show the location of homes of relatives in the vicinity.

7.2.5. I am satisfied that Lilly O' Brien complies with the criteria set out in Category 2 (functional social requirement) as it has been demonstrated with documentation that she has lived full time in the local rural area (defined as within 8km of the site) for a minimum of 5 consecutive years. I note that it is possible that the second applicant also complies with the criteria as set out in the relevant policy, but documentary evidence of living in the rural area for 5 consecutive years has not been submitted to the Planning Authority or the Board. In any case, only one of the applicants must comply with the policy as set out in the Development Plan.

7.2.6. The documentation as submitted with the application is the only acceptable way to determine a person's compliance with National and Local Policy. National Policy Objective 19 clearly states that in rural areas, single housing is to be facilitated '...in the countryside based on the core consideration of demonstratable economic or social need to live in a rural area' subject to design considerations. I am satisfied that the applicant has provided evidence in relation to her social need to live at this location and that this complies with the criteria set in the current Development Plan for Rural Housing Policy Zone 1- Rural Areas Under Urban Influence.

7.3. **Traffic Safety**

7.3.1. The site is located on a laneway which is poorly aligned and narrow. The final c. 120m of the laneway is in use for agricultural purposes only and the roadway is unsurfaced with grass growing in the middle.

7.3.2. Concern is raised in the third appeal regarding the sightlines available at the junction of the laneway and the local road. It is stated that sightlines are not measured correctly and that there is no legal entitlement to carry out the works required to achieve adequate sightlines at this junction.

7.3.3. I note that permission was included in the Further Information response regarding a right of way to the laneway including the unsurfaced section in proximity to the site.

7.3.4. Section 16.10.7 of the Development Plan relates to entrances and sightlines and Table 16.5 indicates that sightlines of 90m are required at this location. I am not satisfied that the required sightlines can be achieved to the east of the junction without works to lands outside of the ownership of the applicant. No consent has been included in the application documentation for such works.

7.3.5. Therefore, having regard to the width and alignment of the public road at this location, taken together with the extent of existing development and the absence of consent to achieve adequate sightlines at the junction of the private laneway and the public road, I consider that the proposed development would endanger public safety by reason of traffic hazard.

7.4. Other Issues

- 7.4.1. I note that the third party expresses concern that the proposed development constitutes haphazard backland development as it does not have a minimum road frontage of 20m.
- 7.4.2. The third party appeal refers to Section 2.7.7 of the Carlow County Development Plan 2015-2021 in relation to Backland Development. This plan has now expired but the current Development Plan contains a similar policy in Section 3.16.7 as follows: *‘Discourage the development of rural housing in the countryside located on backland to the rear of an existing house(s) with road frontage. This form of backland development is inconsistent with the recommendations of the Sustainable Rural Housing Guidelines (2005), militates against the preservation of the rural environment, represents piecemeal and haphazard development in the countryside, and can negatively impact on the residential amenity of neighbouring houses.’*
- 7.4.3. Having regard to the location of the site at the end of a laneway serviced by an existing agricultural road together with the definition of ‘backland development’ above, I do not consider that the policy as outlined in Section 3.16.7 of the current Development Plan is applicable in this case.

7.5. Appropriate Assessment

- 7.5.1. I have considered the proposed development in light of the requirements of S 177S and 177U of the Planning and Development Act 2000 as amended.
- 7.5.2. A screening report for Appropriate Assessment was submitted to the Planning Authority dated the 7th day of February 2020 in response to the Further Information Request. This stated in Section 5.4 that there will be no likely significant impacts and concluded in Section 7 that there will be no significant effects on the water quality of the Ballynaboley River or no impacts on the conservation objectives of the species of qualifying interest of the River Barrow and River Nore SAC. Carlow County Council agreed with this conclusion.
- 7.5.3. It is proposed to construct a dwelling house, detached garage, wastewater treatment plant, bored well, and all associated site works at this location.

Appropriate Assessment Stage 1 Screening

7.5.4. The applicant submitted an Appropriate Assessment Screening Report in response to a Further Information Request from the Planning Authority. The screening report considers three sites – River Barrow and River Nore SAC, Blackstairs Mountains SAC, and Slaney River Valley SAC. The site is located c. 4.9km to the west of the River Barrow and River Nore SAC, c. 11.2km to the south of Blackstairs Mountains SAC and c. 12.4km to the east of the Slaney River Valley SAC.

Site Name and Code	Qualifying Interest and Conservation Objectives
Slaney River Valley SAC 000781	15 QI including a priority habitat- Alluvial forests 91EO and species dependant on high water quality. https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000781.pdf
River Barrow and Rive Nore SAC 002162	23 QI including 2 priority habitats- Alluvial forests and petrifying springs. https://www.npws.ie/protected-sites/sac/002162
Blackstairs Mountains SAC 000770	2 QI- Northern Atlantic wet heaths and European dry heaths. https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000770.pdf

Assessment of Likely Effects

7.5.6. The site is not located within any of the European sites and is not directly adjacent to such sites. Therefore, no direct impacts would arise from the proposed development.

In view of the separation distances, nature of qualifying interests, lack of hydrological connection and the conservation objectives of the following sites:

- Blackstairs Mountains SAC (Site Code 000770)
- Slaney River SAC (Site Code 000781)

- 7.5.7. There is no potential for these designated sites to be indirectly affected by the proposed development.
- 7.5.8. The screening report identifies that it is only the River Barrow and River Nore SAC that could be impacted as a hydrological pathway exists that could impact on the SAC. The Ballynaboley River which forms part of the Barrow River forms part of the southern site boundary and is c. 12m to the east of the percolation area according to the report. From examining the site layout map submitted with the application, I consider that the distance is closer to c. 17m. It is noted that this distance exceeds the recommended minimum distance of 10m from a watercourse/ stream set out in the EPA Code of Practice.
- 7.5.9. The qualifying interests of the River Barrow and River Nore SAC include alluvial wet woodlands and petrifying springs which are priority habitats. The site is also selected for old oak woodlands, floating river vegetation, estuaries, tidal mudflats, Salicornia, Atlantic salt meadows, Mediterranean salt meadows, European dry heaths, and species dependent on high water quality including freshwater pearl mussel, white-clawed crayfish, sea lamprey, brook lamprey, river lamprey, salmon and otter.
- 7.5.10. The key issues which could give rise to adverse impacts include water quality and water dependent species, habitat loss and disturbance of Qualifying Interest Habitats. Potential adverse impacts include deterioration in water quality arising from sedimentation entering surface water channels and impact upon groundwater arising from wastewater treatment on the site. Impacts may be significant due to the proximity and pathway to the SAC and the sensitivity of the aquatic species to changes in water quality. This in turn could affect the conservation objectives of the site having regard to the characteristics and sensitivities of the QI to changes in water quality.
- 7.5.11. In terms of cumulative effects, I have had regard to the provisions of the current Carlow County Council Development Plan and to the planning authority's planning

application database. I am not aware of any large planned or permitted developments in the vicinity.

- 7.5.12. I consider that is a direct hydrological link connecting this site to the River Barrow and River Nore SAC through the Ballynaboley River and there is potential for impacts on water quality which would in turn have an impact on the conservation objectives of the site having regard to the characteristics and sensitivities of the qualifying interests to changes in water quality. As such likely significant effects cannot be ruled out with certainty.

Conclusion

- 7.5.13. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the River Barrow and River Nore SAC (site code 002162) in view of the site's Conservation Objectives, or any other European Site. The likely significant effects cannot be ruled out having regard to the precautionary principal. In such circumstances the Board is precluded from granting permission.

8.0 Recommendation

- 8.1. It is recommended that the proposed development is refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate along a minor laneway which is inadequate in width, alignment and structural condition and where consent to provide adequate sightlines at the junction of the laneway and the local road has not been submitted in accordance with the requirements of Section 16.10.7 of the Carlow County Development Plan.
2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse impacts on the integrity of the River Barrow and River Nore SAC (Site Code 002162) in view of the site's Conservation Objectives, or any other European Site. The likely significant effects cannot be ruled out having regard to the precautionary principle and the lack of information submitted. In such circumstances the Board is precluded from granting permission.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Emer Doyle
Planning Inspector

27th June 2023