



An
Bord
Pleanála

Inspector's Report

ABP-314286-22

Development	House with detached garage and associates site works.
Location	Killyneary, Bawnboy, Co Cavan.
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	22200
Applicant(s)	Jonathan Gould and Michelle Magee.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Observer(s)	Transport Infrastructure Ireland.
Date of Site Inspection	2 nd May 2023.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.56ha and is located in the townland of Killyneary, approx. 1km north of Bawnboy in north County Cavan. It comprises part of a larger greenfield site of improved grassland. At the time of inspection, the field was in use for livestock grazing.
- 1.2. The site is set back from the N87 and is accessed via a private stone track that is identified by the application drawings as a right of way, associated with an amenity walking route known as the Bawnboy Loop Walk.
- 1.3. Land levels rise in a northerly direction in the area and the site is elevated above the level of the N87. It is partially enclosed from views by mature trees and 2 No. bungalow properties that are adjacent to the junction of the stone track and the N87, but is visible in a number of views, particularly from the west.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of a two-storey house, detached garage, effluent treatment system and associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused permission on 12th July 2022, for 2 No. reasons as follows: -
 1. The proposed development by itself and the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network, would be contrary to the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January, 2012) and would result in the creation of a traffic hazard.
 2. Having regard to location of the proposed development on an exposed visually prominent site which is immediately adjacent to the public walkway – Bawnboy

Loop, it is considered that the proposed development by way of height, scale and design would have an adverse visual impact on the surrounding countryside, would unduly impact on the rural character of the area, and would set a precedent for further development of this nature. The proposed development would not be in accordance with the 'Design Guide for Single One-Off Houses within the Cavan Rural Countryside' and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. A Planning Report dated 28th June 2022 has been provided, which reflects the decision to refuse permission. The report states that the principle of development is acceptable in this structurally weak rural area but expresses concern regarding the proposed scale and design of the house, which are stated to be of an urban style. Concerns are also expressed regarding the impact of the development on the strategic road network, in view of the comments provided by Transport Infrastructure Ireland. The report recommends that permission be refused for 2 No. reasons, which are consistent with those attached to the Planning Authority's decision.

3.2.2. Other Technical Reports

The Planning Report indicates that the **Municipal District Engineer** was consulted on the application but did not make a submission.

3.3. **Prescribed Bodies**

3.3.1. Transport Infrastructure Ireland made a submission dated 21st June 2022, advising that the development is at variance with policy in relation to control of development on/affecting national roads, as contained within the DoECLG *Spatial Planning and National Roads Guidelines for Planning Authorities* (January 2012).

3.4. **Third Party Observations**

3.4.1. The Planning Report indicates that no third-party submissions were received.

4.0 Planning History

4.1. I did not encounter any previous planning records pertaining to the site.

5.0 Policy Context

5.1. Cavan County Development Plan 2022 - 2028

5.1.1. The site is in a rural area designated by the development plan as a Structurally Weak Area.

5.1.2. Chapter 12 contains the Rural development strategy and Section 12.13 relates to rural housing. It states that in structurally weak areas the aim of the Plan is to promote real and long-term community consolidation and growth and that the demand for housing will be accommodated as it arises, subject to good planning practice in matters of location, siting, design, access, wastewater disposal and the protection of environmentally sensitive areas and areas of high landscape value.

5.1.3. Policy SWA 01 is the primary housing policy for Structurally Weak Areas: -

SWA 01: Facilitate proposals for permanent residential development subject to good planning practice in matters of location, siting, design and the protection of environmentally sensitive areas and areas of high landscape value.

5.1.4. Other relevant policies include: -

RHD 01: Ensure new rural housing comply with the Design Guide for Single One-Off Houses within Cavan Rural Countryside with respect to Site Selection, House Design, Landscaping, Sustainability and Design Statement.

WTR 01: Ensure proposals involving the installation of an on site wastewater treatment system are in accordance with the requirements of the 'EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses,' (2009) or any subsequent Code of Practice which supersedes it.

SD 01: Require applications for new dwellings in rural locations to: -

- Have a simple design forms and materials reflective of traditional vernacular architecture.
- Have consideration to the scale of surrounding buildings.

- A design, siting and orientation that is site specific responding to the natural features and topography of the site to best integrate development with the landscape and to optimise solar gain to maximise energy efficiency.
- Be sited to visually integrate with the landscape, utilising natural features including existing contours and established field boundaries and to not be visually dominate in the landscape by cutting and filling of sites. New buildings should respect the landscape context and not impinge scenic views or skylines as seen from vantage points or public roads.
- Larger houses should incorporate design solutions to minimise visual mass and scale e.g. subdivided into smaller elements of traditional form to avoid bulky structures.
- Use a simple plan form to give a clean roof shape and avoid the creation of a bulky shape.
- Where existing vernacular structures exist on site, consideration should be given to their re-use, adaptation and extension in preference to new build.
- Determine if the proposed development is located on any designated natural heritage, archaeological or architectural heritage site. The existence of any of these designated sites within the proposed development site may have implications for the proposed dwelling.
- Ensure that the detail, texture, colour, pattern, and durability of materials of the proposed development should be sustainable and of a high quality, and sensitive to its proposed location.
- Local stone and render such as stucco, traditional lime render or lime wash, rough cast render or napped render finish and glass is encouraged.
- Where contemporary materials are proposed they should complement and harmonise with traditional materials.
- Decorative fascia and box end soffits should be avoided.

5.2. National Planning Policy Framework

5.2.1. National Policy Objective 19 is of relevance to the proposed development. It requires the following:

‘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’.*

5.3. Sustainable Rural Housing Guidelines for Planning Authorities

- 5.3.1. The Guidelines identify a number of rural area typologies and accompanying Map 1 provides an indicative outline of these area typologies. According to this indicative map, the subject site is in a ‘structurally weak area’. It is noted from the Guidelines that this map is an indicative guide to the rural area types only and that the development plan process should be used to identify different types of rural area.
- 5.3.2. For structurally weak areas the Guidelines outline that the development plan should *‘accommodate any demand for permanent residential development as it arises subject to good practice in matters such as design, location and the protection of important landscapes and any environmentally sensitive areas.’*
- 5.3.3. The Guidelines require a distinction to be made between urban and rural generated housing needs, in the different rural area types. In relation to the identification of people with rural generated housing needs, the Guidelines refer to ‘Persons who are an intrinsic part of the rural community’ and ‘Persons working full-time or part-time in rural areas. Of relevance to this appeal, ‘Persons who are an intrinsic part of the rural community’ are identified as having *“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.”

5.4. Natural Heritage Designations

- 5.4.1. The site is not located within or adjacent to a designated European site, the closest such site being Cuilcagh – Anierin Uplands SAC (Site Code 000584), which is c.7.3km west.
- 5.4.2. Slieve Rushen Bog NHA (Site Code 000009) lies c.2.4km north-east.

5.5. EIA Screening

- 5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
- 5.5.3. The proposed development consists of one house and associated site works including a wastewater treatment system. It therefore falls well below the applicable threshold for mandatory EIA.
- 5.5.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, it is considered that 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: -
- Refusal reason No. 1

- It is proposed to reuse an existing entrance, which has a wide bellmouth and exits onto a long stretch of road.
- Permission has been granted for 2 other houses (Reg. Refs. 18227 and 2119). It is unclear why these developments were acceptable but the current proposal is not.
- Refusal reason No. 2
 - The site is not visually prominent, it is secluded.
 - Access to the Bawnboy Loop is controlled by the applicant's family and can be restricted if required.
- Proposed design and scale
 - It is not accepted that the development would impact on the rural character of the area. Other houses have been approved and constructed in the area, which are of similar or greater scale.

6.2. Planning Authority Response

6.2.1. The Planning Authority made a submission on 24th August 2022, the contents of which can be summarised as follows: -

- Refusal reason No. 1
 - In making the decision, regard was had to the submission made by TII.
 - The site is located adjacent to N87 and although there is no proposal for a new entrance, the proposal may be regarded as intensification.
 - Objective AS03 of the new development plan is also relevant to the appeal, in addition to the initial planning assessment.
- Refusal reason No. 2
 - In addition to the initial planning assessment, section 12.13.2.2 and objectives RHD 01 and RHD 02 of the new development plan are relevant to this appeal.
- The Board is requested to uphold the decision to refuse permission.

6.3. Observations

6.3.1. Transport Infrastructure Ireland made an observation on the appeal on 15th August 2022, the contents of which can be summarised as follows: -

- The observation set out in the initial submission to the Planning Authority remains TII's position on the proposed development.
- The proposal conflicts with official policy set out within Spatial Planning and National Roads Guidelines for Planning Authorities (January, 2012), which outlines that in this location the creation of new accesses onto the national road or the generation of increased traffic from an existing access should be avoided.
- The provision of a new house will inevitably give rise to an intensification of use of the access lane.
- The Board will be aware of NSO 2 of the National Planning Framework, which includes an objective to maintain the strategic capacity and safety of the national roads network.
- The precedent cases referenced by the appellants are materially different as both of the permitted developments access the public road before accessing the national road.

6.4. Further Responses

6.4.1. None.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:

- Compliance with the rural housing strategy,
- Design and location,
- Access,
- Drainage, and
- Appropriate assessment.

7.2. Compliance with the Rural Housing Strategy

- 7.2.1. The subject site is located in the townland of Killyneary, approx. 1km north of Bawnboy in north County Cavan. It is in a rural area identified by the development plan as a Structurally Weak Area. Development plan policy SWA 01 states that in this location, housing proposals will be facilitated, subject to good planning practice in matters of location, siting, design and the protection of environmentally sensitive areas and areas of high landscape value.
- 7.2.2. The National Planning Framework also seeks, for rural areas outside of those under urban influence, to facilitate single houses in the countryside but includes the proviso '*having regard to the viability of smaller towns and settlements*'.
- 7.2.3. The Rural Housing Guidelines also state that in these areas, rural housing proposals should be accommodated, subject to good practice in matters such as design, location and the protection of important landscapes and any environmentally sensitive areas.
- 7.2.4. The site is not in an area under urban pressure and, as such, there is no restrictive approach to the development of single houses, in accordance with the development plan, National Planning Framework or Rural Housing Guidelines
- 7.2.5. The site is located on a private, stone track that is identified on the site location drawing as a right of way, associated with the Bawnboy Loop Walk. The applicants state within the grounds of appeal that the loop walk route is in family ownership. The private access has experienced no other development to date and it has a rural character. The immediate surrounding area has experienced limited housing development. I am satisfied that the proposed development can be accommodated in accordance with SWA 01, subject to consideration of other relevant factors below.
- 7.2.6. I note that the Planning Authority also did not express any concern regarding compliance with the rural housing strategy.

7.3. Design and Location

- 7.3.1. Refusal reason No. 2 of the Planning Authority's decision states that the proposed height, scale and design of the house would have an adverse visual impact on the surrounding countryside, would unduly impact on the rural character of the area, and would set a precedent for further development of this nature.

- 7.3.2. In appealing the decision, the applicants submit that the development would not impact on the rural character of the area and reference is made to other grants of permission for housing in the area, which is stated to be of similar or greater scale.
- 7.3.3. The site is set back from the N87 by c.130m and is set in the context of improved grassland on surrounding lands. Land levels rise on the north side of the N87 , with the result that the site is on elevated ground and is visible from the N87. The house has a two-storey, gable-front design and incorporates a number of projecting elements, including gable elements to the front, a two-storey element at the east end and a single storey element at the west end. The house has a stated gross floor area of 290m².
- 7.3.4. I have previously expressed the view that the site can accommodate a proposed house but I have concerns regarding the proposed design, which I consider to be an inappropriate design response to the site context. Appendix 22 of the development plan contains the *Design Guide for Single One-Off Houses Within the Cavan Rural Countryside*, which provides advice on issues such as site layout, house design and external finishes and policy RHD 01 requires compliance with its provisions. In my view the accumulation and varied proportions of projecting elements across the front façade result in visual clutter and the overarching bulk and massing of the house across its full width result in a form of development that would be a prominent and stark addition to the area, to the detriment of the character of the area and contrary to the provisions of the development plan. Mature trees to the south are likely to provide some limited screening, but the house will be visible from the N87, particularly from the west.
- 7.3.5. I consider the proposed design requires reconsideration, in order to provide a design that is more respectful of the character of the area and which would better assimilate into the local landscape. I do not consider it would be appropriate to attempt to control such redesign through condition and I thus recommend that permission be refused on this basis.

7.4. **Access**

- 7.4.1. The site is accessed via a narrow, private stone track that connects to the N87 to the south. As I have outlined previously, the stone track forms a local walking route known as the Bawnboy Loop Walk. The stone track access is located on a section of

the N87 that is subject to the 80km/h speed limit and in this context the site location drawing identifies sightlines in excess of 120m in both directions from the junction.

- 7.4.2. Reason No. 1 of the Planning Authority's refusal states that the development would adversely affect the operation and safety of the national road network, would be contrary to the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January, 2012) and would result in the creation of a traffic hazard and, further, would set a precedent for further development.
- 7.4.3. The refusal is grounded in a submission from Transport Infrastructure Ireland, which advises that the development is at variance with policy in relation to control of development on/affecting national roads, as contained within the DoECLG *Spatial Planning and National Roads Guidelines for Planning Authorities* (January 2012). The Board will be aware that TII made a similar submission on the appeal.
- 7.4.4. In appealing the decision, the applicants submit that they are proposing to reuse an existing entrance, which has a wide bellmouth and exits onto a long stretch of road. They also reference other recent grants of permission and question why the current proposal was deemed unacceptable in this context.
- 7.4.5. Spatial Planning and National Roads Guidelines for Planning Authorities provides ministerial guidance in relation to development affecting national primary and secondary roads and, of relevance to the appeal, Section 2.5 states that on land adjoining National Roads to which speed limits greater than 60km/h apply, *'the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses'*.
- 7.4.6. The junction of the stone access and the N87 is of an existing nature, incorporating a high level of visibility in both directions and there are currently no limits on the level of traffic passing through it. The development will give rise to a low volume of additional traffic, associated with daily domestic activities, but I do not consider would affect the efficient operation of the junction or would give rise to the creation of a road safety hazard.
- 7.4.7. In view of the above, and taking a balanced view, I am satisfied that no material intensification of use of the junction at the N87 is likely to arise. I therefore conclude that the development is not at variance with policy in relation to control of

development on/affecting national roads, as contained within Spatial Planning and National Roads Guidelines for Planning Authorities.

7.5. Drainage

Foul Drainage

- 7.5.1. The development includes the provision of an on-site WWTP, although specific details of the proposed system have not been provided. The Site Suitability Assessment Report submitted with the application identifies the category of aquifer as 'Regionally Important', with a vulnerability classification of 'Moderate', and identifies the 'R1' response category under Table E1 of the *EPA Code of Practice Domestic Waste Water Treatment Systems (Population Equivalent ≤10)*, i.e. acceptable subject to normal good practice.
- 7.5.2. The Report indicates that a trial hole with a depth of 2.1m recorded 300mm of silt/clay, 700mm of clay intermixed with stone. The winter watertable is stated to have been encountered at a depth of 1m and groundwater was encountered at a depth of 1.5m. In relation to the percolation characteristics of the soil, a subsurface percolation test result of 60.22 min/25mm was returned. A surface percolation test result of 39.39 min/25mm was returned.
- 7.5.3. In accordance with the requirements of the Code of Practice, the Site Suitability Assessment Report identifies that a raised percolation area will be installed, with an invert level 300mm above ground level, in order to provide a sufficient layer of unsaturated soil above the observed level of the winter watertable.
- 7.5.4. Having regard to the site percolation test results, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. I note the Planning Authority did not express any concern regarding this aspect of the development. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the on-site wastewater treatment system with the Planning Authority.

Surface Water Drainage

- 7.5.5. Surface water is identified as draining to a soakpit to the west of the house but further details of the system have not been provided. Should the Board decide to grant

permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the system with the Planning Authority.

7.6. **Appropriate Assessment**

- 7.6.1. The site is not located within or adjacent to a designated European site, the closest such site being Cuilcagh – Anierin Uplands SAC (Site Code 000584), which is c.7.3km west.
- 7.6.2. Lough Oughter and Associated Loughs SAC (Site Code 000007) also encroaches to within c.8.3km south-west of the site.
- 7.6.3. The construction phase of the development may give rise to discharge of a small amount of suspended solid content to an open drain adjacent to the east site boundary. Available EPA drainage mapping¹ identifies that surface waters drain southward, into a watercourse identified as ‘Bawnboy 36’ and, ultimately into Bellaboy Lough. Bellaboy Lough is downstream of both of the identified European sites, which are themselves in any case a considerable distance from the subject site, and I am satisfied that there is no possibility of such discharge being transferred to a European site.
- 7.6.4. For the operational phase, surface waters are identified as discharging to ground water via a soakpit and foul water is proposed to discharge to groundwater following treatment within an on-site WWTP. Again, the site is not hydrologically connected to either of the European sites within the search zone and I am satisfied that there is no possibility of pollutants being transferred to a European site.

Screening Determination

- 7.6.5. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Site, in view of the sites’ Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

¹ <https://gis.epa.ie/EPAMaps/>

7.6.6. This determination is based on the following:

- The separation distance between the subject site and any European site and the absence of a hydrological connection between sites.

8.0 Recommendation

8.1. I recommend that planning permission is refused for following reasons and considerations set out hereunder.

9.0 Reasons and Considerations

1. The proposed development by reason of its height, bulk and massing and with particular reference to the accumulation and varied proportions of projecting elements across the front façade, results in a haphazard and visually intrusive form of development that fails to respect the rural character of the area and would not assimilate into the landscape, contrary to the Design Guide for Single One-Off Houses Within the Cavan Rural Countryside and policy RHD 01 of the Cavan County Development Plan 2022 – 2028. The development is therefore contrary to the aforementioned provisions of the development plan and is also contrary to the proper planning and development of the area.

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.

Barry O'Donnell
Planning Inspector

12th May 2023.