



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314569-22

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<b>Development</b>	Construction of dwelling and all associated site works
<b>Location</b>	Gneevebane, Tyrrellspass, Co. Westmeath.
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority Reg. Ref.</b>	22329
<b>Applicant(s)</b>	Laura Gaye
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Laura Gaye.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	24 <sup>th</sup> of February 2023
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The site is located in a rural area of Co. Westmeath in the townland of Gneevebane, close to Tyrrellspass.
- 1.2. It is a triangular site, 1.4Ha with a flat topography, positioned along a straight stretch of the Regional Road, R446, 2.5km northeast of Tyrrellspass.
- 1.3. The site has a mature hedgerow along its long (circa 300m.) roadside boundary, with mature trees and hedging along the other two boundaries (south-east and south-west). The site is currently grassland.

## 2.0 Proposed Development

- 2.1. The proposal is to construct a two-storey dwelling with a detached single storey garage, to upgrade the existing field entrance to the splayed entrance, to install a private well and a septic tank and percolation area.

## 3.0 Planning Authority Decision

### 3.1. Decision

Westmeath Co. Co. refused the proposed development for one reason:

*The development proposes the provision of a direct access onto the strategic regional road, R446, where the maximum speed limit applies. The proposed development would harm that carrying capacity and safety of this fast strategic regional road and is contrary to policies CPO 9.16 of the Westmeath County Development Plan 2021-2027, the Sustainable Rural Housing Guidelines (2005) and the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Report of the 12<sup>th</sup> of August 2022

- The site fronts the Regional Road -R446 with direct access onto the road where the maximum speed limit applies. Application references an energy

storage facility and new entrance close to the subject site. The subject development was considered to be exceptional circumstances and the single dwelling is not the same as a significant infrastructure project. The proposal is inconsistent with the Regional Road policies of the development plan.

- It is not considered to be acceptable on road safety grounds.

### 3.2.2. **Other Technical Reports**

District Engineer:

A refusal is recommended.

### 3.3. **Prescribed Bodies**

There were no submissions from the prescribed bodies.

### 3.4. **Third Party Observations**

There were no third-party submissions.

## 4.0 **Planning History**

### 4.1 Planning Reference 21403

Planning permission refused for a two-storey dwelling on the subject site relating to access onto the R446.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

***Westmeath County Development Plan 2021-2027***

9.4 Rural Settlement Strategy

#### **CPO 9.1 Areas Under Strong Urban Influence**

To accommodate demand from individuals for permanent residential development in defined 'Rural Areas Under Strong Urban Influence' who have strong links to the area and who are an intrinsic part of the rural community, subject to good planning

practice, environmental carrying capacity and landscape protection considerations. Local Housing Need Permit residential development in areas defined 'Rural Areas Under Strong Urban Influence and Stronger Rural Areas' subject to the following circumstances:

1. Persons who are actively engaged in agriculture, horticulture, forestry, bloodstock and peat industry,
2. Members of farm families seeking to build on the family farm,
3. Landowners for this purpose being defined as persons who own the land 5 years prior to the date of planning application,
4. Persons employed locally whose employment would provide a service to the local community,
5. Persons who have personal, family or economic ties within the area, including returning emigrants,
6. Persons who wish to return to farming and who buy or inherit a substantial farm holding which is kept intact as an established farm unit, will be considered by the Council to be farmers and will be open to consideration for a rural house, as farmers. Where there is already a house on the holding, refurbishment or replacement of this house is the preferred option.

The local area for the purpose of this policy is defined as the area generally within a 10km radius of the applicant's family home.

### **9.5.1 Rural Housing Site and Design**

Dwellings and structures in the countryside need to be sited and designed to impact minimally on their setting. The utilisation of existing features, natural and manmade, can assist in integrating new development into its established setting. All rural development will be expected to adhere to this basic principle. Design standards are outlined in Chapter 16 Development Management standards of the plan and supplementary planning guidance contained in the Westmeath Rural Design Guidelines (2005) or any revisions thereof. Furthermore, the Landscape Character Assessment prepared for the county assesses the sensitivity and capacity of the different character areas to absorb and facilitate rural residential development.

### **9.6 Development Within Hinterlands of Settlements**

**CPO 9.16** Generally, resist new accesses for single houses onto regional roads, where the 80km per hour limit applies, to safeguard the carrying capacity and safety of these roads.

### **10.5.2 Non-National Roads**

It is a policy objective of Westmeath County Council to:

CPO 10.52 Safeguard the carrying capacity and safety of the County's regional and local road network.

CPO 10.60 Protect strategic regional roads listed in Table 10.2, against development where a maximum speed limit applies, except in exceptional circumstances, in order to protect the carrying capacity and safety of such roads.

#### **Table 10.2 Strategic Regional Roads in Westmeath:**

**R446** Kinnegad- Kilbeggan- Moate- Athlone- Roscommon County Boundary.

### **10.12 Water Quality and Groundwater**

Development management can play a significant role in the prevention of further deterioration of water status and in the protection of existing high and good quality waters. Water protection measures are best incorporated into site selection and site design plans. Therefore, developers should adequately assess environmental risks, take account of site limitations and prepare a water protection plan. Site selection should take account of sensitive areas and sensitive water bodies. Water protection plans should aim to prevent contamination of storm water, minimise soiled and waste waters, install proper containment for material storage, install appropriate treatment and disposal arrangement for soiled and waste waters and take account of legal requirements for discharges to ground and surface waters.

The use of private wells to provide water to single houses remains the responsibility of the householder. Private wells are not regulated under the European Communities (Drinking Water) Regulations 2014 and Irish Water has no role in relation to private water supplies. The Local Authority is responsible for providing advice and guidance in relation to the protection of the supply.

#### **10.13.1 Wastewater Treatment and Disposal Serving Single Houses**

In unserviced areas and outside the main towns and villages, the main method of sewage disposal is by means of individual septic tanks and proprietary systems. In order to protect human health and water quality from the risks posed by domestic wastewater treatment systems the EPA's National Inspection Plan for Domestic Waste Water Treatment Systems 2018-2021 now requires each local authority to develop a local site selection plan, which documents the application of the site selection methodology and outlines the justification for the selection of priority areas and individual sites. The Local Authority should retain the associated documents to facilitate future auditing by the EPA.

#### *10.13.2 EPA Code of Practice 2009*

It shall be a policy of the Council to require that individual septic tank drainage systems be provided in accordance with the standards set out in this Code of Practice. The control of development in areas of high groundwater vulnerability is a priority for the Council. Where existing clusters of septic tanks in vulnerable areas are augmented with additional septic tanks, the risk of pollution increases significantly and therefore the protection of these areas is paramount.

CPO 10.60

Development Management Standards

Westmeath Rural Design Guidelines

## **5.2 National Planning Policy**

### **5.2.1 Project Ireland 2040 - National Planning Framework**

The National Planning Framework (NPF) acknowledges that “rural areas have a major role to play in Ireland 2040 and encourages Local Authorities to ensure that connectivity gaps are addressed and that planning and investment policies support job creation in the rural economy”. Improved coordination of existing investment programmes dealing with social inclusion, rural development and town and village renewal are sought, as is planning for the future growth and development of rural areas. In terms of rural housing, the NPF distinguishes between commuter areas and other rural regions throughout the Country. The NPF recognises the “significant pressures from urban generated pressures in commuter areas and highlights how commuter-generated housing in rural areas accessible to cities and towns, has

affected the character and cohesion of some locations. It seeks to manage the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

#### 5.2.2 **Sustainable Rural Housing, Guidelines for Planning Authorities, 2005**

The Circular letter PL2/2017, issued by the Department of Housing, Planning, Community and Local Government in May 2017, advised local authorities that the Sustainable Rural Housing Guidelines are currently being revised to ensure the rural housing policies and objectives contained in local authority development plans comply with Article 43 of the EU Treaty on the freedom of movement of citizens.

#### 5.2. **Natural Heritage Designations**

Raheenmore Bog SAC 6km from the site.

There are no direct hydrological links to the site to the Natura 2000 site.

#### 5.3. **EIA Screening**

Having regard to the nature and scale of the proposed development, comprising of a domestic dwelling there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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 ***Planning Policy and existing Planning Assessment***

The applicant, Laura Gaye is originally from the area. She qualifies under Section 9.4 of the rural settlement strategy in the county development plan. The site is class has been in an Area Under Strong Urban Influence as per the document *Sustainable Rural Housing Development Guidelines*. There is 95% of Co. Westmeath within this category and this does not appear to be in the spirit of the original guidelines. The applicant does meet with the local needs criteria of the development plan set out

under CPO9.1(5) because she has strong personal, family or economic ties to the area. This was not an issue for the planning authority.

The proposed dwelling is sited below the level of the road. The road is sheltered by a substantial hedgerow of mature trees. The hedgerows will be maintained, and the house design is a simple farmhouse with a simple palette of materials, short spans to reduce the roof height and well-proportioned shapes. The site is 1.4ha and the dwelling integrates well into the site. This was not an issue for the planning authority.

Paragraph 10.5 of the county plan deals with the issue of non-national roads. Westmeath enjoys a very substantial road network including over 193km of national primary/ motorways as well as national secondary routes. It can be concluded due to these extensive national routes throughout the county, the regional roads have a less important transport function that they might in other more remote counties. The development plan has an objective to protect regional roads, there is not an absolute prohibition of new entrances onto such roads, and that 'in exceptional circumstances' new access points may be allowed onto these roads.

Under planning reference 21/532 permission was granted for a new access road onto the regional road in close proximity to the site for an energy storage facility. The use of 'the planning authority cited exceptional circumstances' to justify the decision to grant planning permission. It is not a significant infrastructure project, it is limited in scale and will generate a good deal more traffic than the applicant's proposal.

There are exceptional circumstances associated with the current application as follows:

- (i) The site of the present application has been used by Rahanine FC soccer club since June 2013 when the lease was granted to them by the present landowner. In the event permission is refused, Rahanine FC will continue to use the field as a training facility. It has been used as such for nine years and it is therefore not possible to take planning enforcement against the club. Effectively, the use of the site as a domestic dwelling will greatly improve the road safety associated with the site. ORS Engineering Consultants have prepared a report indicating the soccer club would



generate 41No. trips per day, and a dwelling house will generate 6No. trips per day. There is no comparison between the two in traffic safety terms.

The planning authority has carried out its assessment without regard to the status quo and without the impact of road safety in the event of a refusal. There is no mention of the report in the planning assessment. During training sessions, cars are frequently parked along the roadside, and this will not occur if there was a private dwelling on the site.

- (ii) The second exceptional circumstance is the very straight alignment of the road fronting the site with over 250metres sightlines. The Road Safety Audit concluded the site can be accessed and exited safely within the normal parameters of the site.

The planning assessment was only based on the wording of the development plan, and in any case the wording of the development does allow of exceptional circumstances. The exceptions do apply to the current case and should lead to the reversal of the planning authority's decision.

### 6.1.2 ***Precedent***

There have in recent years been a number of planning permissions granted which access directly onto the R446 as follows:

- Reference 21/43 granted on 25<sup>th</sup> of May 2021 for another dwelling sharing an existing access with another dwelling house. The applicants were not farmers but demonstrated long established ties to the area.
- Reference 17/6115 gave permission for the demolition of a small cottage and the construction of a 570sq.m. dwellinghouse with direct access onto the R446.
- Reference 18/62311 permission for direct access onto the R446 at Farthingstown, Rochfortbridge where the two applicants were not farmers and who lived a distance from the site.
- Reference 19/6018 permission granted for a dwellinghouse at Kilvally, Tyrellspass with access onto the R446.

In all of the above cases the access onto the R446 was raised as an issue but it was determined to be of insufficient significance to overrule the other planning policy matters and to warrant a refusal of permission. In none of the cited cases the sight distance was as favourable as the current application. None of the above applications were an existing user whereby the proposed development would reduce the level of use.

The applicant lives close to the proposed site and has done so for most of her life and has a genuine housing need as she is presently living with her mother.

The above applications are directly comparable to the current case, and consistency must be applied. It is unconscionable that permission should be refused where it has been granted in the above four instances, and where a more substantial permission for an energy storage area involving high levels of traffic generation has been granted closer to the site. There is no point the elected representatives formulating settlement policy under which the applicant is entitled to receive planning permission, then undermining that policy in an inconsistent fashion through apparent arbitrary implantation of the development plan policy which seems to vary from one planning application to the next.

## **6.2. Planning Authority Response**

There was no response to the appeal from the planning authority.

## **7.0 Assessment**

7.1. The site was inspected and the appeal was considered, the relevant issues will be dealt with under the following headings:

- Development Plan Policy
- Roads/Traffic
- Siting Design
- Services
- Appropriate Assessment

## 7.2 Development Plan Policy

7.2.1 The relevant development plan is the Westmeath County Development Plan 2021-2027. The proposed development is a dwelling house in a rural area, which is classified as an *Area Under Strong Urban Influence*. It is located along a straight stretch of a Regional Road, the R446. The relevant development plan policy is CPO 9.1 which includes policy to accommodate certain individuals who have strong links to a particular area and who are an intrinsic part of the rural community.

7.2.2 The applicant is from the area and her family home is less than a kilometre from her family home where she still resides with her mother. The proposed dwelling located in close proximity to the family home will enable the applicant to care for her mother who has a number of health conditions outlined in an attached medical report. There are letters from the community supporting her planning application. I am satisfied the applicant complies with the local housing needs policy of the development plan under the criteria outlined in CPO 9.1 of the development plan. The planning authority had no concerns in this regard and this issue did not form part of the reason for refusal.

## 7.3 Roads/ Traffic

7.3.1 Westmeath County Council refused the proposed development for one reason only:

*The development proposes the provision of a direct access onto a strategic regional road, R446, where the maximum speed limit of 100kmph applies. The proposed development would harm the carrying capacity and safety of this fast strategic regional road and is contrary to policies CPO 9.16 and CPO 10.60 of the Westmeath County Development Plan 2021-2027, the Sustainable Rural Housing Development Guidelines (2005) and to the proper planning and sustainable development of the area.*

7.3.2 The subject site (1.4Ha) has a triangular configuration and is located on the southern side of the R446. There is a mature hedgerow and a field entrance located midway along the northern site boundary. It is positioned in a rural area between Tyrellspass and Rochfortbridge. The site is undeveloped grassland with mature hedging and trees along all boundaries.

According to the planning application and the grounds of appeal, the site was formerly the training grounds of Rahanine FC soccer from 2013 to present day, with photographic evidence of goal posts in the field in 2017. I did not see any evidence on site, during my inspection, that the soccer club are currently using the field for training or matches. There were no goal posts, and the grass was relatively long, and there were no field markings or flags. According to the grounds of appeal, there was no parking onsite, therefore people park along the hard shoulder of the Regional road during training and matches. It is submitted the soccer club would generate more traffic and create a greater traffic hazard at the site than a single dwelling. It is also submitted the grounds has been used as a soccer training facility since 2013 without any planning enforcement, therefore the use can continue without the benefit of planning permission. In my opinion, the use of the site as a soccer club is unauthorised, and regardless of the lack of enforcement, it does not represent an established/ permitted use on the site. Notwithstanding that, the assessment is based on a single dwelling on the site which is currently under consideration in this appeal, because the use as a soccer facility does not have the benefit of planning permission and is not an authorised land use.

7.3.3 It is submitted in the grounds of appeal the issue of precedent and inconsistencies planning authority on the part of Westmeath Co. Co. in deciding planning applications along the R446. The following cases of permissions granted have been cited in the planning application and on appeal.

- **Reference 21/43** granted on 25<sup>th</sup> of May 2021 for another dwelling sharing an existing access with another dwelling house. The applicants were not farmers but demonstrated long established ties to the area.
- **Reference 17/6115** gave permission for the demolition of a small cottage and the construction of a 570sq.m. dwellinghouse with direct access onto the R446.
- **Reference 18/62311** permission for direct access onto the R446 at Farthingstown, Rochfortbridge where the two applicants were not farmers and who lived a distance from the site.
- **Reference 19/6018** permission granted for a dwellinghouse at Kilvally, Tyrellspass with access onto the R446.

This issue was not addressed by the planning authority. Having examined these cases in more detail, and having regard to the current refusal, I would accept there would appear to be blatant inconsistencies with decisions made by Westmeath Co. Co. as regards the implementation of policies relating to the R446. In its defence, the Westmeath County Development Plan came into operation during 2021 and most of those decisions pre-date its adoption. There have been no cases presented by the planning authority regarding refusals for single dwellings, if any, along the R446. Notwithstanding this the Board must consider the current appeal in the context of the current development plan policies. I quote the relevant policies from Section 5 above:

**CPO 9.16** *Generally, resist new accesses for single houses onto regional roads, where the 80km per hour limit applies, to safeguard the carrying capacity and safety of these roads.*

#### **10.5.2 Non-National Roads**

*It is a policy objective of Westmeath County Council to:*

*CPO 10.52 Safeguard the carrying capacity and safety of the County's regional and local road network.*

*CPO 10.60 Protect strategic regional roads listed in Table 10.2, against development where a maximum speed limit applies, except in exceptional circumstances, in order to protect the carrying capacity and safety of such roads.*

#### **Table 10.2 Strategic Regional Roads in Westmeath:**

**R446** *Kinnegad- Kilbeggan- Moate- Athlone- Roscommon County Boundary.*

- 7.3.4 It is clear from the stated policy that new entrances onto the **R446** Kinnegad- Kilbeggan- Moate- Athlone- Roscommon County Boundary will only be considered in exceptional circumstances. The policy does not specify criteria for deeming an applicant's circumstance exceptional, each case it decided on its own merits. The maximum speed limit applies to the proposed access and it is located along a straight stretch of the road. There are ample sightlines at the proposed entrance. However, the concerning planning issue would be traffic turning movements into and out of the site along such a straight stretch of road where the maximum speed limit

applies. Along straight stretches traffic tend to travel faster than more challenging lengths of the road where there is poor vertical and horizontal alignment.

7.3.5 Although the applicant has qualified under the local needs policy of the development plan, I do not believe she has presented exceptional circumstances to build on this particular site. There would be more accessible and safer sites to consider in the general area as opposed to a site requiring direct access to a straight stretch of the R446. Compliance with local needs policy does not automatically provide compliance with exceptional circumstances onto a Regional Road. I would be seriously concerns about traffic turning movements into the site from the Tyrellspass direction which would interfere with the safety and freeflow of traffic within a 100km per hour zone. The citing of a permission granted to a commercial premises for access along the R446 is not relevant as it is not a single dwelling, it has a variety of different planning considerations. This current case must be assessed on its own merits.

#### 7.4 **Siting and Design**

7.4.1 The proposed dwelling is a two-storey detached dwelling with a simple design and specification. It is sited marginally below the level of the road. The road is sheltered by a substantial hedgerow with the backdrop of mature trees along the southern (rear) site boundary. The hedgerows will be maintained. The house design includes short spans to reduce the roof height creating well-proportioned shapes. The site is 1.4ha and the dwelling is setback into the site and in my opinion would integrate well into the site.

#### 7.5 **Sewage Treatment**

7.5.1 A sewage treatment system has been designed for the property based on a soil characteristics assessment report. The effluent will be pumped to a percolation area, which is designed in accordance with the EPA Code of Practice 2021 Wastewater Treatment and Disposal Systems serving single houses. The tests indicated the site has a subsurface value rating of 6.25mins/ 25mm which is good percolative capacity on the subsurface. Groundwater/ winter groundwater was not encountered during the trial hole tests. I am satisfied the site can cater for an individual treatment system in line with EPA standards.

## **7.6 Appropriate Assessment**

7.6.1 Having regard to the nature and limited scale of the proposed development and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

## **8.0 Recommendation**

8.1. I recommend the planning authority's decision to refuse planning permission for the proposed development be upheld by the Board.

## **9.0 Reasons and Considerations**

The development proposes the provision of a direct access onto the strategic Regional Road, R446. It is considered that the proposed development would endanger public safety by reason of a traffic hazard because of the additional traffic turning movements generated onto the Regional Road along a significant straight stretch of the road where the maximum speed limit applies. The proposed development would harm that carrying capacity and safety of this strategic Regional Road and is contrary to policies CPO 9.16 of the Westmeath County Development Plan 2021-2027 and the proper planning and sustainable development of the area.

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Caryn Coogan  
Planning Inspector

28<sup>th</sup> of April 2023