



An
Bord
Pleanála

Inspector's Report

ABP-314855-22

Development	Storey and half style house, garage, waste water disposal system, and associated site works.
Location	Faughanhill, Bohermeen, Navan, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	221060
Applicant	Chris Murray
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal
Appellant	Chris Murray
Observer(s)	None
Date of Site Inspection	17 th June 2023
Inspector	Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site is located on the western side of a narrow access lane, in the townland of Faughanhill, c. 8 km north-west of Navan, Co. Meath. The appeal site is located within a rural area, outside of a settlement.
- 1.2. The appeal site is relatively flat, broadly rectangular in shape, has a stated area of c. 0.3154 ha. and appears to be used for agricultural purposes. The roadside boundary of the appeal site comprises hedgerow. The area in the vicinity of the appeal site is characterised by a high concentration of one-off houses. The adjoining lands are indicated as being in the control/ownership of the applicant, as depicted by the blue line boundary.

2.0 Proposed Development

- 2.1. The proposed development comprises;
 - Construction of a storey and a half, three-bedroom, detached dwelling:
 - stated floor area 202 sqm.
 - ridge height c. 7.2 metres.
 - material finishes to the proposed house comprise roughcast render for the external walls and natural slate for the roof.
 - c. 25 metres from the public road.
 - Construction of a storey and a half garage:
 - stated floor area c. 31 sqm.
 - ridge height c. 5.2 metres.
 - material finishes to the proposed garage match the house.
 - The installation of a packaged waste water treatment system and a soil polishing filter.
 - A new splayed vehicular entrance with wing walls and piers.
 - Landscaping, and boundary treatment comprising timber post and rail fencing.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to REFUSE Permission on the 20th September 2022 for 2 no. reasons which can be summarised as follows;

1. The proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and would establish an undesirable precedent for further development of this type. Furthermore, the proposed development would be contrary to the policies and objectives of the Meath County Development Plan 2021 - 2027 which seeks to provide more sustainable formats of development within the rural area, through supporting the vitality of lower order centres and existing local community facilities including policies/objectives RD POL 4, RD POL 8, RUR DEV SO 5, CS OBJ 1 and RD OBJ 1.
2. The proposed development would contravene materially Condition no. 3 of PA. Ref. KA/40669 and Condition no. 3 of PA. Ref. KA/40653, which provide for the sterilisation of the remainder of the landholding, of which the site forms part of, from any housing or non-agricultural development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- Notes that the site is located within a 'Strong Rura Area'.
- Notes that a number of applications in the vicinity have been refused on the basis of the excessive density of development in the rural area, and the concentration of effluent treatment systems in the area.
- Notes that within the landholding a number of previous planning applications (i.e. PA. Ref.'s KA/191809, KA/60187 and KA/60405) were refused for reasons which included that they would be contrary to Condition no. 3 of PA. Ref. KA/40669 and KA/40653, which provided for the sterilisation of the remaining landholding, which the site forms part of, from housing and non-agricultural

development, and that the sterilisation agreement remains relevant and no application to remove these conditions has been made. As such the proposed development would be contrary to Condition no. 3 of both of these permissions.

- The applicant would appear to satisfy local housing need criteria, however, having regard to the previous planning history of the landholding in relation to the excessive density of development in this rural area, the Planning Authority considers that allowing another dwelling on this landholding within the development pressure area would constitute an excessive density of development to the detriment of the rural area.
- The design of the proposal is considered acceptable and accords with the Meath Rural Design Guide, and would not be harmful to visual amenity of the area. The proposed development is not considered to be harmful to residential amenities.

3.2.2. The report of the Planning Officer recommends a refusal of permission consistent with the Notification of Decision which issued.

3.2.3. Other Technical Reports

Transport Section – reports notes that the proposed entrance gate is too close to the edge of the road. Report recommends standard conditions, including that the entrance gate is recessed 7 metres from the road edge.

3.3. **Prescribed Bodies**

None received.

3.4. **Third Party Observations**

None received.

4.0 **Planning History**

Appeal Site

None.

Within blue line of site:

PA. Ref. 22/1061 – Permission REFUSED for a house and waste water treatment system. Reasons for refusal mirror the reasons cited under the current application/appeal. This application is currently on appeal ABP Ref. 314856-22.

Site to immediate north (outside blue line boundary):

KA/60187 – Permission REFUSED for a house and waste water treatment system. Refusal reasons cited relate to the inadequate provision for the treatment of effluent and design considerations.

KA/191809 – Permission REFUSED for a house and waste water treatment system. The decision to refuse permission was UPHeld on appeal to An Bord Pleanála under ABP Ref. 306950-20. Refusal reasons cited relate to the excessive density of development in a rural area, contravention of Condition no. 3 of PA. Ref.'s KA/40669 and KA/40653, design considerations and the excessive concentration of treatment systems in the area.

KA/201978 – Permission REFUSED for a house and waste water treatment system. The decision to refuse permission was UPHeld on appeal to An Bord Pleanála under ABP Ref. 309695-21. Refusal reasons cited relate to the excessive density of development in a rural area, and contravention of Condition no. 3 of PA. Ref.'s KA/40669 and KA/40653.

KA/60405 – Permission REFUSED for a house and waste water treatment system. Refusal reasons cited relate to the excessive density of development in a rural area, contravention of Condition no. 3 of PA. Ref.'s KA/40669 and KA/40653, the excessive concentration of treatment systems in the area and the suitability of the site to cater for the treatment of effluent.

Site to north-west (outside blue line boundary):

KA/40669 – Permission GRANTED for a house and waste water treatment system. Condition no. 3 required the landowner to enter into a sterilisation agreement with the Local Authority in respect of the remainder of the landholding from any housing or non-agricultural development.

KA/40653 - Permission GRANTED for a house and waste water treatment system. Condition no. 3 required the landowner to enter into a sterilisation agreement with the

Local Authority in respect of the remainder of the landholding from any housing or non-agricultural development.

5.0 Policy Context

5.1.1. National Planning Framework (NPF) – Project Ireland 2040 (2018)

National Policy Objective 15 states -

‘Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.’

National Policy Objective 19 states -

‘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.

5.1.2. Code of Practice Domestic Wastewater Treatment Systems (p.e. ≤ 10) 2021

The Code of Practice (CoP) sets out guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses.

5.1.3. Ministerial Guidance

Sustainable Rural Housing, Guidelines for Planning Authorities (2005)

The appeal site is located within an area identified as a 'Strong Rural Area' (see Map 9.1. Meath County Development Plan 2021 - 202). The Guidelines state that *'in these areas population levels are generally stable within a well-developed town and village structures and in the wider rural areas around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas'*.

5.2. Development Plan

5.2.1. The Meath County Development Plan 2021-2027 is the relevant development plan. The appeal site is zoned 'RA' (Rural Area) with an objective *'to protect and promote in a balanced way, the development of agriculture, forestry and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage'* under the Meath County Development Plan 2021-2027.

5.2.2. The provisions of the Meath County Development Plan 2021 - 2027 relevant to this assessment are as follows:

Chapter 9 'Rural Development Strategy'

- The appeal site is located within Area 2 'Strong Rural Area¹', in respect of which the Development Plan states that *'the level of individual housing development activity in these areas tends to be lower than that within Area Type 1² and confined to certain areas'*.

Policy relevant to 'Strong Rural Areas' includes;

- **RD Pol 4** - to consolidate and sustain the stability of the rural population and to strive to achieve a balance between development activity in urban areas and villages and the wider rural area.

¹ See Map 9.1 of Meath County Development Plan 2021-2027.

² i.e. Rural Areas Under Strong Urban Influence.

- **RD Pol 5** - to facilitate the housing requirements of the rural community as identified while directing urban generated housing to areas zoned for new housing development in towns and villages in the area of the development plan.

Section 9.4 'Persons who are an Intrinsic Part of the Rural Community'

The Planning Authority will support proposals for individual dwellings on suitable sites in rural areas relating to natural resources related employment³ where the applicant can:

- Clearly demonstrate a genuine need for a dwelling on the basis that the applicant is significantly involved in agriculture....
- Clearly demonstrate their significant employment is in the bloodstock and equine industry, forestry, agri-tourism or horticulture sectors....

The Planning Authority recognises the interest of persons local to or linked to a rural area, who are not engaged in significant agricultural or rural resource related occupation⁴, to live in rural areas. For the purposes of this policy section, persons local to an area are considered to include:

- Persons who have spent substantial periods of their lives, living in rural areas as members of the established rural community for a period in excess of five years and who do not possess a dwelling or who have not possessed a dwelling in the past in which they have resided or who possess a dwelling in which they do not currently reside;
- Persons who were originally from rural areas and who are in substandard or unacceptable housing scenario's and who have continuing close family ties with rural communities such as being a mother, father, brother, sister, son, daughter, son in law, or daughter in law of a long established member of the rural community being a person resident rurally for at least ten years;
- Returning emigrants who have lived for substantial parts of their lives in rural areas, then moved abroad and who now wish to return to reside near other

³ My emphasis added.

⁴ My emphasis added.

family members, to work locally, to care for older members of their family or to retire, and;

- Persons, whose employment is rurally based, such as teachers in rural primary schools or whose work predominantly takes place within the rural area in which they are seeking to build their first home, or is suited to rural locations such as farm hands or trades-people and who have a housing need.

Additionally, the Development Plan also makes provision for 'exceptional health circumstances'; for instances where the original dwelling was sold due to unavoidable financial circumstances; and where the applicant resided in a rural area for a considerable period of time, being a period of time in excess of the previous 10 consecutive years, in a dwelling attached to their business, such as farming, and the business inclusive of dwelling house is being sold for retirement or other circumstances.

Section 9.5.1 - The Planning Authority will also take into account the following matters in assessing individual proposals for one-off rural housing:

- The housing need background of the applicant(s) in terms of employment, strong social links to rural areas and immediate family as defined in Section 9.4 Persons who are an Intrinsic Part of the Rural Community;
- Local circumstances such as the degree to which the surrounding area has been developed and is trending towards becoming overdeveloped;
- The degree of existing development on the original landholding from which the site is taken including the extent to which previously permitted rural housing has been retained in family occupancy. Where there is a history of individual residential development on the landholding through the speculative sale of sites, permission may be refused;
- The suitability of the site in terms of access, wastewater disposal and house location relative to other policies and objectives of this plan;
- The degree to which the proposal might be considered infill development.

Section 9.5.4 - The housing needs of those members of the rural community who are not part of the agricultural/horticulture community as set out at section 9.4 will be facilitated in the extensive network of rural nodes⁵. The majority of rural nodes, (see Table 9.2) comprise largely of un-serviced rural areas with limited social and community infrastructure. Rural nodes are designated for limited development at a sustainable scale for immediate local need through the development of clusters. It is anticipated that each rural node can cater for a small population increase from their current population base over the period of the Plan.

- **RD Pol 8** - To ensure that the provision of housing in all rural nodes shall be reserved for persons who are an intrinsic part of the rural community. In all cases applicants shall certify to the satisfaction of the Planning Authority that they have been a rural resident for a minimum of 5 years. The node shall be within 12 km of their current place of residence.

5.3. **Natural Heritage Designations**

The appeal site is not located within or close to any European Site.

5.4. **EIA Screening**

Having regard to the limited nature and scale of the proposed development, 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**

This is a first-party appeal against the decision to refuse permission. The grounds for appeal can be summarised as follows;

- The proposed development is rural generated and not urban generated, and as such the proposal should be facilitated.

⁵ Bohermeen is the closest node to the appeal site.

- The applicant meets the requirements of the Meath County Development Plan, having grown up in the immediate vicinity of the site, attended schools locally, and is an intrinsic part of the local community through his involvement in sporting activities.
- Persons local to an area are considered to include 'persons who have spent substantial periods of their lives living in rural areas as members of the established rural community for a period in excess of five years and who do not possess a dwelling, or who have not possessed a dwelling in the past in which they have resided, or who possess a dwelling in which they do not currently reside'. This demonstrates the applicant's entitlement to be considered for a rural dwelling.
- The applicant currently resides in the family home across the road from the proposed site and is therefore not adding additional population density to the area.
- A number of other applications have been refused in the area which the appellant considers has added to the reasoning of 'excessive density', but this is not the case. The subject site is still considered to be rural and meets all requirements that are set out for a one-off dwelling.
- The area is not lacking public services or community facilities. There was no reference in the decision to what community facilities are lacking within the area. The reasons cited in the first reason for refusal are unreasonable and flawed.
- The site meets all current guidelines for wastewater treatment.
- Policies in the County Development Plan do not state that all residential development should be directed to serviced areas, but rather that urban generated housing should be directed to areas zoned for new housing development. In this regard the proposal would not materially contravene the policies of the County Development Plan.
- Condition no. 3 of PA. Ref.'s KA/40669 and KA/40653 required that prior to commencement of development the landholder enter into a legal agreement with the Planning Authority providing for the sterilisation of the remainder of the

landholding from any housing or non-agricultural development. There is no record of such an agreement being signed. An affidavit from Mr. John Murtagh, who co-owned to the lands in question, states that while he provided two signatures to state that he was willing to enter into a sterilisation agreement he received no further contact from the Council and as far as he was concerned he did not sign a sterilisation agreement. Details of such legal agreements have also not been provided by Meath County Council.

6.2. Planning Authority Response

A submission has been received from the Planning Authority stating that the issues raised in the appeal were addressed in the assessment of the planning application. The Planning Authority request that the Board uphold their decision to refuse permission.

6.3. Observations

None received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant national and local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Refusal Reason 1
- Refusal Reason 2
- Rural Housing Policy
- Waste Water
- Appropriate Assessment

7.2. Refusal Reason 1

7.2.1. The first reason for refusal cited by the Planning Authority relates to an excessive density of development in a rural area, lacking public services and community facilities, and the establishment of an undesirable precedent for further development of this type. I note that the area in the vicinity of the appeal site is characterised by a proliferation of one-off houses, and in my opinion the area lacks an assimilative capacity for further development of this nature. Further development in the area, specifically additional single dwellings, would in my opinion erode the rural character of the area further. I note that Section 9.5.1 of the Meath County Development Plan states that matters which will be taken into account when assessing individual proposals for one-off rural housing include local circumstances such as the degree to which the surrounding area has been developed, and is trending towards becoming overdeveloped. In my opinion this is particularly pertinent in the area in which the appeal site is located and as such I agree with the Planning Authority and consider that the first reason for refusal should be upheld.

7.3. Refusal Reason 2

7.3.1. The second reason for refusal cited by the Planning Authority relates to Condition No. 3 of PA. Ref.'s KA/40669 and KA/40653. These conditions related to permissions for single houses located to the north-west of the appeal site and required that prior to commencement of development the landowner enter into a legal agreement with the Planning Authority providing for the sterilisation of the remainder of the landholding from any housing or non-agricultural development. The report of the Planning Authority notes that the appeal site formed part of the landholding which was associated with PA. Ref.'s KA/40669 and KA/40653 and that the proposed development would contravene these conditions. The first party contends that there is no record of such an agreement being signed and as such the refusal reason is flawed. I refer the Board to a recent preliminary/unapproved judgment of the High Court (attached to this report) which related to a site to the immediate north of the appeal site and which was the subject of appeal reference ABP-309695-21 for a single house for Louise Murtagh. In his judgement, Mr. Justice Alexander Owens held that *'contravention' of conditions in 2005 planning permissions which required landowners to commit to agreements not to engage in further development on Louise Murtagh's plot was not relevant. Existence of these conditions in earlier planning permissions is not a basis on which an*

application for permission may be refused. The proposed development, if proceeded with, would not “contravene” the condition. The decision-makers was not being asked to make a judgment on whether the requirements of these conditions were reasonable’. Having regard to the issues raised by the appellant, and specifically noting that the Planning Authority have not provided any evidence of a signed agreement referred to in the aforementioned conditions, I recommend that refusal reason 2 is not upheld.

7.4. Rural Housing Policy

- 7.4.1. The applicant/appellant has submitted documentation in support of his compliance with the rural settlement strategy of the Meath County Development Plan 2021-2027. From reviewing the information submitted with the planning application and the appeal I note that the applicant currently resides in the family home, which is adjacent to the appeal site; that ‘due to unfortunate circumstances he must leave his current place of residence’; that his wife (Rose Murray) owns the appeal site, consenting to her husband making the planning application on her lands; and, that the applicant states that he is farming, and his yard is located across the road from the appeal site. Correspondence from the Department of Agriculture Food and the Marine has been furnished. I note the contents of the local need form in which the applicant states his employment as a plumber, and that he ‘owns property’. The applicant has not provided details of this property in the space provided in the form, and has stated in the form that he has not sold property. Elsewhere in the appeal submission the applicant intimates that he does not own a house. The report of the Planning Officer concluded that the applicant would appear to satisfy local housing need criteria.
- 7.4.2. The rural settlement strategy of the Meath County Development Plan 2021-2027 provides a number of criteria upon which an applicant may be considered for a dwelling within the rural part of the County, including circumstances relating to natural resources related employment, where they can clearly demonstrate a genuine need for a dwelling on the basis of their significant involvement in agriculture, and also where applicants are not engaged in significant agricultural or rural resource related occupations but have a local link to a rural area. I consider both set of criteria to be of

pertinence to the applicant. The applicant/appellant currently resides in the family home adjacent to the appeal site and has provided no compelling justification for a new dwelling. Information in respect of property owned by the applicant is ambiguous. Additionally, the information submitted as it relates to farming is minimal and does not in my opinion demonstrate a 'significant involvement in agriculture', as is required under Section 9.4 of the Meath County Development Plan 2021-2027, for instance I note that details of the applicant's landholding and time dedicated to farming has not been provided. Based on the information submitted with the planning application and the appeal, I am not satisfied that the applicant has satisfactorily demonstrated compliance with the requirements of the Meath County Development Plan 2021-2027 as it relates to applicants seeking permission for a dwelling within the rural area of the county, and on this basis I recommend that permission is refused.

7.5. Waste Water

- 7.5.1. The Site Characterisation Report submitted with the application identifies that the subject site is located in an area with a Locally Important Aquifer where the bedrock vulnerability is High. A ground protection response to R1 is noted. Accordingly, I note the suitability of the site for a treatment system (subject to normal good practice, i.e. system selection, construction, operation and maintenance). The applicant's Site Characterisation Report identifies that there is no Groundwater Protection Scheme in the area.
- 7.5.2. The trail hole depth referenced in the Site Characterisation Report was 2 metres. Neither bedrock nor the water table were encountered in the trail hole. The soil conditions found in the trail hole are described as comprising loam and clay, and free draining, if somewhat sluggish. Mottling was noted at 0.7 metres below ground level (bgl). Percolation test holes were dug and pre-soaked. A T value/sub-surface value of 30.89 was recorded and a P value/surface test was subsequently carried out and a value of 28.36 recorded. The site was enclosed I was unable to inspect the trail hole at the time of my site inspection.

- 7.5.3. Based on the EPA CoP 2021 (Table 6.4) the site is suitable for a septic tank and percolation area, a secondary treatment system and a soil polishing filter, or a tertiary treatment system and infiltration area. Table 6.3 of the EPA CoP 2021 requires a minimum depth of unsaturated permeable subsoil of 0.9 metres below the base of the polishing filter for secondary treatment systems. Noting the presence of mottling at 0.7 metres bgl it is proposed to install a secondary waste water treatment system and a raised percolation area/polishing bed using imported soil. Based on the site layout drawing submitted I note that the proposal complies with the required separation distances set out in Table 6.2 of the CoP 2021. The Site Characterisation Report submitted with the application notes that there is a ditch 'to the west of the field'. Based on OS mapping this ditch would appear to be located west of the wider landholding, and therefore the proposal would appear to comply with the requirements of the EPA CoP 2021 in respect of distances from open drains/drainage ditches, which is 10 metres. The Site Characterisation Report submitted with the application concludes that the site should be suitable for treatment of waste water.
- 7.5.4. There is no foul sewer network located in this area and all of the adjacent dwellings would appear to be served by septic tanks or wastewater treatment systems. Whilst it is likely that separation distances comply the EPA Code of Practice 2021 for individual wastewater treatment systems given the generous plot sizes in the area, the issue of proliferation of individual treatment systems is of concern. Given the existence of approximately 10 dwellings on individual treatment systems/septic tanks within a 200 metre distance of the appeal site, the proposed development would in my opinion be prejudicial to public health.
- 7.5.5. I also note that there does not appear to be a public water supply in the area and boreholes are used to draw drinking water for the houses in the vicinity. The concentration of septic tanks or wastewater treatment systems in the vicinity would in my opinion result in a likelihood for potential pathogens and contaminants below ground level and as such the proposal would also represent a threat to public health in this regard.
- 7.5.6. In summation, notwithstanding that the proposal complies with the EPA CoP 2021, noting the proliferation of septic tanks and waste water treatment systems in the

immediate vicinity, I am not satisfied that the treatment of effluent on the site can be catered for without a risk to groundwater. The issue of waste water is a **new issue**. The Board may wish to seek the views of the parties. However, having regard to the other substantive reason for refusal set out below, it may not be considered necessary to pursue the matter.

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. Having regard to the above it is recommended that planning permission be refused for the proposed development based on the following reasons and considerations

9.0 **Reasons and Considerations**

1. Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has demonstrated that he comes within the scope of the housing need criteria as set out in Section 9.4 and 9.5 of the Meath County Development Plan 2021-2027. The proposed development would, therefore, be contrary to the Meath County Development Plan 2021-2027. Furthermore, taken in conjunction with the existing development in the vicinity, which is characterised by a proliferation of single dwellings, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services, would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would be contrary to the proper planning and sustainable development of the area.

2. The proposed development would result in an excessive concentration of development served by septic tanks and/or individual wastewater treatment systems in the area. The Board is therefore not satisfied that the site is capable of treating foul effluent arising from the dwelling and considers that the method of foul water disposal will render the treatment of the effluent unacceptable and could increase the risk of serious water pollution. Accordingly, the proposed development would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

Ian Campbell
Planning Inspector

18th June 2023