



An
Bord
Pleanála

Inspector's Report ABP-314919-22

Development	Construction of a dwelling house.
Location	Ballynamona, Durrow, Co. Offaly.
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	22297
Applicant	Ann-Marie Heagney
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	Roddy O'Brien & Maree Ryan-O'Brien
Date of Site Inspection	12 th July 2023
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located in the townland of Ballynamona, Durrow, Co. Offaly, approx. 6km north of Tullamore, less than 3km east of the current N52 and c 7 km south of the M6 interchange at Kilbeggan. The site is located on a narrow local road which serves farmland and houses of recent origin. Some of the recent houses in the area, including that given as the applicant's current rented residence, are quite large. The site is part of a small field where a dwelling has been erected in the southern portion. The field is flat and there is a large drain running along the northern boundary. A stand of trees at the northern side separates the site from a drain which also extends northwards along the road and on the date of inspection had a water level close to ground level (c0.5m). Rushes seen on the site indicate poor drainage and this is even more evident in google street view. The land to the north is scrubland.
- 1.1.2. A low clipped hedgerow forms the front boundary. There is a field gate at the southern end. The dormer bungalow on the adjoining site within the field is the closest of three detached houses to the south.
- 1.1.3. The site is given as 0.35ha.

2.0 Proposed Development

- 2.1.1. The application is for permission for a 4 bedroom house, garage, entrance, effluent treatment plant and percolation area.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided, 29th September 2022, to grant permission subject to 14 no. conditions including a seven-year occupancy, finished floor level, external finishes, detailed requirements in relation to the site frontage and roadside area, water connection, wastewater treatment, surface water disposal, development contribution, construction management, retention of roadside hedge, landscaping, undergrounding of cables, use of garage, water connection, and construction standards.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. There are two planning reports on the file. The first, dated 8th August 2022, recommending further information (FI), which issued, includes:

- Located in an area classified as Rural Areas Under Strong Urban Influence Stronger Rural Areas & outside areas of special control.
- The proposal will create four or more houses in 250m of road frontage and is therefore not considered ribbon development.
- In terms of policy SSP-27 the following is noted:
 - The applicant has lived in the area for more than 5 years; does not already own a house in the open countryside; and fulfils requirement 2 of SSP-27.
 - The design is satisfactory and fulfils requirement 4 of SSP-27
- Recommending FI - confirmation of feasibility of pre-connection agreement to use the watermain.
- The development is unlikely to have significant effects on any European Site.

3.2.3. Other Technical Reports

3.2.4. Tullamore Municipal District. 18/7/2022 – mains water supply; conditions: re boundary removal, surface water, protection of the road, licence for road works, waste management.

3.2.5. Roads Design 12th July 2022 - Roads Design is satisfied. Refer to Westmeath National Roads Office.

3.2.6. Westmeath National Roads Office, 30th June 2022, including:

The site is located inside the study area boundary within which potential route corridor options are to be considered for the N52 Tullamore to Kilbeggan Scheme. The scheme is being prepared by Offaly County Council in partnership with Westmeath County Council and in association with Transport Infrastructure Ireland (TII). Currently phase 2 option Selection has determined an Emerging Preferred Route Corridor. This was presented to the public during the 3rd non statutory public consultation (PC3). The consultants are preparing the final report including feedback.

Based on their evaluation, at this juncture, the application is of very low impact and they recommend a grant of permission.

3.2.7. Water Services and Environment, 29th July 2022 – conditions re: water supply (IW); wastewater treatment; storm water; waste; environmental nuisances.

3.2.8. The second planning report, dated 27th September, recommending permission, which issued, includes:

- Satisfied with further information response.

3.3. **Third Party Observations**

3.3.1. A third party observation on the file has been read and noted.

4.0 **Planning History**

PI2/07/1757 application for construction of dormer house etc. deemed withdrawn.

Opposite side of the road:

PL2 00/621 Roddy O'Brien – dwellinghouse, garage and effluent treatment system granted.

5.0 **Policy Context**

5.1. **Project Ireland 2040 National Planning Framework (NPF)**

5.1.1. National Policy Objective 19 - 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.

5.2. Eastern & Midlands Regional Spatial & Economic Strategy 2019-2031 (RSES)

5.2.1. A key challenge facing the Region, along with all other regions, is the transition to a low carbon society. For the RSES this means five primary areas of transition which are at the core of the Strategy:

- sustainable development patterns which promote compact growth, reduce transport demand and encourage low carbon transport modes;
- sustainable transport systems (people and freight);
- carbon storing and sequestering land uses;
- energy efficient buildings and industry; and
- renewable energy.

5.2.2. Support sustainable rural development and strengthen rural networks, economies and communities. Manage urban generated growth in areas under strong urban influence and encourage sustainable growth in areas that have experienced decline or stagnation.

5.2.3. The Growth Strategy for the Eastern and Midland Region will;

- Support the continued growth of Dublin as our national economic engine,
- Deliver sustainable growth of the Metropolitan Area through the Dublin Metropolitan Area Strategic Plan (MASP),
- Target growth of our Regional Growth Centres of Athlone, Drogheda and Dundalk as regional drivers,
- Support our vibrant rural areas with a network of towns and villages,
- Facilitate the collaboration and growth of the Dublin – Belfast Economic Corridor,
- Embed a network of Key Towns through the Region to deliver sustainable regional development,
- Support the transition to a low carbon, climate resilient and environmentally sustainable Region.

Section 4.2 (Settlement Strategy) – Support the sustainable growth of rural areas by promoting the revitalisation of rural towns and villages, including ready to go

regeneration projects coupled with investment where required in local employment and services and targeted rural housing policies, to be determined by local authorities.

Section 4.8 (Rural Places: Towns, Villages and the Countryside) states, inter alia in relation to housing, that support for housing and population growth within rural towns and villages will help to act as a viable alternative to rural one-off housing, contributing to the principle of compact growth.

RPO 4.80: Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.3. The Environmental Protection Agency Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)

5.3.1. This Code of Practice (CoP) includes:

The recommended minimum depth to the water table is 1.2m.

5.4. Offaly County Development Plan 2021-2027

5.4.1. Offaly County Development Plan 2021-2027 is the operative plan, the following provisions are relevant.

- As shown on Map in Figure 2.1 Rural Area Types the site is within Rural Areas Under Strong Urban Influence, where SSP-27 applies:
- SSP-27 - Having regard to the need to protect County Offaly's natural resources, environment, landscape and infrastructure, it is Council policy to consider a single dwelling for the permanent occupation of an applicant in Rural Areas under Strong Urban Influence and Stronger Rural Areas and Areas of Special Control where all of the following (1-4) can be demonstrated:
 1. The applicant has a functional economic or social requirement to reside in this particular rural area in accordance with (i) or (ii):

(i) Economic requirements will normally encompass persons referred to in the revision to the Sustainable Rural Housing Guidelines 2005 and, if applicable, circulars. Pending the making of the revised Sustainable Rural Housing Guidelines by the Minister, a Functional Economic Requirement in County Offaly shall be taken as including persons who by the nature of their work have a functional economic need to reside in the local rural area close to their place of work. It includes persons involved in full-time farming, horticulture or forestry as well as similar rural-based part-time occupations where it can be demonstrated that it is the predominant occupation. The 'local rural area' is defined as the area generally within 8km radius (5km radius particular to Areas of Special Control) of the place of work. Or

(ii) Social requirements will normally encompass persons referred to in the revision to the Sustainable Rural Housing Guidelines 2005 and, if applicable, circulars. Pending the making of the revised Sustainable Rural Housing Guidelines by the Minister, a Functional Social Requirement in County Offaly shall be taken as including (a) or (b) below:

(a) The applicant was born within the local rural area, or is living or has lived in the local rural area for a minimum of 5 years (15 years particular to Areas of Special Control) at any stage prior to making the planning application. It includes returning emigrants seeking a permanent home in their local rural area. The 'Local Rural Area' for the purpose of this policy is defined as the area generally within an 8km radius (5km radius particular to Areas of Special Control) of where the applicant was born, living or has lived. For the purpose of this policy, the rural area is taken to include 'Villages' listed in the Settlement Hierarchy, but excludes Tullamore, Birr, Edenderry, Portarlinton, Banagher, Clara, Daingean, Ferbane and Kilcormac (i.e. the Key Town, Self-Sustaining Growth Town, Self-Sustaining Towns, Towns and Smaller Towns listed in the Settlement Hierarchy. Or

(b) Special consideration shall be given in cases of exceptional health circumstances - supported by relevant documentation from a registered medical practitioner and a disability organisation proving that a person

requires to live in a particular environment or close to family support, or requires a close family member to live in close proximity to that person.

2. The applicant does not already own or has not owned a house in the open countryside.

3. If the site is located within an Area of Special Control, there is no alternative site outside of Areas of Special Control.

4. High quality siting and design

- DMS-57 applies to domestic garages.

5.5. Natural Heritage Designations

5.5.1. The closest Natura site is Split Hills and Long Hill Esker SAC (site code 001831) located approx. 6km straight line distance to the north-east.

5.6. EIA Screening

5.6.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, 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 stage, and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The third party grounds of appeal include:

- Impact on their well water supply. They have had regular testing since they built their home in 2001. A test in September 2007 showed contamination: general coliform and E-coli. A test in December 2007 showed an increase in contamination.
- They applied for planning permission in 2000 to build on 6 acres of family-owned land. It was zoned rural/agricultural and still is. Since their permission

was granted Offaly County Council have granted planning permission for 18 houses. Construction disturbance and noise has impacted on them.

- They object to the construction hours in condition no 9.
- Only 5 of the houses permitted were to family members. All the other sites have been sold and some re-sold.
- Three houses are opposite the appellant's on a narrow road only wide enough for 1 car.
- These were on the current landowner's (applicant's father's) land to non-family members.
- Appellant didn't then object because they were told that there would be no further development in the area.
- This will be a fourth house opposite theirs on an area of 6 ac.
- Each one restricts how they can develop their property.
- This is ribbon development.
- A previous application was made, under Ref no. 07/1757 on this site.
- Question 3(d) on the supplementary form is answered 'no'; no demonstrable need to live in a rural area.
- It will impact on their privacy.
- There is no infrastructure, the road is in poor condition, narrow, and further development poses a traffic hazard.
- The area is becoming a residential area as the development contribution suggests.
- There is a duty of care for Offaly Co Co.
- Non compliance with Article 191 of the Treaty on the Functioning of the European Union (TFEU):
 - Preserving, protecting and improving the quality of the environment
 - Protecting human health,
 - Prudent and rational utilization of natural resources.

- Non compliance with Articles 38-44 of the Treaty on the Functioning of the European Union (TFEU), directly enforceable under Article 29.10 of the Constitution of Ireland: increase agricultural productivity by rational development of agriculture and optimum utilization of the factors of production (ie. land).
- Previous application 03/1314¹ was refused: impact on amenities, precedent, demands for uneconomic extension to public services and ‘it is considered that the proposed development would be prejudicial to public health as the application site is not suitable for the safe and adequate disposal of septic tank effluent as evidenced by the poor percolation qualities of the site.
- These issues are even more relevant today.
- The applicant answered the question of flooding in the negative. One occasion of flooding is known to the appellant.
- The site is linked by drains to their land and they have concerns regarding their water supply.
- Rushes growing on the site is mentioned in the site suitability report by Des Kilmartin in 2021 and must be read in conjunction with the Molly Environmental Report of 2022.
- The water supply source is given as public. There is only a group scheme supply.
- The applicant states the present address for 4 years as ‘rented’. Applicant is not known to the appellant.
- The site notice was not easily visible.
- Appellant’s dwelling is not shown on the drawings.
- The site is less than an acre 0.35ha.
- The Westmeath National Roads Office have no function in this area; in recommending a grant of permission.

¹ This refers to a site fronting the primary local road to the south, where permission for a dwelling was subsequently granted.

- There is an unhealthy appetite for selling sites to third parties in this area. This has been going on for over 20 years.
- They would be grateful for a determination of whether this is an agricultural or residential area.
- The proposed development would impact amenities and be prejudicial to public health.

6.2. Applicant Response

6.2.1. The applicant has responded to the grounds of appeal, which includes:

- The site was gifted to the applicant and her partner.
- They engaged a local architect. The design echoes the vernacular architecture of the surrounding area. It is to be an A rated house.
- The applicant lives with her son and partner in a rented home near the site.
- The PA were satisfied with the local need requirements.
- The percolation test results were issued to Molloy precast who recommended a wastewater treatment system.
- Quotes are taken from the planner's report to indicate that the application was satisfactory.

6.3. Planning Authority Response

6.3.1. The planning authority notes the third party submission and has no further comments on this case.

7.0 Assessment

7.1.1. I consider that the main issues which arise in relation to this appeal are appropriate assessment, rural housing policy, wastewater treatment, and other issues and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

- 7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.3. Rural Housing Policy

- 7.3.1. The applicant has submitted information regarding compliance with the rural housing policy, ie. that she is living in a rented house in the area and wants to live close to family members. The planning authority considered that the applicant complies with the development plan policy.
- 7.3.2. The planning authority's rural housing policy is set out under Policy SSP-27 of the County Development Plan 2021-2027. The applicant was considered to comply with Local Rural Persons Category 1. a person who was born within the local rural area or who is living or has lived in the local rural area (defined as the area generally within an 8km radius of where the applicant was born or is living) for a minimum of five years and who does not or has not ever owned a house in the open countryside.
- 7.3.3. The applicant may satisfy the rural housing policy as set out in the County Development Plan 2021-2027, however, I do not consider that national or regional policy in relation to rural housing have been met. The NPF and the RSES require that, in rural areas under urban influence or rural areas under strong urban influence, single housing in the countryside shall be provided based on the core consideration of demonstrable economic or social need to live in a rural area. The proposed site is located in one of these areas as evidenced by its location in an area of 'strong urban influence' Figure 2.1 Rural Area Types in County Offaly. In my opinion the applicant has not demonstrated economic or social need to live in this rural area. To permit the development would therefore contravene national and regional policy in relation to rural housing and would have a detrimental impact on the viability of smaller towns, villages and rural settlements.

7.4. Wastewater Treatment

- 7.4.1. The Geological Survey (GSI) data for this area includes that the bedrock is thick-bedded limestone, locally peloidal, of the Allenwood Formation. The groundwater is given as a regionally important karstified aquifer (diffuse), of high vulnerability.
- 7.4.2. The Response Matrix for On-site Treatment Systems (GSI) gives these characteristics an R2¹ rating and this has a recommended minimum depth to water table of 1.2m.
- 7.4.3. The details submitted with the application state that a trial hole was excavated to 3m on the 13th August 2021 and was examined 17th August 2021 when the water level was 1.2m below ground level. It records, for the subsurface percolation test, a pre soak 11th August and a percolation test on the 12th August, with an average T of 243.33. For the surface percolation test, it records a pre soak on 11th August and a surface percolation test on 12th August, with an average P of 213.67.
- 7.4.4. I note that mains water supply is available, but that well sources are also in use in the area.
- 7.4.5. Water table levels are frequently at their lowest in August. Met Eireann's website states that the majority of annual rainfall totals across the country, in the summer of 2022, were below their Long-Term Average (LTA); and they state that the months of July and August were 53% and 45% respectively below their monthly averages.
- 7.4.6. On the date of inspection, 12th July 2023, the water level in the drain at the northern end of the site was about 0.5m below ground level. In my opinion the water table level recorded in the test, 1.2m below ground level, was exceptional. Therefore notwithstanding the proposal to install a proprietary treatment plant, I am not satisfied that the site can satisfactorily accommodate an effluent treatment system, having regard to the high water table and the poor percolation characteristics of the soil. This is a reason to refuse permission.

7.5. Other Issues

- 7.5.1. The grounds of appeal refers to the Westmeath National Roads Office, that in recommending a grant of permission, they have no function in this area.

- 7.5.2. The report of Westmeath National Roads Office, is in relation to the N52 Tullamore to Kilbeggan Scheme, which is in their charge. In recommending a grant of permission, the report is merely stating that the potential route corridor options being considered do not preclude the granting of permission. It does not bear in any other way on the merits of the proposed development.

8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that the planning application be refused for the following reason and consideration.

9.0 Reasons and Considerations

1 Having regard to the soil conditions and high water table, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

2 The proposed development would contribute to urban generated residential sprawl, militating against the preservation of the rural environment, and would lead to inefficient and uneconomic demands for the provision of services. The proposed development would, therefore, be contrary to the proper planning and sustainable 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.

Planning Inspector

14th July 2023

Appendices

Appendix 1 Photographs

Appendix 2 Offaly County Development Plan 2021-2027, extracts.

Appendix 3 Eastern & Midlands Regional Spatial & Economic Strategy 2019-2031 (RSES), extracts.

Appendix 4 National Planning Framework, extracts.

Appendix 5 The Environmental Protection Agency Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), extracts.

Appendix 6 Groundwater Response Matrix for one off housing wastewater, GSI, extracts.