



An
Bord
Pleanála

Inspector's Report ABP315630.23

Development	Construct a new single storey dwelling, garage, on-site wastewater treatment system and all associated site works.
Location	Cloncurry, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	221281
Applicant(s)	Jamie Gaynor
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Jamie Gaynor
Observer(s)	None
Date of Site Inspection	13 th July 2023
Inspector	Terry O' Leary

1.0 Site Location and Description

- 1.1. The site is located on a narrow local road approximately 3.5km northeast of Rathangan which is a town to the west of County Kildare. The current land use is agricultural and there is direct access from the site onto the local road to the southern side. The site slopes gently in a north-south direction and is well screened with mature trees and vegetation to all sides. Immediately to the eastern side of the site is another vacant proposed residential site and that has been the subject of a planning application to Kildare County Council. Beyond that vacant site to the eastern side are 3 no. dwellings constructed and occupied and then approximately 140 meters to the eastern side is a quarry facility and concrete plant which trades as Flanagan Concrete. This is an extensive facility which is also used for the production of concrete blocks and associated products. The subject site comprises c. 0.343 Hectares or thereabouts.

2.0 Proposed Development

- 2.1. Original proposal as submitted on the 27/10/2022 seeks permission for the following;
- Proposed new single storey dwelling
 - Proposed domestic garage
 - Oakstown wastewater treatment system and percolation area
 - All associated site works

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council refused permission for the proposed development on the 19/12/2022 citing two reasons for the decision to refuse. The following summarises these reasons for refusal;

1. Policy RH2 of the Kildare County Development Plan 2017 – 2013 requires applicants to demonstrate compliance with Section 4.12.7 and Table 4.3 of the aforementioned plan. The planning authority do not believe that the applicant has

sufficiently demonstrated compliance with local need criteria and that the proposed development would materially contravene Policy RH2 of the Kildare County Development Plan 2017 – 2013 and therefore be contrary to the proper planning and sustainable development of the area.

2. Policy RH4 of the Kildare County Development Plan 2017 – 2013 seeks to restrict residential development on a landholding where there is a history of development through speculative sale or development of sites notwithstanding the applicant's compliance with local need criteria. Having regard to the planning history on the site and the adjacent sites and the associated history of speculative sales it is considered that the proposal would, on its own and in conjunction with other sites on the landholding contribute to the erosion of the rural area and would set an undesirable precedent for similar development in the rural area and therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Basis for the planning authority decision. Includes;

- Proposed development materially contravenes Policy RH2 of the Kildare County Development Plan 2017-2023 as the applicant has not adequately demonstrated residence within 5km of the site for a period of 12 years prior to the submission of the application.
- Policy RH4 seeks to restrict residential development on speculative sites notwithstanding an applicant's compliance with local need criteria. The proposed development would lead to an erosion of the rural area and would be contrary to the proper planning and sustainable development of the area

3.2.2. Other Technical Reports

Environment:	No objection subject to conditions
Roads:	No objection subject to conditions
Water Services:	No report at the time of Planning Report
Area Engineer:	No objection subject to conditions

Irish Water:

No report on file

4.0 Planning History

00/326 – Planning permission granted 01/08/2000 to Rachel Brennan for dormer bungalow, septic tank and garage.

06/2418 – Planning permission withdrawn for construction of dormer bungalow, domestic garage, secondary effluent treatment system and all ancillary works and services. Application made by Brian & Catherine Law.

07/1145 – Planning permission granted on 22/10/2007 to David Clinton for a dormer bungalow and effluent treatment plant.

12/154 – Application for extension of duration for permission 07/1145 refused 13/06/2013 due to further information request not being replied to.

17/793 - Planning permission withdrawn for single storey dwelling, domestic garage, effluent treatment system, new recessed entrance to replace existing field entrance and all ancillary works and services. Application made by Thomas & Laura Maloney.

22/776 – Permission refused to Jamie Gaynor on 15/08/2022 for bungalow, domestic garage, Oakstown waste water treatment system and percolation area and all associated works and services.

5.0 Policy and Context

5.1. Kildare County Development Plan 2017 – 2023 (Expired Plan)

Kildare County Council considered the application under the Kildare County Development Plan 2017-2023 which has now since expired. Chapter 4 of that plan referred to Housing and the following relevant policy objectives from that plan relate to one-off housing;

Policy RH 2 - Manage the development of one-off housing in conjunction with the rural housing policy zone map (Map 4.4) and accompanying Schedules of Category of Applicant and Local Need Criteria set out in Table 4.3.

Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.

Policy RH 3 - Requires applicants to demonstrate that they are seeking to build their home in the rural area in Kildare for their own full-time occupation. Applicants will be required to demonstrate that they do not own or have not been previously granted permissions for a one-off rural dwelling in Kildare and have not sold this dwelling or site to an unrelated third party, save in exceptional circumstances.

Policy RH9 - Ensure that, notwithstanding compliance with the local need criteria, applicants comply with all other normal siting and design considerations. The capacity of the area to absorb further development. In particular, the following factors will be examined; the extent of existing development in the area, the extent of ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding

Policy RH10 - Control the level of piecemeal and haphazard development of rural areas close to urban centres and settlements having regard to potential impacts on:

- i) The orderly and efficient development of newly developing areas on the edges of towns and villages;
- (ii) The future provision of infrastructure such as roads and electricity lines; and
- (iii) The potential to undermine the viability of urban public transport due to low density development.

Policy RH 11 - To preserve and protect the open character of transitional lands outside of settlements in order to prevent linear sprawl near towns, villages and settlements and to maintain a clear demarcation and distinction between urban areas and the countryside.

5.2. Kildare County Development Plan 2023 – 2029 (Current Plan)

The Kildare County Council Development Plan 2023 – 2029 is the current operative development plan and the following relevant policy objectives from that plan relate to one-off housing in Zone 1 which refers to areas under strong urban influence. In Zone 1 areas such as the subject site it will be an objective of the Council to facilitate the provision of single housing in the countryside based on the core considerations of a demonstrable economic or social need to live in a rural area and siting, environmental and design criteria for rural housing in development plans.

5.3. Natural Heritage Designations

There are no features of built or natural heritage located within the vicinity of the site.

5.4. EIA Screening

Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the grounds of appeal for Reason 1 by the planning authority;

- Future care requirements and needs of aging parents as applicant is an only child.
- No dwellings available within a reasonable distance in any of the local settlements that are within the applicant's financial capacity.
- The purchase of the site and construction of a modest home for the applicant and his partner is the only option to address their housing need.

- Compliant with Section 4 and Table 4.3 of the Kildare County Development Plan 2017 – 2013.
- Sale of site is not for monetary gain.
- Applicant has resided in the local area for more than the required 12 years and has spent his entire life in Allenwood South.
- The applicant's current residence is just over half a kilometre over the maximum 5km distance stipulated in the Kildare County Development Plan 2017 – 2013 and the appeal cites examples of cases where this 5km distance rule has been relaxed.
- The applicant has been unable to secure a site closer to his current place of residence that would comply with the EPA Code of Practice for Domestic Wastewater Treatment Systems (2021) due to the prevalence of turf in the Allen Bog.
- Anomalies that exist in the measurement computation for the 5km residence rule for compliance with Local Need criteria.
- A precedent for flexibility in the relaxation of rural housing policy by Kildare County Council in the implementation of the Kildare County Development Plan 2017 – 2013.
- Cites examples of Kildare Planning Authority relaxing housing policy in Planning Permissions 18383 & 19505 and states that the granting of these planning permissions establishes a precedence for the subject appeal to be granted.
- That the planning authority have accepted the applicant's local need compliance and that the only issue they have is the distance of the applicant's current dwelling from the subject site.

The following is a summary of the grounds of appeal for Reason 2 by the planning authority;

- That the sale of the site could not be considered speculative as the current owner is selling the site at a much lower price than what was paid for it.

- Contends that Policy RH4 of the Kildare County Development Plan 2017-2023 is not intended to inhibit genuine local need circumstances such as this particular case.

6.2. Applicant Response

N/a.

6.3. Planning Authority Response

The Planning Authority has reviewed the contents of the appeal and have no further comment to make at this stage of the appeal process.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings;

- Compliance with Rural Housing Policy
- Speculative Development
- Siting
- Groundwater Protection Matrix
- Other Issues
- Appropriate Assessment Screening

7.2. Compliance with Rural Housing Policy

The planning authority have referred to local need category 2(i) from Table 4.3 of the Kildare County Development Plan 2017-2023 which requires that persons must have spent substantial periods of their lives (12 years) living in the rural area of County Kildare as members of the rural community where they hope to build their home. Where no land is available in family ownership, a site within 5km of the original family home may be considered. The planning authority have determined that based on the information submitted with the planning application the applicant has not sufficiently demonstrated compliance with the local need criteria in Section 4.12.7 and also Table 4.3(b) of the Kildare County Development Plan 2017-2023. The applicant contends that he does comply with all aspects of Table 4.3 for compliance with local need requirements but does accept that the proposed site is outside the 5km distance allowable when no potential site is available in family ownership. The applicant in his appeal document suggest that the local authority can relax policy criteria if they see fit and proposes various grounds why the 5km rule should be relaxed and has referenced planning permissions 18383 & 19504 as examples. Having regard to the information on the file together with the criteria set out in Table 4.3 I am not satisfied that the applicant meets the criteria for compliance with local need requirements. I am also not satisfied that a relaxation of components of Policy RH2 is plausible regarding the 5km rule and therefore refusal is recommended.

7.3. Speculative Development

Policy RH4 of the Kildare County Development Plan 2017-2023 seeks to restrict residential development on a landholding where there is a history of development through the speculative sale or development of sites, notwithstanding the applicant's compliance with local need criteria. The planning authority have considered in their decision to refuse permission the historical ownerships of the site and the previous planning history attaching to same and have cited that the proposal on its own and in conjunction with other site on the landholding would contribute to the erosion of the rural area and would contravene Policy RH4 and be contrary to the proper planning and sustainable development of the area.

The applicant contends that in the previous grant of planning permission 071145 on the site that there was no reference to speculative development and furthermore the current applicant cannot be considered as speculative as the site is being sold at a loss vis-à-vis the price the current vendor paid for it. The applicant also provides supplementary information in the appeal on the making of the of the Kildare County Development Plan 2017-2023 and proposed material alterations to the drafting of Policy RH4. Notwithstanding the inclusion of the proposed and subsequently withdrawn amendment to Policy RH4 the applicant contends that the use of Policy RH4 is unjustified as the site is not being sold from a larger landholding and that a financial loss occurs as a result of the sale to the applicant. The applicant concludes on this point that the vendor has no option other than to sell the site and that there is no conceivable way that the proposed sale could be classed as a speculative one.

Policy RH4 of the Kildare County Development Plan 2017-2023 specifically seeks to restrict residential development on a landholding, where there is a history of development through the speculative sale or development of sites, notwithstanding the applicant's compliance with the local need criteria. The applicant has identified that it is in fact a predecessor in title that benefited from the speculative gain on the sale of the site but when the site is considered in conjunction with the sale of other sites in the area the proposed development would be contrary to Policy RH4 and would set an undesirable precedent for similar development. I do not believe that the now expired planning permission 071145 provides a justification for the granting of this permission or nullifies the speculative nature of the proposed development. The fact that adjacent sites have been developed, albeit from potentially different landholdings is relevant in the planning decision notwithstanding local need compliance and therefore refusal is recommended.

7.4. Siting

The planning authority have confirmed that the proposed dwelling would comprise the fourth house in a row extending to 140m and therefore does not exceed the prescribed threshold as set out in Policy RH12 of five or more houses along a road frontage of 250m and does not constitute 'ribbon development'. Nevertheless, Policy RH9(iv) requires that the capacity of the area to absorb further development be

considered in the making of the planning decision. In particular, the following factors will be examined; the extent of existing development in the area, the extent of ribbon development in the area, the degree of existing haphazard or piecemeal development in the area and the degree of development on a single original landholding. In accepting that the proposed site does not constitute ribbon development it must nevertheless be recognised the degree of development on a single original landholding. The reference to original landholding in RH9(iv) means that it is inconsequential the fact that the current vendor is not the original owner and it is very obvious that speculative sale and development of sites has occurred which has contributed to the erosion of the rural area.

7.5. Groundwater Protection Matrix

The Geological Survey of Ireland (GSI) maps attached with the Site Characterization Report identifies that the vulnerability classification for the site is 'High'. From a review of the GSI mapping it is noted that the actual vulnerability class is 'Moderate'. This does impact materially on the on-site wastewater treatment system design and the proposed system is considered suitable for a site overlying a Regionally Important Aquifer. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring that the construction, installation and commissioning of the system be supervised by a competent person with appropriate professional indemnity insurance.

7.6. Other Issues

Development Contributions - I refer to the Kildare County Council Development Contribution Scheme. The development is not exempt from the requirement to pay a development contribution. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

7.7. Appropriate Assessment Screening

Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of the receiving environment and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

8.0 Recommendation

- 8.1. Having regard to the foregoing I recommend that planning permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. It is the policy of the planning authority that development outside of designated urban centres should be strictly limited to local need. This is set out in the current Development Plan for the area, where it is the settlement policy to direct new residential development to designated development centres and to protect existing rural settlements outside these centres from urban overspill. The proposed development, which does not cater for locally derived housing needs, would conflict with the policies of the Development Plan and would be contrary to the proper planning and sustainable development of the area.
2. Taken in conjunction with existing and permitted development in the area, the proposed development would constitute an excessive density of suburban-type development in a rural area, which would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities, and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Policy RH4 of the Kildare County Development Plan 2017 – 2023 seeks to restrict residential development on a landholding where there is a history of development through the speculative sale or development of sites. Having

regard to the planning history on the site and adjacent sites and the associated history of speculative sales it is considered that the proposal would on its own and in conjunction with other sites contribute to the erosion of the rural area and would be contrary to the proper planning and sustainable development of the area.

Terry O' Leary
Planning Inspector

14th August, 2023.