



An
Bord
Pleanála

Inspector's Report

ABP-317491-23

Development	Amendment of the permission granted under Kildare County Council (KCC) Reg Ref 17326 (Condition No 2)
Location	Kilshanchoe, ("Kilsharoe"), Co Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	23394
Applicant(s)	Martin Forde & Thomas Lynch
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Martin Forde & Thomas Lynch
Observer(s)	None
Date of Site Inspection	4 th September 2023
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.699 ha is located within the 50kph zone of the rural node of Kilshanroe c3.4km southwest of Johnstownbridge. It includes 3 no complete residential units accessing onto the R402 regional road with 2 no access points serving the units. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Permission is sought for the amendment of the permission granted under Kildare County Council (KCC) Reg. Ref. 17326. The proposed amendment consists of the removal or amendment of Condition No. 2 attached to the permission which requires that the permitted dwellings be first occupied for a minimum period of seven years as a sole place of permanent residence by persons complying with the local needs criteria set out in Table 4.3 of the Kildare County Development Plan 2017-2023. The proposed amendment to the permission proposes either the removal of the condition from the permission, or the amendment of the condition to broaden the criteria to be applied to persons who may first occupy the dwellings.
- 2.2. The application was accompanied by a cover letter setting out the context and reasoning for the removal of Condition No 2.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Kildare County Council issued notification of decision to refuse permission for the following reason:

Having regard to the location of the development in a high demand area for rural housing outside of any designated zoned settlements, it is considered that the removal or amendment of the occupancy condition as set out under condition 2 of the permission granted under planning reference 17/326 would

materially contravene the rural housing objectives, HO P11 and HO 045, of the Planning Authority as set out in the Kildare County Development Plan 2023-2029, and would set an undesirable precedent for existing and future comparable applications, and would, therefore be contrary to the proper planning and sustainable

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** recommended that permission be refused permission. The notification of decision to refuse permission issued by Kildare County Council reflects this recommendation.

3.2.2. Other Technical Reports

- **Transport, Mobility and Open Spaces Department** – No objection

3.3. Prescribed Bodies

- **Irish Water** – No objection
- **Environment Section** – No objection
- **Water Services** – No objection

3.4. Third Party Observations

3.4.1. None

4.0 Planning History

4.1.1. No planning history has been made available with the appeal file. There was a previous planning application on this site that is referenced in the site notice. The following is taken from the Case Planners report:

4.1.2. **Reg. Ref. 17326** - Permission granted for the construction of 3 no. detached dormer type dwellings each with detached single storey domestic garages and individual onsite wastewater treatment systems, vehicular access from public road, 1 no. separate entrance (Plot 1), 1 no. shared double entrance (Plot 2 and 3), together with

all associated landscaping, site works and services subject to conditions. **Condition No 2** is relevant to this appeal and set out the following:

The 3 no. dwellings hereby granted planning permission shall be first occupied for a minimum period of seven years as a sole place of permanent residence by persons complying with local need criteria. Prior to the occupation of each dwelling, documentary evidence demonstrating each of the proposed occupant's compliance with the local need criteria as set out in Table 4.3 of the Kildare County Development Plan 2017-2023, shall be submitted for the written agreement of the Planning Authority. Within two months of the first occupation of each dwelling, the applicant shall submit to the Planning Authority a letter from their Architect/Engineer or other suitable qualified and indemnified person indicating the date on which the first occupation of the house occurred. The Planning Authority will consent to any sale of the property by a lending institution in exercise of its powers as mortgagee and likewise consent to any sale by any person deriving title from the lending institution. Approval to the sale of the property in any other circumstance will be considered on its merits by Kildare County Council.

Reason: *To comply with Policy RH 25 of the Kildare County Development Plan 2017-2023, to secure in the interests of orderly development that the proposed dwellings are used to meet local housing need and to ensure that development in this rural area is appropriately restricted in the interest of proper planning, development and visual amenity. Policy Context*

- 4.1.3. **Preplanning PP5586** – KCC advised that the removal of Condition 2 would lead to serious concerns from the planning authority and would set an undesirable precedent for existing and future comparable applications.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Kildare County Council 2017 - 2023**. Objectives relevant to the appeal are set out as follows:

- **Rural housing Objective HO P11** - Facilitate, subject to all appropriate environmental assessments proposals for dwellings in the countryside outside of settlements in accordance with NPF Policy NPO 19 for new Housing in the Open Countryside in conjunction with the rural housing policy zone map (Map 3.1) and accompanying Schedule of Category of Applicant and Local Need Criteria set out in Table 3.4 and in accordance with the objectives set out below. Documentary evidence of compliance with the rural housing policy must be submitted as part of the planning application.
- **Rural Housing Objective HO 045** - Restrict occupancy of the dwelling as a place of permanent residence for a period of ten years to the applicant who complies with the relevant provisions of the local need criteria.
- **Section 3.13.3 Compliance with the Rural Housing Requirements**

Rural generated housing demand will be facilitated having regard, inter alia, to the applicant's genuine local and housing need, together with the protection of key economic, environmental, natural and heritage assets, such as the road network, water quality, sensitive landscapes, habitats, and the built heritage. The Department of Housing, Local Government and Heritage have indicated that new Rural Housing Guidelines are being prepared to address rural housing issues and to take account of the Flemish Decree, the NPF and broader settlement context. In the interim, Kildare Development Plan must establish a policy to facilitate those who can demonstrate a genuine housing need and a social and/or economic need to live in rural County Kildare. Urban generated rural housing³ will not be considered.

For the purposes of demonstrating compliance, this plan has provided a definition of 'Economic' and 'Social' need in the context of rural housing policy, as set out below;

Economic: A person (or persons) who is (are) actively engaged in farming/agricultural activity on the landholding on which the proposed dwelling is to be built, meeting either of the following:

- (i) **A farmer of the land or son, daughter, niece or nephew** of the farmer who it is intended will take over the operation of the family farm.

Note; A farmer (for this purposes) is defined as a landowner with a holding of >15ha which must be in the ownership of the applicant's immediate family for a minimum of seven years preceding the date of the application for planning permission. The leasing of agricultural land to supplement lands within an applicant's ownership for farming, may be considered for the purposes of calculating the minimum land area of 15ha. The applicant shall submit details of said lease with the relevant planning application indicating that the lease is in place for a period of 10 years or more from the date of the application.

Or

- (ii) An **owner and operator of farming / horticultural / forestry / bloodstock / animal husbandry** business on an area less than 15ha, who is engaged in farming activity on a daily basis, where it is demonstrated through the submission of documentary evidence that the farming/agricultural activity forms a significant part of their livelihood, including but not limited to intensive farming.

Social

- i) A person who has resided in a rural area for a substantial period of their lives i.e. 16 years within 5km (Zone 1) or 5km (Zone 2) of the site where they intend to build.

Cluster type developments of five houses or less may be considered in rural areas on family farm holdings for applicants who are family members or adjacent to urban boundaries where no other land is available and comply with the social or economic element of the rural housing policy, where there has not been speculative sale of sites.

Table 3.4 - Schedule of Local Need Criteria in accordance with the NPF (NPO 19)

Applicant Category	Rural Housing Need Assessment Criteria	
Category A - Economic	Zone 1 Areas under Strong Urban Influence	Zone 2 Stronger Rural Areas
(i) A farmer of the land or the son/ daughter/ niece/ nephew of the farmer who	A farmer (for this purpose) is defined as a landowner with a holding of >15ha which must be in the ownership of the	

<p>it is intended will take over the operation of the family farm or</p> <p>(ii) An owner and operator of a farming/ horticultural/ forestry/ bloodstock/ animal husbandry business on an area less than 15ha</p>	<p>applicant's immediate family for a minimum of seven years preceding the date of the application for planning permission.</p> <p>The owner/operator [as referred to in Category A (ii)] must be engaged in that farming activity on a daily basis, as their main employment. Same must be demonstrated through the submission of documentary evidence⁴ to include confirmation that the farming/agricultural activity forms a significant part of the applicant's livelihood, including but not limited to intensive farming</p>	
<p>Category B - Social</p>	<p>Zone 1 Areas under Strong Urban Influence</p>	<p>Zone 2 Stronger Rural Areas</p>
<p>(i) A person who has resided in a rural area for a substantial period of their lives within an appropriate distance of the site where they intend to build on the family landholding.</p>	<p>Applicants must have grown up and spent 16 years⁵ living in the rural area of Kildare and who seek to build their home in the rural area on their family landholding. Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered</p>	<p>Applicants must have grown up and spent 16 years⁵ living in the rural area of Kildare and who seek to build their home in the rural area on their family landholding. Where no land is available in the family ownership, a site within 5km of the applicant's family home may be considered</p>

5.1.2. **Section 4.3 Assessing Housing Circumstances of the Sustainable Rural Housing Guidelines** sets out the following:

In its deliberations on a planning application for a housing proposal in a rural area, particularly those rural areas closest to cities and large towns experiencing substantial pressure for development, balanced assessments will need to be made regarding the circumstances and merits of the application. In this regard, it will be important to have access to all relevant information and where such information is lacking or imperfect, to assemble such information. At all times however, in making such assessments, while it will be necessary to support the spirit of the development plan policies, planning authorities must be sensitive in the treatment of applicants.

In particular, planning authorities should recognise that exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation – may require a person to live in a particular environment or close to family support. In such cases, and in the absence of any strong environmental, access or traffic reasons for refusal, a planning authority should consider granting permission, subject (where appropriate) to conditions regarding occupancy (see paragraph 4.6 below).

5.2. Natural Heritage Designations

5.2.1. The site is not located within a designated Natura 2000 site.

5.3. EIA Screening

5.3.1. Having regard to the 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 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. The first party appeal against the decision to refuse permission has been prepared and submitted by Declan Brassil & Company and may be summarised as follows:

- The three permitted family-sized dwellings are located within an existing rural settlement of 41 properties and several businesses, directly adjoining existing community facilities including a church and school which form the centre of the settlement. The permitted dwellings are fully completed and vacant, are connected to existing services and pedestrian infrastructure.
- The dwellings have been advertised for sale to persons qualifying under Condition 2 since commencement of construction in June 2019 and no potential buyers have been able to demonstrate full compliance with the local needs criteria as currently required under Condition 2 as drafted. The developer has taken all reasonable steps to secure occupiers who comply with the criteria. The dwellings are vacant and there is little if any prospect of selling all three dwellings to persons who fully meet the requirements of Condition 2. As such, without an appropriate amendment to Condition 2, or its removal from the implemented permission, the dwellings are likely to remain vacant indefinitely, notwithstanding the ongoing demand for housing in north Kildare.

- Accordingly, the Board is respectfully requested to omit or amend Condition 2, as requested for the reasons cited above and in particular having regard to the exceptional and compelling circumstances created by:
 - The ongoing and chronic housing crisis; the related national policy imperatives that support innovative measures to deliver housing at sustainable locations that include designated settlements and rural nodes and to avail of every possible opportunity to bring vacant dwellings into residential use
 - National and local planning policy to support and sustain rural communities by ensuring that rural areas and settlements (such as the rural node of Kilshanroe) remain a lived-in landscape, supporting enhanced service provision for rural areas and by maintaining the viability and sustainability of the rural economy, including generational renewal of farming; and,
 - The material change in county planning policy between the former and current County Development Plans regarding small scale cluster type developments and rural nodes since the granting of planning permission for the completed dwellings.
- The application also proposes the amendment of the condition as follows:

The 3 no. dwellings hereby granted planning permission shall be first occupied for a period of seven years by persons complying with the following criteria:

 - *Persons who have grown up and spent substantial periods of their lives in rural areas of Ireland (including Kildare) and are now directly employed full time in agriculture or other rural based, location dependent employment on lands within 50 km of Kilshanroe.*
 - *Persons who have grown up and spent substantial periods of their lives in rural areas of Ireland (including Kildare) who have recently purchased lands from retiring/retired agricultural landowners within 50 km of Kilshanroe for the purpose of establishing their own farm or rural based enterprise. In these instances, the purchased lands do not include existing dwellings, with the previous landowner excluding the purchase of the previously associated farm house.*

- *Members of essential service providers to the rural area who are employed within 50 km of Kilshanroe including medical professionals, veterinary staff and education staff (teachers and childcare services staff).*

Prior to the occupation of each dwelling documentary evidence of compliance with one or more of the above criteria shall be submitted for the written agreement of Kildare County Council. Within two months of the first occupation the applicant shall submit to the Planning Authority satisfactory documentary evidence indicating the date on which the first occupation of the house occurred.

The planning authority will consent to the sale of the property by a lending institution in exercise of its powers as mortgagee and likewise consent to any sale by any person deriving title from the lending institution. Approval of the sale of the property in any other circumstance will be considered on its merits by Kildare County Council.

Reason: To ensure that the dwellings are used and appropriately restricted to support the vitality of the rural area and the needs of the local community in the interests of proper planning and sustainable development.

- It is further submitted that having regard to the primacy of national policy in the plan hierarchy and the extraordinary urgency and weight attached to measures to deliver housing at sustainable locations, it is submitted that a compelling case can be made that the proposed omission or amendment of Condition 2 can be supported by rural development policy at the national and county level, that it will not undermine the rural development strategy in the recently adopted County Development Plan, and will not establish an undesirable precedent by reason of the exceptional and unique circumstances of this application. It is submitted that such circumstances exist in respect of Condition 2 for the reasons set out above and the Board is respectfully requested to amend or omit Condition 2, as proposed.

6.1.2. The appeal was accompanied by a copy of the notification of a decision to refuse permission (Reg Ref 23/394) and Geotechnical Report (2003).

6.2. Planning Authority Response

6.2.1. Planning Authority confirms its decision and asks the Board to refer to the reports on file.

6.3. **Observations**

6.3.1. None

6.4. **Further Responses**

6.4.1. None

7.0 **Assessment**

- 7.1. As documented in the foregoing, planning permission was granted under Reg Ref 17326 for 3 no. detached dormer type dwellings subject to conditions. The three permitted family-sized dwellings are located within an existing rural settlement and are fully completed and vacant. Site photos refer. Condition No 2 of the decision required that the 3 no. dwellings shall be first occupied for a minimum period of seven years as a sole place of permanent residence by persons complying with local need criteria as set out in Table 4.3 of the Kildare County Development Plan 2017-2023 (the former plan). The appeal now before the Board relates to a decision by Kildare County Council to refuse permission to amend or remove Condition 2.
- 7.1.1. The applicant is seeking either the removal of Condition No 2 or its amendment as set out in Section 6.1.1. above. The rationale for the appeal includes the urgency of the housing crisis, national policy that support the bringing of vacant dwellings into occupation, local policies seeking to ensure rural nodes such as Kilshanroe remain vibrant and lived in, the change in policy since the adoption of the new Kildare County Development Plan 2023-29, the extraordinary and exceptional circumstances of the developer and the scheme and that if the condition is not removed the houses will remain vacant.
- 7.1.2. As pointed out by the Case Planner the parent permission (Reg Ref 17/326) was granted based on the principle of development derived from policy RH 25 of the preceding Kildare County Development Plan 2017-23. Policies in the current Kildare County Development Plan 2023 – 29 seek to control development in the rural area based on policies HO P11 and HO 045 where a more onerous 10 year occupancy condition is required for new dwellings in the rural area including settlement nodes. If these three dwellings were to be considered from first principles the foregoing policies

would determine the suitability of the scheme. While I am aware of the fact that these three completed yet unoccupied dwellings are available for occupation it remains that their occupancy in the first instance is determined by the policies and objectives of the new Development Plan. I agree with the Case Planner that to remove or amend the condition would be contrary to the above objectives and that, if granted, would set an undesirable precedent for future development in the rural area of Kildare and would undermine strategic policies that seek to direct population growth into serviced higher order settlements. It is therefore inappropriate to remove the occupancy condition or to amend it to the extent suggested by the applicant. Refusal is recommended.

- 7.2. For completeness I would add that having regard to the nature and scale of the development and its distance to the nearest European site, 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

8.0 Recommendation

- 8.1. Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **REFUSED** for the following reason.

9.0 Reasons and Considerations

1. Having regard to the policies and objectives as set out in the Kildare County Development Plan 2023-2029 together with the location of the 3 no houses in a high demand area for rural housing outside of the designated zoned settlements, it is considered that the removal or amendment of the occupancy condition as set out under condition 2 of the permission granted under planning reference 17/326 would materially contravene the rural housing objectives, HO P11 and HO 045, of the current Development Plan and would set an undesirable precedent for existing and future comparable applications, and 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.

Mary Crowley

Senior Planning Inspector

4th September 2022