



An  
Bord  
Pleanála

## Inspector's Report ABP-317656-23

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<b>Development</b>	Construction of house, domestic garage, wastewater treatment system, polishing filter, vehicular entrance and all associated site works.		
<b>Location</b>	Garrolagh, Clogherhead, County Louth		
<b>Planning Authority Ref.</b>	22570		
<b>Applicant</b>	Stephen Ledwith		
<b>Type of Application</b>	Permission	<b>PA Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party v Refusal	<b>Appellant</b>	Stephan Ledwith
<b>Observer(s)</b>	None		
<b>Date of Site Inspection</b>	16 <sup>th</sup> September 2023	<b>Inspector</b>	Ian Campbell

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### 1.0 Site Location/and Description.

The appeal site, which has a stated area of 0.3836 ha, is located on the northern side of a local access road (L-6279) in the townland of Garrolagh, c. 3.6 km west of the village of Clogherhead, Co. Louth. The appeal site is located in a rural area outside of a settlement. The appeal site, which comprises part of a field, falls from

west to east, with topographical levels indicated as c. 64 metres (OD Malin) to the west of the site and c. 61 metres (OD Malin) at the eastern part of the site. Site boundaries, where present, comprise mature hedge. A drainage ditch is indicated along the northern site boundary. There are a number of detached dwellings in the vicinity of the appeal site. A house and garage are under construction on the site to the immediate west (PA. Ref. 21/367 refers). The appellant's family home is indicated to the immediate north of the appeal site.

### **1.1 Proposed development.**

The proposed development consists of;

- Construction of a single storey, 3 bedroom house;
  - stated floor area c. 178 sqm.
  - maximum ridge height c. 5.8 metres.
  - material finishes to the proposed house comprise nap render and natural stone for the external walls. The roof covering comprises slate (blue/black colour) and zinc cladding.
- Construction of a garage;
  - stated floor area c. 32 sqm.
  - maximum ridge height c. 5.8 metres.
  - material finishes to the proposed garage comprise nap plaster and natural stone for the external walls. The roof covering comprises slate (blue/black colour).
- Packaged waste water treatment system and sand polishing filter.

### **1.2 PA's Decision.**

FI Request: Prior to the decision of the Planning Authority to refuse permission for the proposed development, the Planning Authority requested Further Information. The applicant was requested to submit (1) a revised access arrangement, sharing the existing entrance serving the applicant's parent's property; to indicate sightlines of 75 metres in either direction at this entrance; to submit evidence of consent to undertake works to third party lands/and to have these requirements registered as

a burden; to demonstrate how surface water will be prevented from discharging to the public road, and (2) a groundwater risk assessment.

The applicant submitted a response to the PA on the 14<sup>th</sup> June 2023, specifically a revised access proposal using the existing entrance serving the applicant's parents' house with sightlines of 75 metres indicated from a 3 metre set-back, drainage details to address the potential for surface water run-off from the site to the public road (i.e. an eco-drain), and a groundwater risk assessment.

Decision: The Planning Authority issued a Notification of Decision to REFUSE permission on the 6<sup>th</sup> July 2023 for 1 no. reason, specifically on the basis that the proposal would entail the removal of an excessive amount of hedgerow (45 metres) to achieve sightlines, negatively impacting the visual amenity and character of the area, and that as such the proposal would be contrary to provisions of the Louth County Development Plan 2021-2027, specifically Section 13.9.4 (re. Site Selection), Section 13.9.14 (re. roadside hedgerow and ditches), Policy Objective HOU47 (re. standards for applications for housing in the open countryside as set out in Section 13.9). and Policy Objective HOU42 (re. design/location of housing in the open countryside).

Report(s) of PA: In addition to reflecting the issues raised in the Further Information request the report of the Planning Officer notes that the applicant complies with the qualifying criteria for the PA's rural housing policy; that the siting and design of the proposed dwelling and garage is acceptable; and that the proposal will not result in any adverse impacts on the amenity of adjacent property.

Infrastructure Section – initial report recommends that hedgerow and fence be set back 3 metres from road edge; that works to third party lands be registered formally as a burden; that details of the gates, walls and piers be submitted; and that details of measures to prevent surface water run-off from the site onto the road be submitted. Second report recommends that conditions are attached concerning the maintenance of visibility splays; the location/design of entrance gates; surface water disposal; obtaining utility connections, roads opening licences; and the spillage of debris.

Environment Section – report recommends groundwater risk assessment is submitted. The second report recommends that attachment of conditions in relation to compliance with the EPA CoP 2021.

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

Observations to PA;

1 no. observation received, requesting that a drain is installed within the application site to prevent run-off from affecting the adjoining property to the east and its well.

**1.3 Planning History.**

Appeal Site:

PA. Ref. 21/368 – Permission sought for a house, garage and waste water treatment system. Application WITHDRAWN,

Lands to west:

PA. Ref. 21/367 – Permission GRANTED for house, garage and wastewater treatment system.

Under this permission access was changed from the south to the west of the site following a request for Further Information.

**1.4 Planning Policy**

Code of Practice Domestic Wastewater Treatment Systems (p.e. ≤ 10) 2021 - sets out guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses.

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

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’.

*Sustainable Rural Housing, Guidelines for Planning Authorities (2005)*

The appeal site is located within an area identified as an ‘Area Under Strong Urban Influence’ (see Map 3.1 and 3.2. Louth County Development Plan 2021 - 2027). The Guidelines state that these areas exhibit characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.

Development Plan - The relevant Development Plan is the Louth County Development Plan 2021-2027. The appeal site is not subject to any specific land-use zoning but is located within Policy Area 2 (Area Under Strong Urban Influence) – see Map 3.2, Chapter 3, Louth County Development Plan 2021 – 2027.

The provisions of the Louth County Development Plan 2021 – 2027 relevant to this assessment are as follows:

Chapter 3 (Housing)

- Table 3.5 (Qualifying Criteria Rural Policy Zone 2 – Area Under Strong Urban Influence)
- Policy Objective HOU 41
- Policy Objective HOU 42
- Policy Objective HOU47

Chapter 11 (Environment, Natural Resources & the Coast)

- Policy Objective ENV38
- Policy Objective ENV39

Chapter 13 (Development Management Guidelines)

- Section 13.9.4 (Site Selection)

- Section 13.9.8 (House Design – New Build)
- Section 13.9.10 (Garage and Outbuildings)
- Section 13.9.14 (Access)
- Section 13.9.15 (Boundary Treatments)
- Table 13.13 (Minimum Visibility Standards for New Entrances)

## **1.5 Natural Heritage Designations**

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

## **1.6 The Appeal**

### **1.6.1 First Party**

This is a first-party appeal by Foresight Design and Planning on behalf of Stephen Ledwith against the decision to refuse permission. The grounds for appeal may be summarised as follows;

- The proposal was revised in response to a request for Further Information and results in the removal of 42 metres of hedgerow and not 45 metres as referred to in the refusal.
- The removal of 42 metres of hedgerow would be considered an acceptable amount of hedgerow to be removed from viewing Louth County Council and other County Council's decisions.
- The hedgerow needs to be removed in any event so as to comply with a planning condition under PA. Ref. 02/609, which related to the appellant's parents' house.

### **1.6.2 P.A. Response**

A response was received from the PA stating that they have no further comments to make.

### **1.6.3. Observations**

None received.

## **1.7 EIA Screening**

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, as well as the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, 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.

### **1.8 AA Screening**

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.

## **2.0 Assessment**

2.1. Having examined the application details and all other documentation on file, including the appeal and observations, 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:

- Rural Housing Policy (New Issue)
- Refusal Reason 1
- Waste Water (New Issue)
- Issues Arising

### **2.2. Rural Housing Policy**

2.2.1. The appeal site is identified in the Louth County Development Plan 2021 – 2027 (see Map 3.1 and 3.2) as being within an ‘Area Under Strong Urban Influence’. In accordance with the Louth County Development Plan 2021 – 2027 applicants seeking a house within such areas are required to demonstrate compliance with Table 3.5 (Qualifying Criteria Rural Policy Zone 2 – Area Under Strong Urban Influence). Having reviewed the various criteria under which an applicant may be considered I note that

sub-section 4 of Table 3.5 is pertinent noting the circumstances of the applicant/appellant as set out in the documentation submitted. The applicant/appellant has also indicated that he is applying under this section. This provides that *'a person who is seeking to build their first house in the area and has a demonstrable economic or social requirement to live in that area. Social requirements will be someone who has resided in the rural area of Louth for at least 18 years prior to any application for planning permission. Any applicant under this category must demonstrate a rural housing need and shall not own or have sold a residential property in the County prior to making an application'*.

2.2.2. The appellant has submitted documentation in support of this requirement, including a Birth Certificate, correspondence from primary and secondary school, and correspondence from financial institutions. On the basis of the information submitted I consider that the appellant has demonstrated that he has resided in the rural area of Louth for at least 18 years prior to any application for planning permission, as required under Table 3.5 (4) of the Louth County Development Plan 2021-2027. I note that the appellant states that he has not owned a house in the County.

2.2.3. The qualifying criteria set out under Table 3.5 (4) of the Louth County Development Plan 2021-2027 also provides that applicants must demonstrate a rural housing need. Whilst the documentation submitted indicates a strong local connection, I am not satisfied that a need to reside at this rural location has been demonstrated. I note the location of the appeal site in an area under strong urban influence, within easy reach of urban settlements, in particular Dundalk, Drogheda and Dublin. I also note the proliferation of single dwellings in this rural locality, which is reflective of the significant pressure this rural area is under. Based on the documentation submitted with the application and the appeal, the appellant has not clearly demonstrated the need for a dwelling at this rural location. In addition, I consider that the area in the vicinity of the appeal site, which is characterised by a proliferation of single dwellings, lacks an assimilative capacity for further development of this nature. Additional development in the area, specifically additional single dwellings, would in my opinion, erode the rural character of the area further. I note that Section 13.9.4 of the Louth County Development Plan 2021-2027 states that in identifying a site for a rural dwelling an appraisal of the site and its surroundings should be carried out, with one such



consideration being that if there is a proliferation of one-off houses in the area, the local landscape may be at the point where any further development would completely erode the rural character of the area. In my opinion the area in the vicinity of the appeal site is trending towards becoming overdeveloped. The issue of rural housing policy is a **new issue**. The Board may wish to seek the views of the parties.

### 2.3. Refusal Reason 1

- 2.3.1. The Planning Authority refused permission for the proposed development on the basis that that proposal would entail the removal of an excessive amount of hedgerow (45 metres). The appellant states that the proposal in-fact results in the removal of 42 metres, and not 45 metres as stated by the Planning Authority. The crux of the appeal is that the removal of 42 metres of hedgerow is not excessive, and that in any event the hedgerow needs to be removed so as to comply with the requirements of a planning condition under PA. Ref. 02/609, which related to the appellant's parents' house.
- 2.3.2. Following a request for Further Information the access arrangement was revised and the proposal now entails sharing the appellant's parents' vehicular entrance. The proposal entails the removal of a stretch of hedgerow and the reinstatement of hedgerow behind the visibility envelope. From reviewing the documentation associated with PA. Ref. 02/609 I note that the hedgerow along the roadside boundary of the site was indicated as to be removed in order to facilitate the provision of sightlines. The area of hedgerow corresponds generally with that which is to be removed under the current proposal. Having regard to the previous requirement to remove hedgerow at this location to serve a permitted dwelling (see PA. Ref. 02/609), and to the proposal to set-back the hedgerow behind the area required to provide visibility, I am satisfied that the proposal is acceptable and would not result in any significant adverse impacts on the amenity of the area. In my opinion the proposed development would not warrant a refusal of permission based on this issue.

## 2.4. Waste Water

- 2.4.1. 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 'Extreme'. A ground protection response to R21 is noted<sup>1</sup>. Accordingly, I note the suitability of the site for a treatment system (subject to normal good practice). The applicant's Site Characterisation Report identifies that there is no Groundwater Protection Scheme in the area.
- 2.4.2. The trail hole depth referenced in the Site Characterisation Report was 1.95 metres. The water table was not encountered in the trail hole. Bedrock was encountered in the trail hole at a depth of 0.6 metres below ground level (bgl)<sup>2</sup>. The soil conditions found in the trail hole are described as comprising silt, clay, humus. Percolation test holes were dug and pre-soaked. A T value/sub-surface value of 41.33 was recorded. I was unable to inspect the trail hole at the time of my site inspection.
- 2.4.3. 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 following secondary treatment systems and infiltration areas following tertiary systems. 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 concludes that the site should be suitable for treatment of waste water.
- 2.4.4. 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

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<sup>1</sup> Where domestic water supplies are located Nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Chapter 6 are met and the likelihood of microbial pollution is minimised.

<sup>2</sup> The Hydrocare report submitted in response to the request for Further Information states (at page 3) that bedrock was recorded at 1.2 metres (bgl) whereas the Site Characterisation Report submitted with the initial planning application states that bedrock was encountered in the trail hole at 0.6 metres (bgl).

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 150 metre distance of the appeal site, the proposed development would in my opinion be prejudicial to public health.

- 2.4.5. In summation, notwithstanding that the proposal complies with the EPA CoP 2021, and that tertiary treatment is proposed, 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.

## 2.5. **Issues Arising**

### 2.5.1. Impact on Residential & Visual Amenity

Having regard to the scale, design and relationship of the proposed dwelling and relative to adjoining property, I am satisfied that the proposed development would not result in any significant negative impacts on the residential amenity of property in the vicinity in terms of overlooking, overshadowing or overbearance. Noting the scale and design of the proposed dwelling, and the character of the area, I do not consider that the proposed dwelling would result in any significant negative impacts on the visual amenity or character of the area.

### 2.5.2. Drain

I note that an observation was made to the Planning Authority requesting that a drain be provided within the appeal site to address the potential for surface water run-off from the appeal site to enter the adjacent property to the east. I note that the proposal includes soakaways and an eco-drain at the proposed access. I am satisfied that soakaways will adequately attenuate run-off from the areas of hardstanding, and as such I am satisfied that run-off will not enter the property to the east.

### **3.0 Recommendation**

3.1. Having regard to the above it is recommended that permission is refused based on the following reasons and considerations.

### **4.0 Reasons & Considerations**

1. The site of the proposed development is located within an 'Area Under Strong Urban Influence' in the Louth County Development Plan 2021 – 2027 (see Map 3.1 and Map 3.2). Having regard to the documentation submitted, the Board is not satisfied that the applicant has a demonstrable need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the rural housing need as set out in the provisions of the current Louth 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.

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.

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Ian Campbell  
Planning Inspector

17<sup>th</sup> September 2023