



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317711-23

<b>Development</b>	Construction of a storey and half type dwelling and domestic garage.
<b>Location</b>	Fahy , Rhode, Co. Offaly.
<b>Planning Authority</b>	Offaly County Council
<b>Planning Authority Reg. Ref.</b>	23137
<b>Applicant(s)</b>	Kyle Kavanagh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Olive Curran
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	25 <sup>th</sup> of July 2024
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The subject site is located in the townland of Fahy which is 2.5km east of Rhode village. The site, 0.49Ha, has direct access onto the Regional Road - R-441.
- 1.2. The subject site has mature planting along its boundaries and its interior is covered with dense planting.
- 1.3. There are surface drains along the northern, western and southern site boundaries.
- 1.4. On the western site boundary, there is a laneway leading to a country house in ruins.
- 1.5. There is some ribbon development to the east of the site, and more ribbon development west on the approach to Fahy village.
- 1.6. The site rises to the rear, it is low lying to the front of the site. The drains along the perimeter are deep and overgrown.

## 2.0 Proposed Development

- 2.1 The proposed development is for a storey and a half storey dwelling with a sewage treatment plant. Also proposed is a new detached garage, landscaping and a new entrance off the main road.

## 3.0 Planning Authority Decision

Offlay Co. Co. granted planning permission for the dwellinghouse at Fahy, Rhode by Manager's Order on 5<sup>th</sup> of July 2023, subject to 13No. standard conditions.

### 3.1. *Planning Authority Reports*

#### 3.1.1. 1<sup>st</sup> Planning Report

- According to the development plan the site is located in An Area Under Strong Urban Influence and Stronger Rural Areas. The applicant will be assessed against Policy SSP-27. The applicant has submitted a letter from the local National School indicating the applicant went to school there and he lived within the vicinity of the school. Furthermore, a letter from the local secondary

school supported the applicants local need claims. The site is not located in an Area of Special Control . The applicant is required to map their home place.

- Area Engineer had no objections to the proposed development.
- No objections from the Environmental Engineer.
- The design and layout of the proposed dwelling is considered to be acceptable.
- Further Information is recommended.

### **3.1.2 2<sup>nd</sup> Planning Report**

- The subject site is 235m from applicant's original family home.
- Land registry folios are submitted in response to a third-party objection. There was an error on the original site layout drawings submitted. There are to be new native broad-leaved trees planting to the north of the site.
- Planning permission is recommended subject to the standard conditions and development contributions.

### **3.1.3. *Other Technical Reports***

- Water Services : No objections
- Engineer's Report : No objections

### **3.2. Prescribed Bodies**

No submissions

### **3.3. Third Party Observations**

There was one third party objection with concerns regarding the area of the site, ownership and boundary issues and the drainage of the site.

## **4.0 Planning History**

### **4.1 Planning Reference 99/133:**

Planning permission was refused to Frank Walsh for a two-storey dwelling on the subject site for two reasons:

- i) Public Health, the information was insufficient to determine the suitability for sewage treatment.
- ii) The site adjoins a National Secondary Road at a point where maximum speed limit applies. Traffic hazard.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1 Offaly County Development Plan 2021-27

##### *Rural Housing Policy*

##### *Figure 2.6 2.6 Open Countryside Housing Policy Map*

##### **(D) Open Countryside**

##### **Housing in Rural Areas under Strong Urban Influence and Stronger Rural Areas, and Areas of Special Control**

##### **Rural Areas under Strong Urban Influence and Stronger Rural Areas include:**

- Electoral Divisions where at least 15% of their workforce commute to a town of population over 10,000 or a town with more than 2,500 jobs.

##### **Areas of Special Control include:**

- National/International Conservation Designations (Special Protection Areas, Special Areas of Conservation, Natural Heritage Areas)
- Areas of High Amenity
- Source Protection Zones
- Restricted Regional Roads

*Refer to Figure 2.6*

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**.

#### 5.1.2 **Development Management Standards**

**DMS-44** For individual on-site wastewater treatment systems, the standards and guidance on design, operation and maintenance of on-site wastewater treatment systems as set out in the Environmental Protection Agency (EPA) 'Code of Practice on Wastewater Treatment and Disposal Systems serving Single Houses' (October, 2009) or any later version that may be issued by the EPA during the lifetime of this Plan shall be complied with.

#### 5.1.3 Chapter 8 addresses **Sustainable Transport Strategy**.

The Regional Road R441 is not listed in Table 8.4 Restricted Regional Routes in Co. Offlay.

**SMAP-23** It is Council policy to strictly control development, outside of identified settlements, which could generate significant additional traffic, thereby potentially compromising the capacity and efficiency of the national roads/restricted regional roads and associated interchanges and possibly lead to the premature and unacceptable reduction in the level of service available to road users. This policy will also apply to national roads which may be downgraded during the lifetime of this Plan but which will still comprise high quality regionally important links.

## 5.2 **National Policy**

#### 5.1.5 **National Planning Framework**

**National Policy Objective 19** makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in

statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

#### **5.2.2 *Sustainable Rural Housing – Guidelines for Planning Authorities 2005***

The Circular letter PL2/2017, issued by the Department of Housing, Planning, Community and Local Government in May 2017, advised local authorities that the Sustainable Rural Housing Guidelines are currently being revised to ensure the rural housing policies and objectives contained in local authority development plans comply with Article 43 of the EU Treaty on the freedom of movement of citizens.

### **5.2. Natural Heritage Designations**

There are no European sites within the vicinity of the site.

The Grand Canal pNHA (site code 002104) is located approximately 3km south of the site.

### **5.3. EIA Screening**

Having regard to the nature and scale of the proposed development, comprising of a domestic dwelling 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 A quick summary of the grounds of appeal is as follows:**

The third-party appellant adjoins the subject site on three sides. The site on its northern boundary adjoins a higher limestone plateau of The Fahy Escarpment, and to prevent landslides on such a height differential joining bogland below, this high ground in centuries past was planted all around the Ring of Escarpment of Fahy and beyond as necessary ground holding mechanism preventing further landslides.

The third party's plantation ground has been interfered with and tampered with due to an adverse possession on part of it now leaving it open to ground movements/ slippage occurring at anytime. Once a landslide always a landslide on this ancient fault-line.

The architect/ Engineer did not produce OS blue line with his site location map re the 3 lady owners property to ascertain the ground might have been claimed against the third party. This matter is been taken up with the State Solicitor, as this ground may be offered for sale. There have been attempts to access her private lane. The lane is a private access to their farm and entrance gate locked for generations. Legal matters are now a priority and may be resolved before the end of the appeal.

The applicant had previously withdrew a planning application, Ref. 20354. Only one of the 3 lady owners of the 1.26ha site has signed the owners permission to granting the permission under the local needs criteria. The applicant has not demonstrated exceptional circumstances required to live in the area, particularly with regard to the groundwater situation.

6.1.2 The design of the dwelling is unsuitable and would be out of character with the established house types in the surrounding rural area and the development does not comply with the Council's rural house design guidelines.

The site is enveloped amid forestry. The previous refusal on the site cited high water table and contamination to ground water could occur. The Site Suitability included with the application, indicates the trial pits were dug to the front of the site close to the road and do not represent the intended location for the percolation area.

6.1.3 There are dry ditches on both sides of their avenue. These are required to keep their avenue dry. They were built to drain bogs and serve as boundaries. The farm has been in their family for generations and in the 1960s the Irish Land Commission took upwards of 100 acres who was paid in land bonds with the proviso of no other claims by locals against it, which are kept in Portlaoise.

6.1.4 Farms should be protected against houses along their boundaries, as per UN Agenda 21 252030 Agenda for Sustainable Development, and more recently the Paris Accord to meet with climate change obligations.



6.1.5 Groundwater vulnerability is at risk, where a locally groundwater aquifer is at moderate risk. There is a source-pathway-receptor link to the yellow river and Boyne river catchment which was not referred to in the AA screening. The Council Engineers were asked to carry out an acidity test as part of the original objections. An 'abandonment of use' might be explored in consultation with the engineers and the OPW in Trim to ascertain if the drains could be abandoned altogether for cleaning thus causing a build up of water in their avenue area and if re-wetting to occur on this low-lying land shortly to revert to nature.

6.1.6 There are currently 11 No. less sensitive sites for sale in the Rhode where there is no danger of collapse of their proposed dwelling or the potential of collapse of their avenue. There will be serious disturbance to the ecosystem. The drains cannot be deepened any further. The previous owner carried out a failed reclamation attempt erecting a dam along their northern boundary by filling in the 10ft dry-ditch, effectively blocking the flow of water with a platformed dam. There was an attempted entry onto their private avenue as the site was advertised as giving some old right of way obtaining and reputed €50,000 for this combination, thus being detrimental to our safety and privacy with no right of way yellow marker on the site he is selling now.

6.1.7 Open Countryside, Rural Areas under Strong Urban Influence and Stronger Rural Areas must comply with the local needs rural policy as per SSP-27 of the plan, it makes more sense to occupy an existing house in the area as opposed to building a new stand alone dwelling and an additional septic tank in an unserviced area or refurbish an old vacant property.

6.1.8 Raised bogs are an accumulation of deep acid peat that originated in shallow lake basin or topographical depressions. Degraded raised bogs are still capable of regeneration.

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## **6.2 Applicant Response**

6.2.1 Point 1 – There is no record or point of reasoning why the Fahy Escarpment would have an impact on Kyle Kavanagh's grant of permission. It is not highlighted in the development plan for having potential for landslides.

Point 2 – A planning map submitted with a planning application is not for acceptance in the land registry. Planning permission maps are superseded by land registry maps and at time of sale all boundaries will be ratified between client/ engineer and prior to the new owner acquiring a new plot of land. The grounds is one that can be settled between all parties and not an issue for An Bord Pleanala.

Point 3 -the applicant did withdraw a different planning application for a dwelling house in Co. Offlay when he was made aware he was unable to use the entrance. This was in 2020 in Ballystrig. It is not known how this issue relevant to the current application.

Point 4: New landowner's letters have been submitted which were acquired by the auctioneer and the solicitor. It was an error to only submit the consent of one landowner. However all three landowners were in agreement at the time of making the application, it was an error not to submit this in the first place.

Kyle Kavanagh has been a native of Rhode village and born here, documents have been submitted to support this. His parent's house is highlighted on the submitted map as they reside 235m from the subject site. Kyle does not own a dwelling house. His house is set back 75m from the edge of the road and landscaping proposals are included.

The house does not add to ribbon development as there is 288metres between the site and existing houses.

Point 5: The house design is in keeping with the existing dwellings in the immediate vicinity most of which were granted under previous development plans. The house is of the correct scale and form. It is a modern design that fits into the landscape. It is a simple plan form. The layout was designed and orientated to take into account the site's topography. The site is more than 1.2 acres and is capable of taking the modern dwelling.

Point 6: A site suitability report was completed by a suitability qualified professional. The water table was noted at 0.7m. It was recommended to remove the peat and import soil which will increase the separation to 0.9m. The design of the site suitability assessment fully complies with the EPA Guidelines 2021.

Point 7: The trees are not within the subject site. The appellant's concerns regarding the common boundary can be ratified by all parties' solicitors at the time of land registry. The local authority was satisfied with surface water drainage proposals.

### **6.3 Planning Authority Response**

6.3.1 The planning authority requested the Board to support its decision to grant planning permission for the proposed development.

## **7.0 Assessment**

7.1 I have considered the submissions on the appeal file, the submission documents relating to the planning application, and inspected the site. The appeal will be assessed under the following headings:

- Compliance with Rural Housing Policy
- Design
- Roads/ Traffic
- Site Suitability

### **7.2 Compliance with Rural Housing Policy**

According to the Offaly County Development Plan 2021-2027 Figure 2.6, the site is located in a 'Rural Area Under Strong Urban Influence and Stronger Rural Areas'. Applicants applying for planning permission within this area must comply with certain criteria in order to be considered favourably for a house in the open countryside, provided that other environmental, design and traffic related criteria are adhered to. The relevant criteria is set out under Policy SSP-27-as follows:

1. The applicant has a functional economic or social requirement to reside in this particular rural area in accordance with (i) or (ii) outlined in the Plan.
2. The applicant does not already own or has owned a dwelling in the open countryside
3. If the site is located within an area of Special Development Control, there is no alternative site outside of the Area of Special Development Control.
4. High quality siting and design.

7.2.2 According to the planning authority assessment and decision it was considered the applicant did meet with the criteria of SP-27. There were letters submitted from the local schools confirming the applicant attended schools locally at national and secondary level. He does own the site or land in the area. His parents live in a one-off house approximately 250metres east of the site along the Regional Road. He does not own a dwelling. The site is not located within an area of special development control. In terms of the local development plan policy he meets with SSP-27 criteria.

7.2.3 However, based on the information provided the applicant has failed to present a social or economic need to have a build a dwelling in accordance with the National Planning Framework, which the development plan should comply with. Simply been from an area does not qualify as a social and economic need to live in a rural area under strong urban pressure. I refer to **National Policy Objective 19** which makes a distinction between areas under urban influence and elsewhere. This Objective seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements. The applicant has not provided any supporting information in this regard.

### 7.3 **Design/ Impact on the Rural Environment**

7.3.1 The proposed dwelling is a four-bedroom split level dwelling located 75m deep into the site. It is a simple plan and contemporary design. A detached garage is proposed in the north-eastern extremity of the site. The proposed access is located centrally along the roadside boundary. The site is long and narrow, and the proposed dwelling layout provides a proportionate footprint on the rising topography to the rear of the site.

7.3.2 The site is currently overgrown with dense vegetation and mature planting along all the site boundaries. There are surface water drains along three site boundaries. The site was difficult to penetrate during my inspection due to the dense natural planting within the site. In my opinion, to clear the site to accommodate a one-off dwelling would militate against the rural environment. The Regional Road east of Fahy village has a high concentration of linear developments. It is important to

preserve the rural setting from haphazard piecemeal developments such as the current proposal. In my opinion, the Regional Road at this location has experienced considerable development pressure for one-off housing and this has led to an overconcentration of dwellings, on individual sewage treatment systems, along the Regional Road outside of Fahy village. The proposed development if granted, would exacerbate this issue.

#### **7.4 Roads/ Traffic**

The development proposes the provision of a direct access onto a strategic regional road, R441, where the maximum speed limit of 100kmph applies. I note the Engineering Report on file had no objections to the proposed development. I also note a previous refusal on the site in 1999 on traffic grounds (Planning Ref. 99/133). In my opinion, the proposed development would harm the carrying capacity and safety of this strategic regional road. There are ample sightlines at the proposed entrance. However, the concerning planning issue is the existing multiplicity of entrances onto the Regional Road in the general vicinity of the site. I experienced heavy and fast traffic movements during my site inspection fronting the site. There are no road verges and additional accesses onto the Regional Road at this location would undermine the carrying capacity and safety of the road. In my opinion, there would be more accessible and safer sites to consider in the general Fahy/ Rhode area as opposed to a site requiring direct access to a straight stretch of the R441, where there is a multiplicity of entrances along a straight stretch of road.

#### **7.5 Site Suitability**

- 7.5.1 The Site Suitability report submitted with the planning application indicated the soil type to be cut peat, with basin peats as the subsoil, with a high water table (0.7m). The site boundaries are marked by hedgerows and open watercourses. The ground water has been indicated as a potential target at risk. The Trial hole (T-value of 42) and percolation test (P- value of 33 results indicated the site was suitable for sewage treatment providing a wastewater treatment system was installed, with a raised mound polishing filter, removing the peat surface to 0.7 and to insert a raised soil polishing filter with a T value greater than 30.

7.5.2 Notwithstanding the proposal to provide a wastewater treatment system and polishing filter, I am concerned about the existing soil conditions and high water table on the subject site and the underlying peat basin. The site is bounded on three sides by surface water drains. It is a narrow site (44metres in width). The surface water drains on site were overgrown and in certain spots were swamp like. I would be concerned about the percolative properties and drainage capabilities of the site, given it's high water table. From my general observations on my site inspection, the site would appear to have very poor drainage capabilities, and the proposed development taken in conjunction with the over concentration of individual sewage treatment systems in the general locality, could be prejudicial to public health.

## 7.6 Other Matters

- The concerns raised by the third party appellant concerning the consent of the relevant landowners to make the planning application have been addressed by the applicant's response to appeal.
- Any outstanding issues regarding boundaries and rights-of-way are a matter for the land registry and beyond the remit of this appeal.

## 8.0 AA Screening

8.1. In accordance with Section 177U (4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that that the development sought under this application would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (Stage 2) under Section 177V of the Planning and Development Act 2000 is not required. This conclusion is based on:

- There are no European sites within the Zone of Influence
- The lateral separation distance between the subject site and the nearest European site (10km).

- The absence of meaningful pathway to any European site from the subject site.

## 9.0 Recommendation

Based on my assessment above I recommend that planning permission be **REFUSED** for the proposed development.

## 10.0 Reasons and Considerations

1. Taken in conjunction with existing 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.
2. The development proposes the provision of a direct access onto the strategic Regional Road, R446. It is considered that the proposed development would endanger public safety by reason of a traffic hazard because of the additional traffic turning movements generated onto the Regional Road along a significant straight stretch of the road where the maximum speed limit applies. The proposed development would harm that carrying capacity and safety of this strategic Regional Road and is contrary to policies CPO 9.16 of the Westmeath County Development Plan 2021-2027 and the proper planning and sustainable development of the area.

3. 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] [or] disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

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**Caryn Coogan**  
**Planning Inspector**

**22<sup>nd</sup> of August 2022**



## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>				
<b>Proposed Development Summary</b>				
<b>Development Address</b>				
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)			<b>Yes</b>	
			<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>Yes</b>		Class.....	EIA Mandatory EIAR required	
<b>No</b>			Proceed to Q.3	
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>		Class/Threshold.....		Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_