



An
Bord
Pleanála

Inspector's Report ABP-305133-19

Development	House and waste water treatment system
Location	Strawhall, Fermoy, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	18/7328
Applicant(s)	Deirdre Devaney
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Transport Infrastructure Ireland
Date of Site Inspection	12 th December, 2019
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The site of the proposed development is located in a rural area to the east of the town of Fermoy in North Cork. The site comprises a plot of land to the rear of the applicant's parents' house and includes a short section of frontage onto the N72 National Secondary Road which is to the north. The site forms part of a larger field that slopes northwards. It is elevated over the ground level on which the applicant's parents' house is sited. Development in the immediate vicinity includes one-off housing and agricultural structures.

2.0 Proposed Development

- 2.1. The proposed development originally comprised a split level dwelling that was revised to a four bedroom, single-storey dwelling located to the rear of the house to the north. The house would be served by a mains water supply and a private on-site waste water treatment plant. The treatment plant would be sited to the front of the proposed house. The development would include the closing up of the existing vehicular entrance serving the applicant's parents' house and the provision of a combined entrance to serve this existing house and the proposed development. The development would be on a site with a stated area of 0.235 hectares and the house would have a gross floor area of 276.7 square metres.
- 2.2. Details submitted with the planning application included a completed site characterisation form relating to the treatment system, a letter from the applicant's parents stating they had bequeathed the site to her, and some further details on the applicant's need applicable to the proposed development.

3.0 Planning Authority Decision

3.1. Decision

On 17th July 2019, Cork County Council decided to grant permission for the proposed development subject to 18 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the context of the proposed development and referred to the site being within the “Town Greenbelt” of Fermoy. Reference was made to development plan provisions, planning history and to reports received. The principle of the development was accepted. The back land setting of the proposed house was noted and was considered acceptable given the applicant is the daughter of the landowner and that she would be residing to the rear of the family home. Given the elevated nature of the site, a revised house design was considered necessary. Noting Transport Infrastructure Ireland’s submission, the Area Engineer’s comments were referenced. A request for further information was recommended relating to a revised house design and the Area Engineer’s request.

3.2.2. Other Technical Reports

The Area Engineer noted the site is located along a busy section of the N72. Reference was made to a proposal to reduce the current speed limit in this area. It was considered the proposed new shared entrance would improve the existing access substantially. Further information was requested on the proposed effluent treatment system and ground conditions and on a requirement to close a proposed pedestrian entrance.

3.3. Prescribed Bodies

Transport Infrastructure Ireland submitted that the proposed development would be at variance with official policy in relation to the control of development on national roads and that it would endanger public safety by reason of traffic hazard.

Irish Water had no objection to the proposal.

Following the receipt of further information, which included the revised house design and clarification on the waste water treatment system, the reports to the planning authority were as follows:

TII stated its position remained the same.

The Area Engineer considered the further information to be acceptable, had no objection to the proposal and set out a schedule of conditions.

The Planner considered the further information response to be acceptable and recommended that permission be granted subject to conditions.

4.0 **Planning History**

I note that a planning application for a house and waste water treatment system on the site was withdrawn (P.A. 17/6859).

The Planner also refers to outline planning permission having been granted for a house on this site under P.A. Ref. 00/3328 to another family member and that this family member subsequently got planning permission for a dwelling to the north of the N72.

5.0 **Policy Context**

5.1. **Cork County Development Plan 2014**

The proposed site is located within a designated 'Town Greenbelt'.

Rural Housing

Rural housing objectives include:

RCI 2-1: Urban Generated Housing

Discourage urban generated housing in rural areas, which should normally take place in the larger urban centres or the towns, villages and other settlements identified in the Settlement Network.

RCI 2-2: Rural Generated Housing

Sustain and renew established rural communities, by facilitating those with a rural generated housing need to live within their rural community.

RCI 4-2: Rural Area under Strong Urban Influence and Town Greenbelts (GB 1-1)

The rural areas of the Greater Cork Area (outside Metropolitan Cork) and the Town Greenbelt areas are under significant urban pressure for rural housing. Therefore, applicants must satisfy the Planning Authority that their proposal constitutes a genuine rural generated housing need based on their social and / or economic links to a particular local rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

- a)** Farmers, their sons and daughters who wish to build a first home for their permanent occupation on the family farm.
- b)** Persons taking over the ownership and running of a farm on a fulltime basis, who wish to build a first home on the farm for their permanent occupation, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.
- c)** Other persons working fulltime in farming, forestry, inland waterway or marine related occupations, for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- d)** Persons who have spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation.
- e)** Returning emigrants who spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation, who now wish to return to reside near other immediate family members (mother, father, brother, sister, son, daughter or guardian), to care for elderly immediate family members, to work locally, or to retire.

Transport

Objectives include:

TM 3-1: National Road Network ...

c) Restrict individual access onto national roads, in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network.

d) Avoid the creation of additional access points from new development or the generation of increased traffic from existing accesses onto national roads to which speed limits greater than 50kph apply.

5.2. **Appropriate Assessment**

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

5.3. **EIA Screening**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of the appeal may be synthesised as follows:

- The grant of permission has the potential to compromise the safety and efficiency of the national road network at a location where the 80kph speed limit applies and is at variance with the provisions of official policy.
- The proposal will bring about an intensification of access onto and off the N72 and is, therefore, at variance with the provisions of the “Spatial Planning and National Roads Guidelines for Planning Authorities”.

- The proposal is at variance with official policy to preserve the level of service, safety and carrying capacity of national roads and to protect public investment in such roads.
- The proposal is inconsistent with the provisions of Cork County Development Plan, particularly Objective TM 3-1. This was not addressed by the planning authority.
- While the speed limit is to be altered from 100kph to 80kph as a result of road safety concerns, there is no proposal to reduce this to less than 60kph.
- The family landholding has previously had the benefit of permission for a dwelling to the north of the site with access onto the N72.
- Although the applicant has outlined a case in support of her application, no exceptional reason has been put forward in this instance which would justify a departure from standard policy and road safety considerations.
- The proposal, by itself and by the precedent a grant of permission would set, would endanger public safety by reason of traffic hazard due to the additional traffic, including turning movements that would be generated onto the N72 at a point where the 80kph speed limit applies, and would interfere with the free-flow of traffic on the road.
- Restricting direct access and intensification of use of direct access to the high speed national road network can contribute to a reduction in road collisions and fatalities.
- The proposal fails to demonstrate the ability of the new access to achieve required sightlines for an 80kph speed limit.
- TII seeks to ensure that official national objectives are not undermined and that the anticipated benefits of the investment made in the national road network are not jeopardised.

6.2. Applicant Response

The applicant's response to the appeal may be summarised as follows:

- The applicant is the only member of her family whose employment position affords flexibility to care for her elderly parents. The applicant's parents increasingly require more continuous support due to their age and health conditions and this will allow them to continue to live independently, without putting unnecessary pressure on public spending.
- The applicant does not have a choice but to continue to support her parents meaning that the net impact on traffic is not going to change as part of the development.
- The existing entrance serving the existing house is substandard. The improvements with the proposed shared access are compelling.

6.3. **Planning Authority Response**

I have no record of any response to the appeal from the planning authority.

7.0 **Assessment**

7.1. Introduction

7.1.1 I consider that the principal planning issues relating to the appeal are the development in the context of national and local transportation policy, the traffic impact, the need for the proposed development, the issue of backland development, and effluent disposal.

7.2. The Proposed Development in the Context of National and Local Transportation Policy

7.2.1 Guidance for planning authorities relating to development seeking vehicular access directly onto national roads outside of 50/60 kph speed limit zones for cities, towns and villages is set out in *Spatial Planning and National Roads: Guidelines for Planning Authorities*, published by the Department of the Environment, Community and Local Government in January 2012. The Guidelines note that proper planning is central to ensuring road safety.

- 7.2.2 It is apparent that, in meeting with the Guideline requirements as they apply to development plans, the inclusion of Transport Objective TM 3-1 of the Cork County Development Plan demonstrates the planning authority's intent in relation to controlling development seeking access onto the national road network outside of 50/60 kph zones of settlements. This objective seeks to restrict individual access onto national roads, in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety, and to prevent the premature obsolescence of the network. Also, it seeks to avoid the creation of additional access points from new development or the generation of increased traffic from existing accesses onto national roads to which speed limits greater than 50kph apply. It is evident that the planning authority's decision is contrary to its own development plan objective and, as a consequence, is contrary to the Guidelines. Furthermore, it is notable that the planning authority appears not to have addressed either its own development plan objective or the national guidelines in the consideration of this planning application, which seeks permission for direct access onto a national secondary road where an 80 kph speed limit applies.
- 7.2.3 Transport Infrastructure Ireland has ably demonstrated in its appeal how this proposed development is wholly contrary to national policy which seeks to avoid creation of additional accesses onto national routes outside of speed limit control zones for settlements, the intensification of accesses, and which seeks to uphold safety on national routes and to protect the carrying capacity of these routes.
- 7.2.4 Overall, it may reasonably be determined that the proposed closing up of an existing vehicular access and the provision of a new shared access to serve two residential properties will intensify vehicular turning movement at this location where the 80 kph speed limit applies. It is irrelevant how such properties may or may not be occupied in the immediate term and how much vehicular traffic may or may not be generated in the immediate term. The proposal will intensify vehicular movements onto a national road outside the speed limit control of the nearby settlement of Fermoy and is contrary to national policy and to Cork County Development Plan Objective TM 3-1.

7.3. Traffic Impact

7.3.1 The proposed development seeks to provide a shared access for two houses directly accessing the N72 National Secondary Road at a location where an 80 kph speed limit applies. This is very much a poorly aligned, narrow stretch of the national road, evidenced by a continuous white centreline on the road and very narrow roadside margins. The increased vehicular traffic turning movements onto and off the national road at this location would cause a significant traffic hazard where a speed limit of 80 kph applies, at a location where traffic speeds are high and where the road alignment is poor. Once again, I note, and accept, the submission of Transport Infrastructure Ireland that this proposed development would have an adverse traffic safety impact.

7.4. Housing Need

7.4.1 It is apparent from the details submitted with the planning application that the applicant has no 'rural housing need' to reside at this location. The applicant has submitted that she works for Aer Rianta. The applicant does not reside in this area and has not done so for many years. She resides in Dublin and has resided there since 2004. The applicant does not work in, and does not have any attachment to, farming or agricultural-related activities at this location. The applicant seeks to develop a house behind her parents' house in order for her husband to provide full time care for her parents. This is not a 'rural generated housing need'.

7.4.2 It is apparent that, based on the applicant's submission on need, this proposal would run contrary to the *Sustainable Rural Housing Guidelines for Planning Authorities*, as the appellant has no genuine 'rural' housing need within an area of the county that is under significant development pressure for one-off housing, i.e. an Area under Strong Urban Influence, close to the town of Fermoy. The applicant's needs could clearly be met within this nearby town.

7.4.3 Further to the above guidance, I note national planning policy as set out under the *National Planning Framework* published in February, 2018. This includes the following:

- With reference to the development of rural areas, National Policy Objective 15 seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- National Policy Objective 19 seeks to 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, it is policy to 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.

7.4.4 From the details on the appeal file, it is very clear that the appellant does not have any justification that would merit permitting the development of a house on this site. The National Planning Framework objective of managing the growth of areas that are under strong urban influence to avoid over-development would essentially be contravened. The proposal would, thus, be in conflict with the National Planning Framework.

7.5 Backland Development

7.5.1 The proposal seeks to develop a house immediately behind and upslope of an existing house. The nature of this development is completely disorderly and haphazard. Having regard to the topographical characteristics of this site, the layout of the development and the scale of the development, the proposal would culminate in the loss of privacy of the established property to the north and would be contrary to any notion of proper planning and sustainable development in the delivery of rural housing due to its location and adverse impact on neighbouring properties.

7.5.2 It appears that the planning authority has lent some weight on the occupant of the proposed house being the daughter of the occupants of the established house to the north. This is an irrelevance in the context of seeking to provide sustainable

development into the future. The proposed development, due to its siting and consequential adverse impacts for the established property, is unsustainable, constitutes disorderly development, and a grant of permission for it would set a most undesirable precedent for further development of this nature in the area.

7.6 Effluent Disposal

- 7.6.1 The proposed development seeks to develop a waste water treatment system immediately upslope and behind an existing house. The application has demonstrated that a number of trial holes were dug on this site to determine the suitability of the site for waste water disposal. It is reasonable to conclude that the trial holes that were dug where it is proposed to develop the waste water treatment system were shallow before encountering rock. This has necessitated the proposed development of a complex treatment system that includes 'splitting the system into two zones', according to the applicant's response to the further information request. Furthermore, it appears likely that pumping of effluent will be an essential component of the treatment system. This system would unquestionably demand a high degree of ongoing maintenance.
- 7.6.2 I put it to the Board that the shallow depth to bedrock, the siting of the waste water treatment system immediately behind an established house, and the necessity to significantly engineer a treatment proposal for this site that would require significant ongoing maintenance, can only result in one concluding that this proposal constitutes a pollution threat and should not be accepted as being a sustainable development.

8.0 **Recommendation**

- 8.1. I recommend that planning permission is refused. I acknowledge that the issues relating to backland development and effluent disposal do not form part of the issues arising from the appeal correspondence and may be considered by the Board to be new issues. They are very significant planning issues and the Board may wish to have regard to them in its deliberations. On the basis of these matters likely being

considered new issues, I recommend that permission is refused for traffic-related and housing need related reasons.

9.0 Reasons and Considerations

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard because the site is located alongside the heavily trafficked National Secondary Road N72 at a point where the general speed limit of 80 kph applies, where the horizontal alignment of the national route is poor and where the traffic turning movements generated by the development would interfere with the safety and free flow of traffic on the public road.
2. The proposed development would militate against national policies on the control of access to national roads, as set out in *Spatial Planning and National Roads: Guidelines for Planning Authorities*, published by the Department of the Environment, Community and Local Government in January 2012, which seek to preserve the level of service and carrying capacity of national roads, to protect public investment in same, and to control frontage development that adversely affects road safety. Furthermore, the proposed development would conflict with Objective TM 3-1 of Cork County Development Plan 2014 which seeks to restrict individual access onto national roads in order to protect the substantial investment in the road network, to improve carrying capacity, efficiency and safety, to prevent the premature obsolescence of the network, and to avoid the creation of additional access points from new development or the generation of increased traffic from existing accesses onto national roads to which speed limits greater than 50kph apply. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to the location of the site within the Fermoy Greenbelt, an Area Under Strong Urban Influence, as designated in the Cork County Development Plan 2014 and to the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities* and the National Policy Objectives of the National Planning Framework, which seek to manage the growth of areas that are under

strong urban influence to avoid over-development and to ensure that the provision of single housing in rural areas under urban influence are provided based upon demonstrable economic or social need to live in a rural area, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Rural Housing Guidelines for a house at this rural location and does not comply with National Policy Objectives. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, thus, be contrary to the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities* and rural policy provisions of the National Planning Framework, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Kevin Moore
Senior Planning Inspector

17th December 2019