



An
Bord
Pleanála

Inspector's Report

ABP-305543-19

Development	Replacement of chalet type dwelling with a new log cabin dwelling.
Location	Ardoginna, Ardmore, Co. Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	19555
Applicants	Declan and Gemma Hallahan
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party v Refusal
Appellants	Declan and Gemma Hallahan
Date of Site Inspection	2 nd , March 2020
Inspector	Paddy Keogh

1.0 Site Location and Description

- 1.1.1. The site of the proposed development which has a stated area of 0.358 ha. is located c. 2.5 km west of the village of Ardmore. The site fronts onto the southern side of the carriageway of the L6036 – a secondary road that connects Ardmore Village with the coast at Whiting Bay and strand. The section of carriageway that runs to the front of the site falls away gently and then more dramatically in a westerly direction towards Whiting Bay.
- 1.1.2. The site which contains a chalet and shed is located between a row of detached dwellings (predominantly single storey) of differing styles. It would appear that the bulk of these properties are second homes/holiday homes.

2.0 Proposed Development

- 2.1.1. The proposed development involves the replacement of an existing chalet type timber dwelling with a new log cabin type dwelling.
- 2.1.2. Documentation on file states that the existing chalet is occupied as a place of permanent residence. It is intended that the proposed replacement log cabin will be occupied as a place of permanent residence.
- 2.1.3. It is stated that the proposed log cabin will be served by an existing septic tank and well that currently services the existing chalet on site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of a decision to refuse planning permission for the proposed development for two reasons was issued by the planning authority per Order dated 17th, September 2019. Briefly, the stated reasons for refusal were as follows:

(1) Non-compliance with rural housing policy as set out in the Waterford County Development Plan 2011-2017 and national policy on rural housing as set out in Objective 19 of the *National Planning Framework* and as set out in the

Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government in April 2005.

[material contravention of Development Plan cited in the wording of this reason for refusal]

- (2) Concerns in relation to ground water protection and public health – the proposed development would be serviced by water supply and a septic tank system in an area where there is already a concentration of such facilities (unlikely that public water or sewerage facilities will be provided in the area)

3.2. Planning Authority Reports

Planning Reports

- 3.2.1. A report from the planning authority Executive Planner dated 16th, September 2019 includes:

- There was a structure (use unknown) close to the eastern boundary of the site on the site in 1995 (OSI Aerial Photography 1995). This structure was still in place in 2000 (OSI Aerial Photography). The structure was subsequently moved or replaced before 2005 (OSI Aerial Photography). The current structure is on the western boundary of the site. This structure (or the previously existing structure at a revised location) does not have the benefit of planning permission.
- The proposed log cabin will be placed on the approximate footprint of the existing chalet on site.
- The site is located within an are designated as being ‘Under Urban Pressure’ The applicant has not submitted a Supplementary Planning Application Form and no details to demonstrate a local housing need in compliance with Development Plan requirements have been submitted.
- The proposed development does not comply with Development Plan policy in relation to replacement houses as the existing chalet, septic tank and associated structures do not have the benefit of planning permission.

- The visual impact of the proposed development is minor as the proposed log cabin will occupy a gap site, is single storey and scale to a height of 4m only.
- There are serious concerns in relation to the level of development pressure at this location which does not benefit from public services such as public water supply, public sewer, public lighting etc. The location is characterised by ribbon development and there are serious concerns regarding additional dwellings being sited on private water supplies and septic tanks/private wastewater treatment systems.
- The applicant states that adequate sightlines can be provided from the existing access onto the L6036 but these have not been demonstrated.
- The applicant states that the existing septic tank on site was installed in accordance with EPA standards for private treatment systems for single dwellings. However, no details have been submitted in support of this claim. It is stated that the system that has been installed has adequate capacity to serve the proposed log cabin.
- The site lies over a Locally Important Aquifer of High Vulnerability.
- It is proposed to dispose of surface water to soakpits.

The recommendation of the Executive Planner is reflects in the planning authority notification of decision to refuse planning permission for the proposed development.

3.3. Third Party Observations

3.3.1. A submission per letter dated 30th, August 2019 from John Hallahan, Hugh Hallahan and Fiona Devitt objecting to the proposed development includes:

- The dwellings immediately to the east and west of the appeal site are in the ownership of the observers.
- The proposed development by virtue of its nature (permanent dwelling) and design is not suitable at this rural coastal location.
- It appears that the existing chalet (together with septic tank, private well and access from the public road) on site do not have the benefit of planning permission.

- The proposed development must be assessed as a new structure and not as a replacement dwelling.
- The site has been owned by the applicants since 2005 only (per land registry records) and not for 25 years as specified by the applicant.
- The applicants have not demonstrated compliance with relevant rural housing policies.
- The proposed development is substandard in terms of Development Plan policies relating to Ribbon Development (there are already 18 dwellings within a 450 m stretch of road at this location) and Wastewater Treatment.
- The proposed log cabin would be setback only 14m from the adjoining house to the east and 10m from the adjoining house to the west. The existing chalet on site injures the amenities of the neighbouring houses by reason of overlooking and overshadowing. The extent of overlooking and overshadowing will be increased as a consequence of the proposed development.

4.0 Planning History

- 4.1.1. There is no record of recent relevant planning history pertaining to the subject site.

5.0 Policy Context

5.1. Waterford County Development Plan 2011-2017

- 5.1.1. The Waterford County Development Plan 2011-2017 ('the Development Plan') is the current Development Plan for the area. With the establishment of Waterford City & County Council, in June 2014, this plan had its lifetime extended (pursuant to *S. 11A of the Planning and Development Act 2000, as amended*) and remains in effect until the new Regional Spatial and Economic Strategy comes into effect.
- 5.1.2. The appeal site is located in an area zoned 'Agriculture'. The stated objective of this zoning is '*To provide for the development of agriculture and to protect and improve rural amenity*'
- 5.1.3. The county is divided into three broad categories;

1. Areas Under Urban Pressure
2. Stronger Rural Areas
3. Structurally Weak Rural Areas

The *Rural Area Types Map* contained within the Development Plan identifies the subject site as being located within an 'Area Under Urban Pressure'.

5.1.4. **Section 4.8** refers to Rural Housing Policy

The Council's aim is to

'Minimise the amount of sporadic speculative development which would be more appropriately located on serviceable lands in towns and villages; and

Meet the genuine housing need of rural people and their families who have strong ties to a particular locality and to those who need to reside in rural areas for employment, economic and social reasons subject to the applicant demonstrating a Genuine Local Housing Need.'

5.1.5. **Policy SS3** seeks 'To cater for the housing requirements of members of the local rural community who have a genuine local housing need in areas under urban pressure as set out in the Criteria in Section 4.10.'

5.1.6. **Policy SS4** seeks 'To direct urban generated housing development in Areas Under Urban Pressure into the adjoining zoned settlements.'

5.1.7. **Section 4.10** refers to 'Genuine Local Housing Need'.

Housing Need criteria includes 'A farm owner or an immediate family member (son, daughter, mother, father, sister, brother, heir) wishing to build a permanent home for their own use on family lands.'....

and

'Persons who were born and reared for substantial parts of their lives (three years or more) in a specific rural area, who then moved away and who now wish to return to their home places to reside near other family members, to work locally, to care for elderly family members....'

5.1.8. **Section 7.5** (Variation No. 1) of the Development Plan states;

It is the policy of the Council to retain vernacular architecture and to preserve, where possible cottage and traditional outbuilding. The Council may allow in limited circumstances, a replacement dwelling where it is deemed that the existing habitable dwelling is of little or no architectural or historical merit. This assessment shall be made during the Development Management Stage of any prospective application and may require specialist reports if deemed necessary by the Council.'

5.1.9. **Section 10.19** defines a 'habitable structure' as

A dwelling that is serviced by electricity and water, has 4 intact walls and a roof and the last use of which was residential.

National Policy

5.2. Sustainable Rural Housing Planning Guidelines (2005)

5.2.1. The site of the proposed development is located within an area designated as being under strong urban influence.

5.2.2. The Guidelines distinguish between 'Urban Generated' and 'Rural Generated' housing need. Examples of situations where rural generated housing need might apply as set out in the Guidelines include rural houses for '*persons who are an intrinsic part of the rural community*' and '*persons working full time or part time in rural areas*'

5.3. National Planning Framework

5.3.1. National Policy Objective No. 19 states

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.

5.4. Natural Heritage Designations

Ardmore Head Special Area of Conservation (SAC) (Site Code 002123) is located c. 3 km east of the site.

The Blackwater River SAC (Site Code 2170) is located c. 3.5 km north-west of the site.

The Ballymacoda Bay SAC (Site Code 000070) is located c. 9.5 km south west of the site.

The Helvic and Ballyquin Special Protection Area (SPA) (Site Code 004192) is located c. 6km north-east of the subject site.

The Blackwater Estuary SPA (Site Code 004028) is located c. 3.8 km north west of the site.

The Ballymacoda SPA (Site Code 004023) is located c. 8 km south west of the site.

The Dungarvan Harbour SPA (Site Code 004032) is located c. 15 km north east of the site.

5.5. EIA Screening

- 5.5.1. Having regard to the nature and limited scale of the proposed development, to the character of the area and to the nature of the receiving environment it is considered that it would not result in a real likelihood of significant effects on the environment. The need for environmental 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 submitted grounds of appeal include:
- The applicants have been holidaying in Ardmore for over 50 years. The applicants have been living (as a place of permanent residence) in the existing chalet on the site since 2017.
 - Details of the applicant's connection to the area have been set out in narrative form. Both grandmothers of the first named applicant (Declan Hallahan) were from the area. His father built the dwelling on the adjoining site to the west in 1969 and retired to live in the house from 1989 onwards. A mobile home was

placed on the appeal site in 1987 and the applicants (and family) have used the site since then. The mobile home was replaced with a chalet in 1992 which was subsequently replaced with the existing chalet (and other structures) in 2002. Declan Hallahan has owned the site for many years. The property was registered in the joint names of the applicants in 2005. It has been occupied as their place of permanent residence since 2017.

- The houses to both the east and west of the appeal site are owned by brothers of the first named applicant.
- A supplementary Application Form (detailing alleged compliance with the planning authority rural housing policy) was inadvertently omitted from the application lodged with the planning authority. Documentary evidence of the applicants' connections with the area (library card, medical card etc.) are now submitted.
- The original roadside boundary to the site was relocated to its current position in order to provide adequate sightlines.
- The proposed development will not impact negatively on the visual amenities of the area and will not result in injury to the amenities of neighbouring houses by reason of overlooking or overshadowing.
- The existing septic tank has been constructed and installed in compliance with Environmental Protection Agency (EPA) standards. A copy of a Site Characterisation Report relied upon at the time of construction and installation of the septic tank accompany the submitted grounds of appeal. This report indicates that the site is suitable to accommodate a septic tank.
- The applicants wish to regularise the status of structures on the site and to provide accommodation suitable to their needs. The existing chalet is not weather-proof and is not suitable for permanent habitation.

6.2. Planning Authority Response

None

7.0 Assessment

7.1. I consider that the key matters arising from the current appeal are as follows:

- (1) Procedural Matters
- (2) Rural Housing Policy
- (3) Water Supply & Effluent Disposal
- (4) Other Matters

The issue of Appropriate Assessment also needs to be addressed.

(1) Procedural Matters

7.1.1. The applicants acknowledge that the existing development on the appeal site (chalet site together with the septic tank and vehicular access etc.) do not have the benefit of planning permission.

7.1.2. The proposed development is described per the submitted public notices as an application for planning permission for the replacement of an existing chalet type timber dwelling with a log cabin. The proposed development intends to utilize the existing septic tank and access from the public road. No application for planning permission for the retention of these elements has been submitted.

(2) Rural Housing Policy

7.1.3. The submitted grounds of appeal argue that the proposed development which will replace a chalet currently being used as a place of permanent residents by the applicants can reasonably be regarded as a replacement dwelling. However, the applicants also acknowledge the fact that the existing structure does not have the benefit of planning permission and constitutes unauthorised development.

7.1.4. Section 7.5 of the Development Plan sets out policy in relation to replacement dwellings. This policy refers to the replacement of habitable structures. The existing chalet on the appeal site is clearly habitable. Nonetheless, I consider that it is implicit in the interpretation of Development Plan policy in relation to replacement dwelling that it is intended that any dwelling to be replaced and coming within the ambit of the policy must itself be authorised. In these circumstances, (notwithstanding the fact that

the existing structures although unauthorised would appear to be immune from prosecution for the purposes of enforcement action by the planning authority) I share the stance adopted by the planning authority Executive Planner and consider that the applicant cannot avail of or benefit from Development Plan provisions in relation to replacement dwellings.

7.1.5. On the basis of the submitted documentation, I consider that the applicants (despite being permanently resident in the area since 2017) do not comply with the rural housing policy contained within the Development. 'Genuine Local Housing Need' for the purposes of Section 4.10 of the Development Plan is defined as including '*Persons who were born and reared for substantial parts of their lives (three years or more) in a specific rural area, who then moved away and who now wish to return to their home places to reside near other family members, to work locally, to care for elderly family members...*'. The applicants have lived in the area for c. 3 years. However, neither applicant was born or reared in the area. They did not move away and are not now looking to 'return to their home place'.

7.1.6. Despite the fact that the applicants have been living at this location of a permanent basis for 3 years, this residency has been in a chalet that does not have the benefit of planning permission. It would appear that the applicants' overall connection to the local area can reasonably be characterised as seasonal visitors. Thus, I consider that the applicants fail to qualify as '*persons who are an intrinsic part of the rural community*' for the purposes of the *Sustainable Rural Housing Guidelines (2005)* and have not shown a '*demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements*' for the purposes of the National Planning Framework..

(3) Water Supply & Effluent Disposal

7.1.7. The proposed development will be served by an existing septic tank and private well that currently serves the existing chalet on the site,

7.1.8. The submitted grounds of appeal state that the septic tank has been constructed and installed in accordance EPA standards. A copy of a Site Characterisation Report (undated) deems the site to be suitable to accommodate a septic tank. It is stated that this report was prepared prior to the installation of the septic tank on site.

- 7.1.9. The planning authority note that the appeal site is located within an area of significant ribbon development and characterised by a multiplicity of dwellings served by individual wastewater treatment systems with water supply from private wells. The site is within an area that lies over a locally important aquifer of high vulnerability. It is stated that public water or sewerage facilities are unlikely to be provided in the area. In these circumstances, the planning authority consider that there are serious concerns in relation to the protection of groundwater in the area and in relation to the impact of the proposed development on public health generally.
- 7.1.10. On balance and on the basis of the submitted documentation, I would tend to agree with the conclusions of the planning authority in this matter. No details have been submitted in relation to the location, design, capacity, maintenance and operational efficiency of the existing septic tank. In these circumstances, I consider that the applicant has not demonstrated that the proposed development would not be prejudicial to public health.

(4) Other Matters

- 7.1.11. The proposed replacement dwelling is described as a log cabin. The submitted documentation indicates a proposal for a detached single storey chalet type structure finished with external timber cladding and a low profile pitched roof. Having regard to the established character and pattern of development in the immediate vicinity and the infill nature of the site, I would share the opinion expressed by the planning authority Executive Planner and the applicants/appellants that the proposed development would not impact unduly on the visual amenities of the area.
- 7.1.12. Having regard to the design and single storey nature of the proposed development I consider that it would not result in serious injury to the residential amenities of neighbouring houses or to the amenities of the area by reason of overlooking or overshadowing.

(5) Appropriate Assessment

- 7.1.13. The application was screened by the planning authority and the need for a stage 2 appropriate assessment was screened out.

7.1.14. Having regard to the nature and scale of the proposed development, to the nature of the receiving environment and to the separation 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 any European site, in light of the sites conservation objectives.

8.0 Recommendation

8.1. I recommend that planning permission for the proposed development be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

(1) On the basis of the documentation submitted with the current application and appeal, it is considered that the proposed development contravene policy as set out in Section 4.10 of the Waterford County Development Plan 2011-2017 (as extended) for a dwelling in a rural area designated as being an area under strong urban influence and with policy in relation to replacement dwellings as set out in Section 7.5 of the same Development Plan. Furthermore, having regard to the location of the site in an area under urban influence, and to National Policy Objective 19 of the National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018 which, for rural areas under urban influence, seeks 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, having regard to the viability of smaller towns and rural settlements, it is considered, that the applicants have not satisfactorily demonstrated how they come within the scope of the housing need criteria as set out in the Guidelines and do not, therefore, comply with National Policy Objective 19. 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.

- (2) The proposed development will be served by an existing septic tank from an existing well that does not have the benefit of planning permission and are located within an area where there is already a high concentration of septic tanks and private wells. It is considered that, on the basis of the submitted documentation the applicants have not demonstrated that the site is suitable to cater for the treatment and disposal of effluent from the proposed development by means of a septic tank and in the absence of any plans for the provision of public water or sewerage facilities to the serve the area, the proposed development over a locally important aquifer of high vulnerability would result in an excessive concentration of development served by individual wastewater treatment systems and would, therefore, be prejudicial to public health.
- (3) The proposed development will be served by an access from the public road that does not have the benefit of planning permission. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Paddy Keogh
Planning Inspector

10th, March 2020