



An
Bord
Pleanála

Inspector's Report ABP-306056-19

Development	House and waste water treatment system
Location	Kilgobbin, Ballinspittle, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/5449
Applicant(s)	Gerard Coughlan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Pat Sweetman Donna Bennett
Date of Site Inspection	24 th January 2020
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The site of the proposed development is located in a remote rural area approximately 4km south of Ballinadee and 5km north-west of Ballinspittle in County Cork. The site has frontage onto the west side of a minor local road. The site comprises part of a larger field in agricultural use. The land rises in a westerly direction and is elevated over the public road. There is a sod bank/low hedge along the site's frontage and a hedge separates the site from a residential property (appellant Donna Bennett's house) to the north. There is a further dwelling and farm complex (appellant Pat Sweetman's property) a short distance to the south on the same side of the local road.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a three bedroom, single storey house with a stated floor area of 177 square metres. The house would be served by a private on-site waste water treatment system and an on-site bored well.
- 2.2. Details submitted with the application included a completed Site Characterisation Form relating to the proposed treatment system, soakpit assessment, and a letter from the applicant stating that this is the only parcel of land he owns in Ireland, having been gifted it by his younger brother, detailing his ties to the area and referencing his imminent retirement and return from England.

3.0 Planning Authority Decision

3.1. Decision

On 8th November 2019, Cork County Council decided to grant permission for the proposed development subject to 10 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the Area Engineer's report, the objections received and the policy context for the development. It was considered that the applicant qualified under development plan provisions relating to housing eligibility. It was considered that the biggest drawback with the site was its proximity to the adjoining house to the north and the levels rise from the public road, creating a potential infill plot to the south and the proposed house being higher than the house to the north. Lowering finished floor levels and/or increasing separation distance between houses were referenced. A request for further information was recommended.

3.2.2. Other Technical Reports

The Area Engineer requested further information relating to the waste water treatment system and surface water drainage.

3.3. **Third Party Observations**

Objections to the proposal were received from Pat Sweetman and Donna Bennett. The grounds of the appeals reflect the concerns raised.

A request for further information was sought on 18th July 2019 seeking an increase in separation distance between the proposed house and the house to the north and/.or lowering the proposed finished floor level, a site layout plan showing all waste water treatment systems and bored wells in the vicinity, site specific construction drawings for the designed waste water treatment system, and details on surface water drainage pathways. A response to the request was received by the planning authority on 5th September 2019.

Following the receipt of this information the reports to the planning authority were as follows:

The Area Engineer had no objection to permission being granted subject to a schedule of conditions.

The Planner was satisfied with the further information response and recommended that permission be granted subject to a schedule of conditions.

4.0 Planning History

I have no record of any planning application or appeal relating to this site.

5.0 Policy Context

5.1. Cork County Development Plan 2014

The proposed site is located within a designated 'Area under Strong Urban Influence'.

Rural housing objectives include:

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.

5.2. **Appropriate Assessment**

The proposed site is not on, in or near any European site. There is no known indirect connectivity with any European Site, the nearest being Courtmacsherry Estuary SAC which is many kilometres south-west of the proposed site.

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 by Pat Sweetman**

The grounds of the appeal may be synthesised as follows:

- The proposal will be injurious to the amenities and enjoyment of the appellant's home as he has a well within a few feet of the boundary of the south side of the site and there are concerns about its contamination. There is a further well to the north close to the site.

The appeal includes a report referring to inadequate safe distance between the proposed treatment system and the wells and details of the provision of a new bored well supply to serve the appellant and the need for this alternative provision.

6.2. **Grounds of Appeal by Donna Bennett**

The grounds of the appeal may be synthesised as follows:

- The proposal is located close to the appellant's boundary and would have windows overlooking and impacting on privacy.
- The site is on a minor road, overstretched with the volume of traffic using it.
- There is serious concern about the impact the proposed treatment system would have on the appellant's well. The appellant's bored well is close to the site boundary. This is not an exploratory borehole. It is the sole source of water supply for the appellant's house.
- The appeal includes a report referring to non-compliance with the EPA Code of Practice and details of the provision of a new bored well supply to serve the appellant and the need for this alternative provision.

6.3. **Applicant Response**

The applicant's response to the appeals may be synthesised as follows:

- The proposed house is fully in accordance with the zoning, policies and objectives of the County Development Plan as well as national rural housing policy and the applicant has a genuine housing need.
- The proposal has been carefully designed to protect the amenities of the area and will not have a negative impact on same.
- The proposal is in accordance with the EPA Code of Practice 20089: Wastewater Treatment Systems for Single Houses and will not have a negative impact on existing domestic wells in the area. The response included an alternative site layout with the proposed treatment system located further south on the site.
- The proposal will not give rise to any adverse traffic impacts.

6.4. **Planning Authority Response**

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

6.5. **Further Responses**

The appellants submitted a response to the applicant's response to the appeals. This restated that the appellants' new wells are for domestic use and it remained the contention that the proposal, notwithstanding the relocation of the proposed waste water treatment system, did not comply with required separation distances. A report is attached detailing technical concerns and issues with water quality and separation distance. It is further submitted that the applicant did not demonstrate that the application complies with all stated policy tests set out in the County Development Plan.

7.0 **Assessment**

7.1. Introduction

7.1.1 I consider that the principal planning issues relating to the proposed development are rural housing need, impact on wells, impact on residential amenity and traffic impact.

7.2. Rural Housing Need

7.2.1 The proposed development would be located in a rural area remote from the villages of Ballinadee and Ballinspittle. The site is in an area that is designated an 'Area under Strong Urban Influence'. There is a clear pattern of one-off housing being developed along the minor local road network in this area. Thus, it is undergoing significant development change as modern housing encroaches on the rural landscape. In order to protect the quality of this environment, one of the basic requirements is to demonstrate need to develop a house in such a location.

7.2.2 The applicant is a returning emigrant who is originally from Kilgobbin, having grown up on a farm a short distance north of the appeal site. The site was gifted to him by

his brother. He submits that he emigrated to England in the 1980s and wishes to return to reside amongst his family in the area.

7.2.3 Under Cork County Development Plan, Objective RCI 4-2 sets out the eligibility criteria needing to be met by a prospective applicant within an Area under Strong Urban Influence. The planning authority is satisfied that he complies with criteria (d) and (e) of this objective, namely he is a person who has spent a substantial period of his life (i.e. over seven years), living in this local rural area in which he proposes to build a first home for his permanent occupation and he is a returning emigrant who spent a substantial period of his life (i.e. over seven years), living in the local rural area in which he proposes to build a first home for his permanent occupation, who now wishes to return to reside near other immediate family members and to retire. Based upon the information that has been provided in the planning application and in response to the planning appeals, there is no reason to suggest that the applicant does not meet with criteria (d) and (e) of Objective RCI 4-2.

7.2.4 Further to the above, I note the *Sustainable Rural Housing: Guidelines for Planning Authorities*. Section 3.2.3 of the Guidelines suggests development plans illustrate broad categories of circumstances that would lead the planning authority to conclude that a particular proposal for development is intended to meet a rural generated housing need. Examples given include persons who are an intrinsic part of the rural community and persons working full-time or part-time in rural areas. The former is referenced to include persons who will normally have spent substantial periods of their lives living in rural areas as members of the established rural community. Returning emigrants who lived substantial parts of their lives in rural areas are also referenced.

7.2.5 It is very clear that the applicant is not a person working full-time or part-time in the rural area in which he now proposes to build a house. It is clear that he is a returning emigrant who now wishes to retire and reside near family members. The relevant issue is whether he can be determined to be a person who has spent a substantial period of his life in the rural area in which he now seeks to reside. I submit to the Board that it is clear that he has spent the substantial period of his life not living in the rural area in which he now proposes to build a house. He clearly lived in this rural area in the earlier part of his life and then moved out of this area for the substantial period of his life to date. The planning authority is content to determine that a period

of seven years or more constitutes a 'substantial period' when assessing rural generated housing need. If one was to accept this, then one would conclude that he has demonstrated a rural generated housing need. It is somewhat unfortunate that there is no definition in the Guidelines as to what constitutes a 'substantial period' of one's life living a rural area. It is reasonable to determine, from what the applicant has submitted, that he has lived the substantial period of his life outside of the rural area in which he now proposes to build a house. A very substantially shorter period of his life (given he is nearing retirement) was spent living in this rural area.

7.2.6 Demonstrating a rural generated housing need is an important consideration in the assessment of this proposal and it is particularly so given that the proposed site is located in a rural area that is designated an 'Area under Strong Urban Influence'. The Guidelines recognise that such areas are under considerable pressure for development of housing due to proximity to urban areas. The proximity of this area to Kinsale, Bandon and Cork, as well as its easy accessibility to attractive coastal locations a short distance to the south, makes this an area that is under significant pressure for one-off rural housing. The Guidelines stress the need to direct urban generated development to zoned areas for new housing in cities, town and villages.

7.2.7 Further to the above guidance, I note national planning policy as set out under the *National Planning Framework*. 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.

7.2.8 I have serious concerns about the 'rural housing need' in this instance. There is clearly no economic need for the applicant to live in this rural area. On the basis of what is available in the appeal file, I would also seriously question how it could reasonably be determined that the applicant has a demonstrable social need to live in this rural area. It is understood that he has spent the substantial period of his life away from this rural area. Although there is reference to family members residing in the general area, there is no understanding of where they are and, most importantly, there is no understanding of why there is a social need for the applicant to be living near them.

7.2.9 It is my conclusion that the applicant has not demonstrated any economic or social justification that would merit permitting a house on this site in this 'Area under Strong Urban Influence'. The proposed development would conflict with the provisions of the National Planning Framework and I would question the compatibility of such a proposal with the Rural Housing Guidelines, given the lack of information on the applicant's connectivity with this area and the lack of a genuine rural generated housing need based on tangible social or economic need.

7.3. Impact on Wells

7.3.1 In considering this issue, I make the following observations:

- The proposed effluent treatment system would be developed in the immediate vicinity of two recently developed well supplies that lie to the north and south of the appeal site.
- The layout and location of the treatment system, in response to the appeal by Donna Bennett, has been revised and, as a consequence, the system would be sited closer to the new bored well supply of the appellant Pat Sweetman.
- Both appellants submit that the new bored well supplies were necessitated due to deficiencies in their previous well supplies.

- Both appellants submit that the new wells are domestic supplies to serve their houses which are sited north and south of the appeal site.
- The site is an elevated and sloping site. It is on the side of a hill.
- The site characterisation assessment undertaken by the applicant shows that there is a very shallow depth to bedrock on this site – 0.45m depth from the ground surface to bedrock evident from the trial hole.
- The applicant’s assessment notes that targets at risk are groundwater, nearby streams and domestic wells.
- In recognition of these conditions, the applicant’s response is to install a secondary waste water treatment system with a soil polishing filter.

7.3.2 Having regard to these observations, it is my submission to the Board that there are very serious concerns relating to the development of a house on this site that would discharge effluent to a private on-site treatment system in such circumstances.

There is very shallow material above rock on this site. As a consequence, the applicant proposes to develop a significantly engineered response that would require importation of materials, careful construction and continuous maintenance to ensure the soil polishing filter remains a viable functioning component of the development. This system would be sited on sloping lands that would be in the immediate vicinity of bored wells. The threat to the water quality of these supplies is obvious. This proposal constitutes a significant pollution threat to the established well supplies. The applicant’s response to the appeals brings the treatment system further away from the well supply of Donna Bennett but sites the soil polishing filter to within 14 metres of Pat Sweetman’s bored well. The siting of the proposed treatment system does not comply with the EPA *Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses*. It is clearly in breach of recommended minimum distances between domestic wells and a polishing filter as set out in Table B.3 of this guidance.

7.3.3 In conclusion, I submit to the Board that the proposed development constitutes a significant pollution threat to the water supplies of the neighbouring properties and is not sustainable as a result.

7.4. Impact on Residential Amenity

7.4.1 The proposed development was revised during the assessment period by the planning authority, reducing finished floor levels for the proposed house by 0.6 metres and increasing separation distance between the proposed house and the appellant's house to the north by almost 5.5 metres compared to the original proposal. The proposal would be a single storey house located in excess of 22 metres from the southern gable elevation of the appellant's house. There would be a hedgerow forming the boundary between the properties. While proposed finished floor levels would be above that of the appellant's house, I submit to the Board that the likelihood of loss of privacy arising from the kitchen/dining room windows at ground floor level in the proposed house, at some 26 metres from the appellant's house, would not arise. I have no concerns relating to the loss of privacy and associated impact on the residential amenities of the adjoining house to the north.

7.5. Traffic Impact

7.5.1 The proposed development would access a minor local road in a remote rural location. This is a narrow road, approximately 3 metres in width. It cannot accommodate two-way vehicular traffic. This road is also poorly aligned. The occupancy of the proposed house would be car-dependent. To be encouraging increased unnecessary traffic on this road would increase the likelihood of interference with the free flow of traffic on this road for established road users, in particular for those needing to use it for agricultural-related uses. It is not sustainable to be facilitating development such as that proposed where the road infrastructure is clearly deficient. This proposal would endanger public safety by reason of traffic hazard and obstruction of road users.

8.0 Recommendation

- 8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the extent of one-off housing in this rural location, to the location of the site within an area designated an 'Area under Strong Urban Influence' in Cork County Development Plan 2014, to the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities* and to 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 applicants do 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 do 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.
2. Having regard to the proximity of existing private domestic wells to the proposed effluent treatment system, to the shallow depth to bedrock on this site, and the siting of the proposed soil polishing filter upgradient of the existing wells, it is considered that the proposed development would be prejudicial to

public health due to the risk of pollution of these established water supply sources.

3. It is considered that the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users because of the additional traffic turning movements it would generate onto a minor local road that is seriously substandard in width and alignment.

Kevin Moore
Senior Planning Inspector

13th February 2020