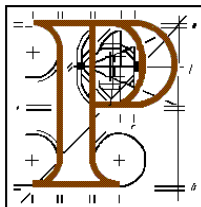


An Bord Pleanála



Inspector's Report

Site Address: The Doon, Dunderrow, Kinsale Co. Cork

Proposal: House, treatment unit and site works.

Planning Application

Planning Authority: Cork County Council

Planning Authority Reg. Ref.: 15/5711

Applicants: Donal Hayes and Miriam Kiely

Type of Application: Permission

Planning Authority Decision: Grant

Planning Appeal

Appellant: John Delahunty and Others

Type of Appeal: 3rd party –v- grant

Observers: None.

Date of Site Inspection: 29th March 2016

Inspector: G. Ryan

1.0 SITE

- 1.1 The subject site consists of an irregular plot of land in a rural area in South County Cork. It is located around 500m south of the small village of Dunderrow, which lies on the R605 road linking Kinsale (4.5km southeast) with Inishannon (6km northwest).
- 1.2 The site is located to the north of a somewhat unusual 4-way junction of local roads and small lanes which I will describe as follows based on a naming convention I have arrived at for the purposes of this report only.
- East Road – a local road that links the crossroads to the R605 south of Dunderrow.
 - South Road – a local road that links the crossroads to the southern hinterland along the banks of the Bandon. The East and South Roads form the main route through this junction.
 - West Lane – a minor cul-de-sac lane that runs west from the junction to ‘Doon’/‘The Doon’, a period farmhouse, and onward to Dunderrow Wood on the banks of the Bandon River and Doon Creek.
 - North Lane – a minor lane that runs north from the junction, serving a run of 4 houses along its western side, between the subject site and the crossroads. Travelling north, the quality of the lane deteriorates to the standard of a farm track, and is accessible by vehicle only at low speeds. A distance further to the north, the standard of the lane improves, in the vicinity of housing, and it continues to a junction at the Dunderrow National School. As such, this lane is somewhere between a cul-de-sac and a through road. The subject site has frontage onto this lane, and also wraps around the northernmost house of the ‘run of 4’.
- 1.3 There is a ridge running along the axis of West Lane / East Road such that North Lane and surrounding lands falls away from the crossroads. This is evident in the topography immediately surrounding the subject site, which rises sharply to the southwest.
- 1.4 The site itself is under grass, with the larger field from which it was taken having been recently ploughed at the time of my site inspection. The site has a stated area of 0.207ha.

2.0 PROPOSAL

2.1 BROAD OVERVIEW

- 2.1.1 It is proposed to construct a 4-bedroom house within the central portion of the site that would be part 2-storey and part single storey. It has a stated gross floor area of 252m². The design of the house exhibits aspects of traditional and contemporary design.
- 2.1.2 Access would be taken by way of a new driveway of around 150m in length that would run north from West Lane, along the backs of the 'run of 4' houses' to the south of the subject site. This new driveway would be taken from the existing field, would run roughly parallel to North Lane, and would have a 'chicane' around half way along its length near the driveway's highest point.

2.2 BACKGROUND TO THE APPLICATION AND LEGAL MATTERS

- 2.2.1 Permission for a house on this site was granted in 2004, but has since expired (See Section 5.0 below). A cover note with the application sets out a number of legal issues regarding access to the site via 'North Lane', with claims and counter claims in this regard. Delays ensued, along with difficulties in raising finance.
- 2.2.2 In resolving the matter, it was agreed that the original landowner would provide a separate access [the driveway], as is currently proposed. The applicants have lived at rented accommodation in the intervening years, and their children attend the local Gaelscoil¹.

2.3 RURAL HOUSING INFORMATION

- 2.3.1 The applicants state that they are the owners of the site and that the house is for permanent occupation.
- 2.3.2 The applicants give their occupations as Journalist and Civil Engineer. They state that they have lived at their current rented address for 13 years, which is shown on an attached map as being in a rural area on the far (north) side of Dunderrow, around 2km northeast of the subject site in the townland of Puckane. The applicants state that they have never owned any residential properties, and have never built a home in a rural area.
- 2.3.3 Neither of the applicants are involved in forestry, inland waterway, marine rated occupations, rural based sustainable tourism, natural resource related occupations, employment which is essential to the delivery of social and community services and intrinsically linked to this particular rural area. One of the applicants (journalist) is

¹ It would appear from online sources that the nearest Gaelscoil is in the town of Kinsale, around 5km to the southeast. (source: <http://www.gaelscoileanna.ie/en/schools/learscailmap/>)

identified as working in a full time home based business in a rural area.

2.4 WATER WASTEWATER INFORMATION

- 2.4.1 The percolation area is shown located in the ‘panhandle’ section of the site that provides frontage onto the North Lane. A P8 Bioprocess Sewage Treatment Plant is prosed.
- 2.4.2 The application is accompanied by a site assessment which incorporates a site characterisation form. It identifies aquifer vulnerability as ‘extreme’, and recommends a packaged wastewater treatment system. I note that the maps in this report show a site near Roscarberry, around 35km to the southwest. At least one of the attached photographs does appear to be from the subject site.
- 2.4.3 Water supply would be from a proposed well, and surface water disposal would be by on-site soakaways.

2.5 UNSOLICITED FURTHER INFORMATION

- 2.5.1 A letter from the applicant refutes some of the issues raised in the objections to the application, and notes that the neighbours have not objected to the house, only to the driveway. The applicant asserts that there would be no net increase in impacts as compared with the previously permitted scheme.

2.6 FURTHER INFORMATION REQUEST AND RESPONSE

- 2.6.1 Prior to issuing a decision, the planning authority sought further information on 3 broad points (unnumbered in the planning authority’s documentation), which are quoted in full below, along with a summary of the response from the applicant.

Planning authority request	Applicant’s response
<p>1. <i>The right-of-way marked yellow on the Site Plan stops short of the public road. There is another 50m length of private road between the site entrance and edge of the public road in private ownership. Please lodge proof of a legal right-of-way over this strip of land.</i></p> <p><i>The Planning Authority has no objections to an alternative means of access, from the existing laneway, if the applicant can obtain the written consent from all the owners concerned.</i></p>	<p>Proof of right of way provided by way of an attached letter.</p>

2. <i>Please lodge details of spot levels at about 20m regular intervals along the driveway including sectional drawings showing existing and proposed ground levels and proposed finished road level.</i>	Revised drawing provided showing levels along driveway.
3. <i>A site suitability assessment has been carried out. However mapping included in the assessment does not refer to the site on this application. Please clarify.</i>	Revised mapping attached to append to Site Suitability Assessment.

Table 1

3.0 SUMMARY OF REPORTS TO THE PLANNING AUTHORITY

3.1 DEPARTMENTAL REPORTS AND EXTERNAL CONSULTEES

3.1.1 Irish Water

3.1.2 No objections subject to conditions.

3.1.3 Area Engineer's first report

3.1.4 The right of way shown does not extend [along West Lane] to the public road [at the crossroads]. Confirmation is required.

3.1.5 Clarification is required in respect of wastewater treatment, as the mapping included does not refer to the site in the application.

3.1.6 Recommends requesting further information on the two points above.

3.1.7 Area Engineer's second report

3.1.8 Following the receipt of further information, a second report states that there is no objection subject to conditions.

3.1.9 Health Service Executive

3.1.10 The HSE reference national legislation² relating to the SEVESO directive, and state that they do not advise against the granting of planning permission in the context of Major Accidents Hazards.

3.2 REPRESENTATIONS

Objections were submitted on behalf of the current appellant (2 of 3 parties). The matters raised in these objections are largely reflected in the appeal grounds summarised in section 6.1 below. Other matters of note can be summarised as follows.

² <http://www.irishstatutebook.ie/eli/2015/si/209/made/en/print?q=209&=&=>

- There is a traffic blind spot at the proposed junction.
- The applicants do have a right of way over the road [North Lane].
- A soakaway is proposed adjacent to the objector's property.

3.3 PLANNING OFFICERS REPORTS

3.3.1 Planning officer's first report

- 3.3.2 There is a rising density of housing in the immediate surrounds. If permitted, the proposed development would result in 5 houses (existing and permitted) in a scattered pattern of development along a long cul-de-sac.
- 3.3.3 Since the previous grant of permission by the planning authority, there has been no material change in the character of the area, or approach to planning applications between the old and current CDP.
- 3.3.4 The applicants clearly qualify to build a house [under the polices of] the CDP.
- 3.3.5 The house is smaller than the permitted house, and of good design quality. While close, no direct overlooking between houses would occur. A separation distance of 19m is just adequate.
- 3.3.6 There are insufficient levels provided in relation to the proposed driveway.
- 3.3.7 The right of way issues [on West Lane] need clarification. If it came to it, the planning officer would have no difficulties with the applicants using the existing laneway [North Lane].
- 3.3.8 'Screens out' for Appropriate Assessment under the Habitats Directive.
- 3.3.9 Recommends further information.

3.3.10 Planning officer's second report

- 3.3.11 Following the receipt of further information, a second planning officer report notes the Area Engineer's report and states that the planning authority should accept that the preferred entrance proposals would not adversely impact on adjoining occupiers' property or amenity. The planning officer recommends a grant of permission subject to 8 conditions.

4.0 PLANNING AUTHORITY DECISION

The planning authority decided to grant permission subject to 8 conditions, many of which could be considered 'standard' conditions. Others of note can be summarised as follows.

3 7-year occupancy condition.

5.0 HISTORY

5.1 ON THIS SITE

PA Ref. 04/9464 – Permission granted by the planning authority to Donal Hayes (current applicant) for a dwellinghouse. This permission was not implemented, and has since expired.

5.2 ON NEARBY SITES

PL04.225745 (PA Ref. 07/6725) - Permission granted by the planning authority, but refused on appeal by the board to Kathryn Burguin for a house near the 4-way junction to the south. The refusal reasons cited rural housing policy and drainage

PL04.235799 (PA Ref. 09/5709) – Permission granted by the planning authority, but refused on appeal by the board to Suzanne and Bhaskar Mahendran for the demolition of she and construction of a house at a site within the farmyard complex of ‘the Doon’, which is located on ‘West Lane’ to the southwest of the subject site. The refusal reasons cited rural housing policy, visual impact, and drainage.

6.0 POLICY

6.1 RURAL HOUSING GUIDELINES

The ‘Sustainable Rural Housing - Guidelines for planning authorities’ produced by the DoEHLG in 2005 designate this area as being an ‘Area under ‘Strong Urban Influence’³ associated with Cork City. In such areas, the guidelines advise that

The key development plan objectives in these areas should be to on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

6.2 CORK COUNTY COUNCIL DEVELOPMENT PLAN 2014

6.2.1 Rural housing policy

The site is located within a ‘high value landscape’ associated with the coast.

³ <http://www.irishspatialstrategy.ie/Map%2013505.pdf>

The site is located in a 'Rural Area under Strong Urban Influence', a designation that applies to the area outside of the Cork City Greenbelt, and stretching in an arc from Kinsale through Bandon, Macroom, Mallow, and Fermoy to Youghal, punctured by other designations associated with towns themselves. I note that the village of Dunderrow is surrounded by a 'development boundary' which includes greenfield lands.

In these areas, Objective RCI 4-2 applies, which is worth stating in full

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.

Objective RCI 6-3 is a 'Presumption against development which would contribute to or exacerbate ribbon development.' 'Ribbon Development' is defined in Section 4.6.7 of the plan as 'five or more houses on any one side of a given 250 metres of road frontage'.

7.0 GROUNDS OF APPEAL

7.1 BACKGROUND TO THE APPEAL

The 3rd party appeal was submitted by the following parties by way of a single appeal

- John Delahunty with an address of 'The Doon'. On the basis of the information submitted in the objection to the planning authority, Mr Delahunty lives in the first (southernmost) of the 'run of 4' houses to the south of the subject site, at the northwest corner of the crossroads.
- DanJoe Lawton, with an address 'Oaklands, The Doon'. On the basis of the information submitted to the planning authority, the Lawtons live in either the 2nd or 3rd of the 'run of 4' houses to the south of the subject site.
- Barry and Ruth Daly, with an address of 'The Doon'. On the basis of the information submitted to the planning authority, the Dalys live in either the 2nd or 3rd of the 'run of 4' houses to the south of the subject site.

7.2 APPEAL GROUNDS

7.2.1 Insufficient ties to the area

7.2.2 It is not clear whether the policies of the CDP refer to 'The Doon', Dunderrow, or the wider local area of Kinsale.

7.2.3 Refers to refusals under PA Ref. 06/9324 which referred to ample zoned residential land within the village of Dunderrow. Refers also to PL04.225745 [see Section 5.2 above]

7.2.4 Overconcentration of septic tanks

7.2.5 The planning officer's report only mentions the 4 houses on the road and ignores 2 houses opposite [at the southwest and southeast corners of the crossroads]. There is currently a cluster of 6 residential houses with septic tanks within around 250m

7.2.6 The percolation test was completed in dry summer months. This is a flood plain and the adjacent stream is regularly flooded in winter.

7.2.7 Right of way issues

7.2.8 A letter (enclosed, 2000) from Cork County Council confirms that there is a right of way along [North Lane] for development. The appellants assert that the applicant does indeed have the right of access along this lane.

7.2.9 The proposed driveway access and associated right of way issues were not investigated by the planning officer.

7.2.10 Impacts on residential amenity

- 7.2.11 The proposed development is behind the building line. It should have been continued in a proper building line with the other existing developments.
- 7.2.12 The proposed house would not integrate appropriately with its physical surroundings and would result in an excessive concentration of suburban type development, wholly out of character with this rural area.
- 7.2.13 The creation of an additional road at the rear of other properties interferes with other residents' privacy, and has security implications. A 5m berm is of concern, as is the issue of drainage.

8.0 SUMMARY OF RESPONSES

8.1 PLANNING AUTHORITY

- 8.1.1 The planning authority have not responded to the matters raised in the appeal.

8.2 FIRST PARTY RESPONSE TO THIRD PARTY APPEAL

- 8.2.1 A response submitted by the applicant counters the grounds of the appeal. The content of this submission is largely reflected in the documentation submitted previously by the applicant and summarised in my report in the sections above. As such, I will not restate these matters, although I do note that this submission provides a useful summary from the applicants' perspective. Other points of note can be summarised as follows.
- 8.2.2 In relation to local ties, the applicants refer to information submitted under their 2004 application regarding activities in local organisations and the presence of family in the area.
- 8.2.3 The proposed site layout takes account of flooding, with the proposed entrance being at a location just before the flooding starts.

9.0 ASSESSMENT

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following broad headings:

- Rural housing policy
- Access arrangements
- Impacts on residential amenity
- Effluent treatment

- Screening for Appropriate Assessment

9.1 RURAL HOUSING POLICY

9.1.1 The applicant's circumstances

9.1.2 The applicants appear to have roots in the wider Kinsale area (5km), including the town itself (5km to the southeast). They have been renting a house in a rural area on the opposite side of Dunderrow in the 11-13 years since they bought the subject site and received planning permission (since expired) and have been trying to advance the development of this site, in the face of legal issues. One of the applicant's sisters lives nearby.

9.1.3 One of the applicants is a journalist, working from home, and the other works for the County Council. Neither have a direct need from first principles to live in this or any rural area, in my opinion.

9.1.4 Applicable policy

9.1.5 The site is located in a 'Rural Area under Strong Urban Influence' under the county development plan. In such areas, Objective RCI 4-2 applies, which requires that applicants must demonstrate that they comply with one of 5 categories of housing need. The first three relate to those engaged in farming or other rural activities and the last relates to returning emigrants. The remaining category is perhaps of most relevance to the current applicants, and is as follows.

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.

9.1.6 Assessment on rural housing policy

9.1.7 By virtue of having lived nearby in rented accommodation since commencing the planning process, I consider on balance that the applicants qualify for a positive presumption under category 'd' of RCI 4-2. It should be noted that on the basis of the facts available, I would not have been recommending such a qualification at the outset of the applicants embarking on the planning process.

9.1.8 However, I would raise some concern in light of the higher-level policies of the DoE 2005 guidelines which is strong on directing urban generated development into cities, towns, and villages. There is some inconsistency between national and local policy in this regard.

9.1.9 I note that the planning officer did not present any assessment of how the applicants circumstances compared against policy in this

area, merely stating that they 'clearly' comply. I also note that the applicants in their observations on the appeal refer to information provided in 2004 under the application for the now-expired permission. This information was not presented in the subject application.

9.1.10 Ribbon development

9.1.11 On the question of ribbon development, Objective RCI 6-3 (See Section 6.2.1 above) should be considered. The planning officer's report states that the proposed development would result in 5 houses in a scattered pattern along a cul de sac.

9.1.12 In fact, the proposed development represents a 6th house along a 255m stretch of the North Lane / South Road axis, and a 5th house along a 215 stretch of the west side of North Lane.

9.1.13 As such, the proposed development would be inconstant with Objective 6-3, which states that there is a 'presumption against' development in such circumstances.

9.1.14 Conclusion on rural housing issues

9.1.15 I consider that the applicant qualifies for a positive presumption under RCI 4-2. However, given the inconsistency with RCI 6-3, and wider concerns regarding national policy, I consider that permission should be refused on this issue.

9.2 ACCESS ARRANGEMENTS

9.2.1 The proposal to provide a new-build driveway of some 150m along the edge of an agricultural field to the rear of the boundaries of 4 existing houses is, in the first instance, unusual. However, the circumstances that the applicant has outlined appear to be a genuine response to the legal issues they have encountered. It is clear that this is not an aspect of the proposal that anyone would chose to pursue in the first instance, but it is can validly be seen as an attempt to address the existing set of constraints.

9.2.2 That being said, it should be recognised that on the bare facts of the case, the proposed access arrangements are fundamentally at odds with sound planning principles. To provide such an amount of circulation space for a single house, with such a large environmental footprint, expanse of hardstanding, and detrimental impact on future surrounding landuses, and all for just one house, is not indicative of sustainable development.

9.2.3 Clearly, the preference would be to provide access via North Lane. I note that, should legal impediments be removed in the future, that the proposed layout would preclude a re-ordering of the site access arrangements by virtue of the percolation are being proposed for the

‘site frontage’. The 4m separation distance required under Table 6.1 of the EPA Code of Practice could not be met in respect of the percolation area and any new driveway accessing North Lane.

- 9.2.4 On balance, I consider the proposed access arrangements via the long driveway to be sub-optimal, but acceptable on the basis of the circumstances presented.

9.3 IMPACTS ON RESIDENTIAL AMENITY

- 9.3.1 The concerns of the appellants about a driveway to the rear of their properties is not unfounded. There is a clear difference in perception between the front of a house and the rear, and a different set of expectations around privacy and disturbance. I note that the appellants had not objected to the original permission, which has since expired.
- 9.3.2 The applicants assert that there would be no net difference in traffic movements between the previously permitted scheme and the current scheme. While this is true in a quantitative sense, I do not consider that this contention holds in a qualitative said.
- 9.3.3 However, while the impacts on the adjoining residents would be greater than under the permitted scheme, that is not to say that these impacts would be unreasonable. In my opinion, the passing of a small number of cars along the driveway each day would not be an undue imposition. The dogleg/chicane section in the middle portion of the driveway would tend to direct car headlights towards the rear of the appellants’ properties at night for both northbound and southbound traffic on the driveway. This could be exacerbated by the topography and the level differences between the sites. However, I consider that this could be satisfactorily addressed by way of planting.
- 9.3.4 In terms of separation distances between the proposed house and the northernmost existing house, distances are in the order of 30m, and the orientations of the buildings’ facades are offset. I do not consider the proposed development to be problematic in this regard.

9.4 EFFLUENT TREATMENT

- 9.4.1 I have serious concerns regarding the site suitability assessment presented by the applicant. The initial information presented included mapping from a location 35km away near Roscarberry. The planning authority rightly picked up on this and put it to the applicant by way of further information. The applicant submitted revised mapping, but not a revised site suitability assessment. Cross-referencing between the documents, it is clear that the baseline input to the assessment in terms of bedrock, aquifer characteristics, soils, etc., relates to the Roscarberry site. As such, this is not merely a

mapping issue, but an issue fundamental to the entire site suitability assessment.

- 9.4.2 In the absence of a dependable assessment on this issue, I recommend a refusal of permission.

9.5 SCREENING FOR APPROPRIATE ASSESSMENT

- 9.5.1 I note the screening exercise undertaken by the planning authority.
- 9.5.2 The site is around 9.5km northeast of the Courtmacsherry Bay/Estuary SAC/SPA.
- 9.5.3 Potential likely effects are runoff to groundwater of potential pollutants. Using the source-pathway-receptor model, and considering the proposed wastewater treatment system on site, and the lack of hydrological connection between the site and the SAC/SPA, I do not consider that the proposed development would be likely to impact on the qualifying interests of the Natura 2000 sites.
- 9.5.4 It is reasonable to conclude that on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site in view of that site's conservation objectives and an appropriate assessment (and submission of a NIS) is not therefore required.

10.0 CONCLUSION AND RECOMMENDATION

- 10.1 Based on the above, I recommend that permission be refused. The applicants' circumstances are clearly regrettable, and it is evident that they have acted in good faith in difficult circumstances. However, the proposed development would result in ribbon development in a 'Rural Area under Strong Urban Influence', and there are significant issues with regard to the site suitability assessment for wastewater treatment. As such, I consider a grant of permission would not be appropriate in the current policy context.

11.0 REASONS AND CONSIDERATIONS

1. Having regard to the location of the proposed development in an 'Area Under Strong Urban Influence', as set out in the 'Sustainable Rural Housing Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in April, 2005, and identified as a 'Rural Area under Strong Urban Influence' in the current Development Plan for the area, and having regard to Objective RCI 6-3 of the current Development Plan which sets out a presumption against development that would result in a situation whereby there would be 5 or more houses on any one side of a given 250m of road frontage, it is considered that the proposed development would, by itself, and by the precedent it would set for similar type developments, lead to an extension of ribbon development and conflict with the policies of the current Development Plan for the area. The proposed development would lead to demands for the uneconomic extension of public services and community facilities in an area where they are not proposed and would set an undesirable precedent for similar type development in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the errors evident in the Site Suitability Assessment in relation to the baseline information on geology, soils, and aquifers in the vicinity, the board is not satisfied that it has been sufficiently demonstrated that wastewater could be successfully treated to an acceptable standard. As such, the proposed development would, therefore, be prejudicial to public health.

G. Ryan
Planning Inspector
19th May 2016