
An Bord Pleanála



Inspector's Report

Ref.: PL04. 246550

Development: To construct a dwelling house, installation of a small treatment plant and associated site works.

Killaminoge, Innishannon, Co. Cork.

PLANNING APPLICATION

Planning Authority: Cork County Council

Planning Authority Ref.: 16/4317

Applicant: Darren & Rosie Linham

Type of Application: Permission

Planning Authority Decision: Grant subject to conditions

APPEAL

Type of Appeal: Third Party v. Decision

Appellant: Damian & Kerry Coleman

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 19th August, 2016

1.0 SITE LOCATION AND DESCRIPTION

1.1 The proposed development site is located in the rural townland of Killaminoge, Co. Cork, approximately 4km east of Innishannon and 16km southwest of Cork City Centre. The surrounding landscape is primarily one of undulating rural countryside with intermittent instances of one-off housing and agricultural outbuildings, although the prevalence of roadside residential development gradually increases on the approach to the nearby urban centre of Innishannon. The site itself has a stated site area of 0.21 hectares (which appears to include measurement from the centreline of the public road), is generally rectangular in shape, and presently comprises a plot of rough ground / scrubland occupied by 2 No. shipping / freight containers, a number of sheds, and cut tree trunks. To the immediate northeast and northwest the site adjoins agricultural lands whilst the public road is to the southeast with the adjacent site to the southwest occupied by a single storey bungalow. The site is bounded by timber post and wire fencing to the northeast and northwest whilst the roadside boundary comprises more substantial timber fencing with the remaining south-western site boundary being defined by a blockwork wall.

2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 The proposed development consists of the construction of a single storey dwelling house with a stated floor area of 194.29m² and a ridge height of 5.416m. The overall design of the proposed dwelling house is based on a somewhat conventional interpretation of the traditional 'cottage' vernacular and utilises an elongated 'L'-shaped construction with a narrow plan depth and vertically emphasised fenestration. External finishes include blue / black roof slates, smooth plaster, and hardwood doors and windows.

2.2 Access to the site will be obtained directly from the adjacent public road to the immediate southeast via an upgrading of the existing entrance arrangement. It is also proposed to install a wastewater treatment system which will discharge to a soil polishing filter whilst a water supply will be obtained from an existing private well on site.

3.0 RELEVANT PLANNING HISTORY

3.1 On Site:

PA Ref. No. 01/4374 / PL04.127009. Was refused on appeal on 16th April, 2002 refusing Michael Mehigan outline permission for a development comprising demolition of existing sheds and erection of a dwelling for the following reason:

- The proposed development is located in a rural area where it is the policy of the planning authority, as set out in the current development plan for the area, to restrict housing development. It is also the policy of the planning authority to seek to direct development to designated settlements. These policies are considered reasonable. It is considered that the proposed development, when taken in conjunction with existing development in the area, would contribute to an excessive density of development in a rural area, would militate against the preservation of the rural environment and lead to demands for the uneconomic provision of public services and community facilities. The proposed development would, therefore, be in conflict with the provisions of the development plan and be contrary to the proper planning and development of the area.

PA Ref. No. 04/4567. Was refused on 16th August, 2004 refusing Davina McCarthy & Raymond Keane permission for a dwelling house and garage.

PA Ref. No. 07/8470. Was refused on 1st August, 2007 refusing Michael O'Connell permission for the demolition of 2 No. sheds and construction of 2 No. sheds for the storage of building materials.

PA Ref. No. 13/6514 / ABP Ref. No. PL04.243428. Was granted on appeal on 1st October, 2014 permitting Darren and Rosie Linham permission for the retention of storehouse and permission for the construction of 2 No. stables and 1 No. tack room, and the erection of a timber palisade fence on the western boundary of the site, and associated site works.

PA Ref. No. 14/5545 / ABP Ref. No. PL04.244526. Was refused on appeal on 30th June, 2015 refusing Darren and Rosie Linham permission for the construction of a dwelling house, installation of a small treatment plant and associated site works for the following reason:

- The proposed development would be located within an Area Under Strong Urban Influence as identified in the Sustainable Rural Housing Guidelines

for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005 and in the current development plan for the area, where it is the policy of the planning authority to discourage urban generated housing and to seek to locate such housing in the larger urban centres or the towns, villages and other settlements identified in the Settlement Network. The proposed development would further erode the rural character of this area and would lead to demands for the provision of further public services and community facilities and would be contrary to the said Ministerial Guidelines. The proposed development, by itself and by the precedent it would set for other houses in this area would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2 On Adjacent Sites:

PA Ref. No. 13/6343. Was granted on 20th March, 2014 permitting Damian & Kerry Coleman permission for alterations to dwelling house, namely; construction of a single storey extension to side of dwelling house and conversion of attic to new bedroom with 2 No. new dormer windows to rear at Killaminoge, Innishannon, Co. Cork.

3.3 On Sites in the Immediate Vicinity:

PA Ref. No. 03/105. Was refused on 6th March, 2003 refusing Norene Kelleher outline permission for a dwelling and garage at Killaminoge, Innishannon, Co. Cork.

PA Ref. No. 04/6835. Was granted on 1st November, 2004 permitting Ger Healy permission for a dwelling house and garage at Killaminoge, Innishannon, Co. Cork.

PA Ref. No. 04/9607. Was refused on 25th February, 2005 refusing Niall O'Sullivan permission for a dwelling and garage at Killaminoge, Innishannon, Co. Cork.

PA Ref. No. 06/11074. Was granted on 2nd January, 2007 permitting Gabriel O'Sullivan permission for a one and half storey dwelling house (change of plan) at Killaminoge, Innishannon, Co. Cork.

PA Ref. No. 14/6195. Was granted on 25th May, 2015 permitting Anne Kelleher permission for the retention of a one-and-a-half storey detached granny flat/double garage to the rear and side of the existing house and for retention of

alterations to dwelling elevations. Permission was sought also for a two-storey extension to the rear of the existing two-storey dwelling and installation of a new percolation area. All at Farmleigh, Killaminoge, Innishannon, Co. Cork.

PA Ref. No. 15/6504. Was granted on 22nd February, 2016 permitting Anne Kelleher permission for the construction of extension to side/rear of dwelling (linking dwelling to existing granny flat/garage) and external and internal alterations to granny flat/garage at Farmleigh, Killaminoge, Innishannon, Co. Cork.

4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

4.1 Decision:

On 11th April, 2016 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 9 No. conditions which can be summarised as follows:

- Condition No. 1 – Refers to the submitted plans and particulars.
- Condition No. 2 – Refers to the payment of a development contribution in the sum of €3,778.56.
- Condition No. 3 – Refers to the occupancy of the proposed dwelling house.
- Condition No. 4 – Refers to external finishes.
- Condition No. 5 – Refers to the installation of the wastewater treatment system.
- Condition No. 6 – Refers to the maintenance of the wastewater treatment system.
- Condition No. 7 – Requires the wastewater treatment system to be provided with an alarm system in the event of failure.
- Condition No. 8 – Requires the site entrance to adjoin the public road to the satisfaction of the Planning Authority.
- Condition No. 9 – Refers to piping of the site entrance.

4.2 Objections / Observations:

A total of 3 No. submissions were received from interested parties and the principle grounds of objection contained therein are generally reiterated in the grounds of appeal.

4.3 Internal Reports:

Area Engineer: No objection subject to conditions.

4.4 Prescribed Bodies / Other Consultees:

None.

4.5 Representations:

Deputy Jim Daly TD: Requests to be kept informed of the subject application as it progresses through the planning system.

Cllr. Alan Coleman: Expresses support for the application.

5.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- The subject application has been lodged only 9 No. months since the Board previously refused permission to the same applicants for an identical development under ABP Ref. No. PL04.244526 wherein one of the key reasons for refusal was the absence of a 'rural housing need'.
- The assessment of the subject application by the Planning Authority is considered to be inadequate and includes a number of errors:
 - Insufficient evidence has been provided to support the assertion that the applicants have been resident in the area for 7 No. years. In this regard specific reference is made to the absence of any documentation to support their residency between May, 2013 and December, 2014.
 - The Planner's Report states that the applicants qualify under Items 'C' and 'D' of Policy RCI 4-2, however, Item 'C' refers to persons '*working full-time*' in rural areas and thus this conclusion is incorrect.
 - The contents of the multiple observations made on the planning application have not been adequately addressed.
 - The commentary of the Case Planner as regards the applicant's (Mr. Linham's) employment is both factually incorrect and misleading.
 - The location of the appellant's private well has been incorrectly identified which is of concern given the need for adequate separation from same.
 - The address provided by the applicants in the supplementary application form (i.e. Killaminoge) is incorrect as it is not their home address.

-
- The Planner's Report has not referenced a number of previous planning applications made on site which were refused permission. It is further noted that the Planning Authority has adopted a position in contrast to that previously held in its determination of PA Ref. No. 01/4374.
 - There are notable inconsistencies between the information which has accompanied the subject application and that previously provided in respect of PA Ref. No. 14/5545.
 - No reference was made in PA Ref. No. 14/5545 to the applicants having been involved in agriculture.
 - Contrary to the details provided in PA Ref. No. 14/5545, the applicant (Mr. Linham) is employed as a truck driver in the UK.
 - The supplementary application form submitted with PA Ref. No. 14/5545 indicated that the applicants had previously owned a residential property (in contrast to the subject application).
 - Whilst the applicant (Mrs. Linham) has sought to emphasise her aunt's and grandmother's links to the area, her family home is in Bishopstown where she continues to reside. Furthermore, Mrs. Linham's mother's family are from Bandon which is also outside of the parish of the application site. Similarly, Mr. Linham is not from the area and thus the statement that the applicants are returning emigrants is incorrect.
 - The applicants are no longer resident in the area although they have sought to maintain a postal address on site by erecting a letterbox on same.
 - The applicants have failed to comply with the conditions imposed by the Board in respect of the grant of permission issued under ABP Ref. No. PL04.243428.
 - An unauthorised well has been sunk on site without the benefit of planning permission.
 - It is considered that the applicants have potentially made fraudulent claims as regards their residency in the area for 7 No. years.
 - The letters of reference which have been submitted in support of the applicants' links to the rural area were not included in the previous planning application lodged on site under PA Ref. No. 14/5545 and the veracity of the information contained therein is questioned.
 - Permission has been refused on site on multiple occasions and it is submitted that there has been no change in policy nor is there any other

reason which would overturn the previous reasons for refusal. In this respect it is further submitted that both local and national planning policy with regard to the development of one-off rural housing has been significantly strengthened in recent years.

- The proposed development is contrary to the relevant provisions of the County Development Plan. In this respect the Board is referred to Objective RCI 9-1 which recognises the serious long-term effects that urban-generated housing can have on rural area in terms of the viability of rural settlements, the carrying capacity of the rural infrastructure, and its impact on the special character and environment of rural areas.
- The proposed development site is located within the 'Rural Housing Control Zone' where Objective RCI 9-2 of the Development Plan states the following:

a) It is an objective to recognise the particular development pressures for large numbers of urban generated commuter housing in the countryside, outside the Greenbelt, but within easy commuting distance of the city.

b) It is an objective to maintain the Rural Housing Control Zone, with strict controls on commuter housing, that covers those rural areas outside the Metropolitan Area.

- Contrary to the submitted information, it is the applicant's (Mr. Linham's) intention to return to work in England as a long distance truck driver on receipt of any grant of planning permission.
- Insufficient evidence has been provided to support the various statements / assertions made by the applicants.

6.0 RESPONSE TO GROUNDS OF APPEAL

6.1 Response of the Planning Authority:

None.

6.2 Response of the Applicants:

- The third party appeal against the notification of the decision to grant permission for the subject proposal is considered to be of a vexatious nature and the grounds of objection contained therein should be given no credence.

-
- A comprehensive and accurate account of the applicants' ties to this particular rural area has been provided and this is supported by the documentation which has accompanied the application.
 - The circumstances of Mr. Linham's full-time employment on a farm within walking distance of the application site have been detailed and it is further submitted that the applicants' rural housing need is genuine given that they are both engaged in agriculture.
 - The applicants are part of the local community and have been able to call on the support of same.
 - By way of clarity, it is submitted that following the sale of the applicant's aunt's house in December, 2014, they have resided with family and friends and that more recently they have been unable to find a property to rent in the locality which is both suitable and affordable. Accordingly, the applicants have an urgent rurally-generated housing need.
 - The subject application satisfies the relevant provisions of the County Development Plan and the '*Sustainable Rural Housing, Guidelines for Planning Authorities*'.
 - In their respective assessments of PA Ref. No. 14/5545 / ABP Ref. No. PL04.244526, both the Planning Authority and An Bord Pleanala previously accepted the applicants' proof of residency in the area for 7 No. years. In this respect it is reiterated that the applicants' present housing circumstances have arose from a lack of affordable rental accommodation which has resulted in them having to rely on family and friends and thus they are unable to provide named utility bills pertaining to these properties.
 - With regard to compliance with the criteria set out in Policy RCI 4-2 of the Development Plan, it is submitted that the applicants have been resident in the area for 9 No. years and that their employment in agriculture establishes a rural housing need.
 - The Planner's Report has acknowledged the contents of those objections received in respect of the subject application and has satisfactorily addressed the issues raised.
 - The accompanying documentation prepared by the accountants of Mr. Donal Kiely serves to support the applicant's (Mr. Linham's) employment locally in agriculture.
 - With regard to the location of the appellant's well, the subject application has been prepared on the basis of drawings supplied by the Local Authority. The minimum separation distances have been observed and all technical matters in this regard were agreed to the satisfaction of the Area Engineer in the previous application lodged on site.

-
- In relation to the address supplied on the supplementary application form, it is submitted that the applicants' do not presently have a fixed home address, hence their housing need.
 - In the assessment of ABP Ref. No. PL04.244526 the reporting inspector made reference to 2 No. previous planning applications which were deemed to be relevant to the determination of that appeal and these have also been considered in the subject application. Other less relevant aspects of the planning history of the proposed development site have been discounted by the case planner.
 - Following consideration of Policy Objective RCI 4-2 of the County Development Plan, the Planner's Report has concluded that the subject proposal satisfies the relevant requirements whereby an exemption may be made in order to issue a grant of planning permission.
 - It was previously detailed in response to the appeal made under ABP Ref. No. PL04.244526 that Mr. Linham was working part-time in agriculture and although he has at times had to work short-term as a Class 1 HGV driver in the UK this is not considered to be relevant to the subject application.
 - The applicants are both presently involved in the rearing of pigs, poultry and ponies.
 - The appellants' comments as regards the applicant's place of upbringing are not considered to be of relevance to the subject application.
 - Due to an increase in the rent it was necessary for the applicants to leave their previous accommodation in Killaminoge and thus they subsequently moved in to live with Mrs. Linham's aunt.
 - The applicants have always fully engaged with the planning process and all instances of unauthorised development have been resolved with the Planning Authority. Furthermore, the well on site is considered to constitute exempted development and there is no negative impact on any third party property.
 - The suggestion that the applicants have submitted fraudulent information is rejected and it is asserted that the appellants have chosen to 'cherry-pick' certain details with a view to undermining the subject application.
 - It is considered that the applicants form an intrinsic part of the local rural community and the additional documentation / references submitted, including those pertaining to Mr. Linham's employment, have been provided in support of same.
 - Whilst acknowledging the planning history of the subject site, it is submitted that the circumstances of the applicants have changed and that they now qualify under several different criteria for a dwelling house at this location pursuant to both local and national policy.

-
- With regard to the objection lodged by Mr. Declan Duggan, the Board is requested to note the following:
 - The planning history of the application site has already been addressed in this submission.
 - The behaviour of the applicant's dogs is not a planning matter and the County Dog Warden has concluded that no action is required in respect of same.
 - There has been no attempt to obtain planning permission 'by stealth' and all instances of unauthorised development have been resolved with the Planning Authority.
 - A post box does not require a residence. There is a utility bill generated in relation to the electrical supply to the application site. When the applicants moved out from the dwelling house across the road from the site, it was not considered necessary to change their address as it was hoped that the move would be of a temporary short-term nature.
 - The existing driveway / access is never used whilst the Area Engineer is also satisfied that there is sufficient space on site to accommodate the turning of vehicles. No further issues were raised with regard to the site access by either the Planning Authority or the Board in their respective assessments of PA Ref. No. 14/5545.
 - There have been only two accidents along this section of roadway in the last 9 No. years, both of which were as the result of driver error as opposed to road design considerations or traffic volume.
 - With regard to the reference by the objector to a previous determination by the Board wherein it was held that an earlier proposal on site would erode the rural character of the area, would lead to demands for the provision of further public services and community facilities, and would set a precedent for further houses in the area, it is submitted that both the Planning Authority and the Board have more recently concluded that these were not issues of concern as regards the suitability of the site for development.

 - With regard to the original objection lodged by the appellants, the Board is requested to note the following:

-
- The planning history of the site is not of sufficient similarity as to be of relevance to the subject application.
 - The applicants satisfy the eligibility criteria set out under Objective RCI 4-2 of the County Development Plan, 2014. Furthermore, the objectors' reference to commutable distances is not considered to be relevant as Mr. Linham's primary place of employment is within walking distance of the application site.
 - The proposal previously determined on appeal under ABP Ref. No. PL04.241551 is not comparable to the subject application as it concerned a site within the Bandon River Valley where there are efforts to restrict development with a view to changing its future designation.
 - The applicants have a housing need and their previous ownership of a dwelling house in another jurisdiction is of no relevance to the subject application.
 - The applicants satisfy the 7 No. year residency requirement and this was previously accepted by the reporting inspector in their assessment of ABP Ref. No. PL04.244526.
 - Additional information has now been provided as regards the applicants' involvement in agriculture locally (these details were not submitted as part of PA Ref. No. 14/5545 as the applicants were then relying on their residency in the area).
 - It has already been established through the assessment of earlier planning applications that the proposed development will not give rise to any traffic hazard.
 - The suggestion that inadequate or inaccurate information has been submitted with the application is rejected.
 - It is reiterated that the applicants have always engaged with the planning process and that there has been no disregard for planning laws.
 - The *'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005'* guard against an overly prescriptive approach and provides for persons who satisfy specific criteria in relation to demonstrating their economic, social and physical links to a community. In relation to the travelling distances undertaken by the applicants, it is submitted that the application site is centrally located relative to their family, employment, agricultural, community and educational needs.

-
- It is reiterated that the references supplied are correct and serve to support the applicant's (Mr. Linham's) full-time employment in agriculture locally.
 - The applicant (Mrs. Linham) has family connections to the Ballinhassig area dating to the late 1960s.
- With regard to the objection lodged by Hawk Investigations, the contents of same are refuted by the applicants.

7.0 NATIONAL AND REGIONAL POLICY

7.1 The 'Sustainable Rural Housing, Guidelines for Planning Authorities', 2005 promote the development of appropriate rural housing for various categories of individual as a means of ensuring the sustainable development of rural areas and communities. Notably, the proposed development site is located in an 'Area under Strong Urban Influence' as indicatively identified by the Guidelines. Furthermore, in accordance with the provisions of the Guidelines, the Cork County Development Plan, 2014 includes a detailed identification of the various rural area types specific to the county at a local scale and 'Figure 4.1: Rural Housing Policy Area Types' of the Plan confirms that the site is located within a 'Rural Area under Strong Urban Influence'.

8.0 DEVELOPMENT PLAN

Cork County Development Plan, 2014:-

Chapter 2: Core Strategy:

Section 2.3: The Network of Settlements

Chapter 4: Rural, Coastal and Islands:

RCI 1-1: Rural Communities:

Strengthen rural communities and counteract declining trends within the settlement policy framework provided for by the Regional Planning Guidelines and Core Strategy, while ensuring that key assets in rural areas are protected to support quality of life and rural economic vitality.

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.

Section 4.3: Identifying Rural Area Types:

Section 4.3.6: Rural Area under Strong Urban Influence and Town Greenbelts:

The rural areas of the Greater Cork Area outside the Metropolitan Greenbelt are now within easy commuting distance of Cork City and Environs as a result of road and infrastructural improvements. These areas exhibit characteristics such as rapidly rising population, evidence of considerable pressure from the development of (urban generated) housing in the open countryside due to proximity to such urban areas / major transport corridors, pressures on infrastructure such as the local road network and higher levels of environmental and landscape sensitivity. The Town Greenbelts define the visual setting around the main towns and have been established to prevent sprawl and control linear roadside development

Section 4.4: Categories of Rural Generated Housing Need:

Section 4.4.2: This plan recognises the positive benefits for rural areas to sustain and strengthen the vibrancy of rural communities by allowing qualifying applicants to build a first home for their permanent occupation in a 'local rural area' to which they have strong economic or social links as defined in the following objectives RCI 4-1 to RCI 4-5. The meaning of 'local rural area' is generally defined by reference to the townland, parish or catchment of the local rural school to which the applicant has a strong social and / or economic link.

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.

Section 4.6: *General Planning Considerations:*

RCI 6-1: Design and Landscaping of New Dwelling Houses in Rural Areas:

- a) Encourage new dwelling house design that respects the character, pattern and tradition of existing places, materials and built forms and that fit appropriately into the landscape.
- b) Promote sustainable approaches to dwelling house design by encouraging proposals to be energy efficient in their design, layout and siting.
- c) Require the appropriate landscaping and screen planting of proposed developments by using predominantly indigenous/local species and groupings.

RCI 6-2: Servicing Individual Houses in Rural Areas:

Ensure that proposals for development incorporating septic tanks or proprietary treatment systems comply with the EPA Code of

Practice: Wastewater Treatment and Disposal Systems serving Single Houses (p.e. < 10) or any requirements as may be amended by future national legislation, guidance, or Codes of Practice.

RCI 6-4: Occupancy Conditions:

In order to take a positive approach to facilitating the housing needs of the rural community, where permission has been granted for a rural housing proposal, an occupancy condition shall normally be imposed under Section 47 of the Planning & Development Act 2000.

Chapter 13: Green Infrastructure and Environment:

Section 13.5: Landscape

Section 13.6: Landscape Character Assessment of County Cork

GI 6-1: Landscape:

- a) Protect the visual and scenic amenities of County Cork's built and natural environment.
- b) Landscape issues will be an important factor in all land use proposals, ensuring that a proactive view of development is undertaken while maintaining respect for the environment and heritage generally in line with the principle of sustainability.
- c) Ensure that new development meets high standards of siting and design.
- d) Protect skylines and ridgelines from development.
- e) Discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.

GI 6-2: Draft Landscape Strategy:

Ensure that the management of development throughout the County will have regard for the value of the landscape, its character, distinctiveness and sensitivity as recognised in the Cork County Draft Landscape Strategy and its recommendations, in order to minimize the visual and environmental impact of development, particularly in areas designated as High Value Landscapes where higher development standards (layout, design, landscaping, materials used) will be required.

Section 13.7: *Landscape Views and Prospects:*

GI 7-1: *General Views and Prospects:*

Preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty as recognized in the Draft Landscape Strategy.

Bandon Electoral Area Local Area Plan, 2011 (2nd Ed., January, 2015):

Section 1: *Introduction to the Bandon Electoral Area Local Area Plan*

Section 2: *Local Area Strategy*

9.0 ASSESSMENT

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The nature of the grounds of appeal
- Rural housing policy / the principle of the proposed development
- Overall design and layout / visual impact
- Traffic implications
- Wastewater treatment and disposal
- Appropriate assessment

These are assessed as follows:

9.1 The Nature of the Grounds of Appeal:

9.1.1. With regard to the suggestion that the Board may wish to dismiss the subject appeal pursuant to the provisions of Section 138(1) of the Planning and Development Act, 2000, as amended, on the basis that said appeal is '*vexatious, frivolous or without substance or foundation*' or has been made '*with the sole intention of delaying the development*', having considered the grounds of appeal, I am satisfied that it raises legitimate material planning considerations and thus I propose to assess same accordingly.

9.2 Rural Housing Policy / The Principle of the Proposed Development:

9.2.1 The proposed development site is located in an '*Area under Strong Urban Influence*' as indicatively identified by the '*Sustainable Rural Housing, Guidelines*

for *Planning Authorities, 2005*'. These Guidelines state that such areas will exhibit characteristics such as their proximity to the immediate environs or the close commuting catchments of large cities and towns (e.g. Cork City, Bandon & Kinsale) and will generally be under considerable pressure for the development of housing due to their proximity to these urban centres or the major transport corridors accessing same. Notably, within these areas the National Spatial Strategy states that the provision of new housing should generally be confined to persons with roots in or links to these areas whilst the Guidelines also acknowledge that the housing requirements of persons with roots or links in rural areas are to be facilitated and that planning policies should be tailored to local circumstances. In addition to the foregoing, it is of further relevance to note that the Cork County Development Plan, 2014 includes a detailed identification of the various rural area types specific to the county at a local scale and that *'Figure 4.1: Rural Housing Policy Area Types'* of the Plan serves to confirm that the site is located within a *'Rural Area under Strong Urban Influence'*.

9.2.2 Within the *'Rural Areas under Strong Urban Influence'* the Planning Authority has adopted a restrictive approach as regards the eligibility of prospective applicants for rural housing and in this respect I would refer the Board to Objective RCI 4-2 of the County Development Plan which states that applicants must satisfy the Planning Authority that they have a genuine rural-generated housing need based on their social and / or economic links to a particular local rural area and 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.

9.2.3 Having regard to the foregoing, I would accept that any further housing in this area should be restricted to named persons with a genuine need to reside in the locality and, therefore, it is necessary to critically analyse the subject application in the context of compliance with Objective RCI 4-2 of the County Development Plan and the provisions of the *'Sustainable Rural Housing, Guidelines for Planning Authorities', 2005*.

9.2.4 From a review of the available information, with particular reference to the planning application form and the grounds of appeal, in addition to the planning history of the site, including the Board's previous determination of ABP Ref. No. PL04.244526, it is apparent that the key issues in the assessment of the subject appeal are whether or not the applicants satisfy the eligibility criteria set out in the County Development Plan and the *'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005'* as regards the development of a rural dwelling house at the location proposed, and if the submitted proposal constitutes *'rural-generated'* housing as distinct from *'urban-generated'* development.

9.2.5 With regard to the applicants' compliance with the eligibility criteria set out in Objective RCI 4-2 of the County Development Plan, it has been submitted that they adhere to the requirements of Items 'C' and 'D' of same and thus I propose to review these in turn.

9.2.6 In the first instance, Objective RCI 4-2(C) refers to *'persons working full-time in farming, forestry, inland waterway or marine related occupations, for a period of over seven years, in the local rural area'* and in this respect it is clear from the submitted information that neither of the co-applicants satisfies this requirement. In support of this conclusion I would advise the Board that Ms. R. Linham is employed in Bandon as a Betting Shop Manager and that whilst it would appear that Mr. D. Linham previously carried out SOME part-time agricultural work in the locality over the last number of years (during which time he was primarily engaged as a 'house husband'), he has only been employed full-time in agriculture as a 'Farm Manager' since May, 2015 (with documentation having been submitted from his employer to this effect). Notwithstanding the

additional correspondence which has accompanied the planning application that serves to indicate that both of the applicants have been involved to some extent in agricultural activities (the rearing of livestock i.e. poultry and pigs, in addition to equestrian activities), it would appear that this only amounts to part-time work of a limited scale and thus I am inclined to suggest that it is insufficient to comply with the requirements of Objective RCI 4-2(C). Indeed, given that the proposed development site would appear to be the only lands retained in the ownership of the applicants and in the absence of any details of (or reference to) other lands in which the applicants may hold an interest and that could serve to support their farming activities, it is difficult to conclude that their involvement in agriculture is anything other than small-scale.

9.2.7 In relation to compliance with Objective RCI 4-2(D), it is of relevance to note that the reporting inspector in their assessment of ABP Ref. No. PL04.244526 was satisfied that the applicants had resided in the surrounding rural area for a period in excess of 7 No. years and thus met the relevant eligibility criteria. In this respect I would advise the Board that it appears the applicants moved to the locality from the UK in 2007 and that they have resided at various addresses in the wider area since. Whilst I would acknowledge the appellants' assertions with regard to the veracity of the applicants' residency claims, on balance, I am inclined to accept same and thus the subject proposal broadly complies with the requirements of Objective RCI 4-2(D).

9.2.8 At this point, I would also draw the Board's attention to Objective RCI 4-2(E) which refers to returning emigrants seeking to reside in the rural area where they previously spent a substantial period of their lives (i.e. over seven years). Whilst there is a suggestion in the submitted documentation that the applicants may satisfy this provision, in my opinion, given that no details of the applicants residency prior to their 'return' from the UK in 2007 have been provided, I do not accept that it has been demonstrated that the applicants are originally from the rural area within which the application site is located and thus cannot be considered to be 'returning' to the locality.

9.2.9 Having established that the applicants would appear to satisfy the wider eligibility requirements of Objective RCI 4-2(D) of the Development Plan, it is necessary to consider whether their housing need is 'urban' or 'rural-generated' generated. In this regard, I would concur with previous reporting inspector in their assessment of ABP Ref. No. PL04.244526 that Ms. Linham's employment in Bandon and her family connections to same would seem to suggest that the subject proposal is urban-generated. Furthermore, whilst I would concede that it

is perhaps desirable for Mr. Linham to reside at the subject site given his recent employment on a farm in the vicinity of same, I would reiterate that he does not satisfy the requirements of Objective RCI 4-2(C) of the Development Plan.

9.2.10 Furthermore, in relation to the applicants 'housing need' it is readily apparent from the available information that they previously owned a dwelling house in the UK seemingly prior to their purchase of the application site. In this respect whilst I would acknowledge the applicants recent residency in this rural area and their present accommodation difficulties, it is clear that they are not 'returning emigrants' and do not meet a fundamental aspect of qualifying criteria set out in Objective RCI 4-2 in that they are not building '*a first home for their permanent occupation*'. Indeed, the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*' provide further clarity in this respect in that they aim to facilitate '*persons who are an intrinsic part of the rural community*' and are building their first homes.

9.2.11 Therefore, on the basis of the foregoing, whilst I would acknowledge the merits of the case provided by the applicants, on balance, I am inclined to conclude that they do not satisfy the eligibility criteria set out in the Development Plan or the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*' as regards the construction of a rural dwelling house at the location proposed, although the Board is open to review same.

9.3 Overall Design and Layout / Visual Impact:

9.3.1 In terms of assessing the visual impact of the proposed development it is of relevance in the first instance to note that the wider landscape type within which the subject site is located has been classified as '*Broad Fertile Lowland Valleys*' as per the landscape character mapping set out in the County Development Plan, 2014. In addition, it should be noted that the site is not located within any designated '*High Value*' landscape nor will it be readily visible from any scenic route identified for preservation in the County Development Plan.

9.3.2 In a local context, the application site is situated along a minor local roadway and adjoins an existing single storey property at the foot of a localised rise in the landscape with the lands to the southeast and southwest rising over same.

9.3.3 With regard to the specifics of the actual design and siting of the proposed development, I would advise the Board that the submitted proposal is identical to that previously considered under ABP Ref. No. PL04.244526 in that it involves

the construction of a single storey dwelling house based on a somewhat conventional interpretation of the traditional 'cottage' vernacular which utilises an elongated 'L'-shaped construction with a narrow plan depth and vertically emphasised fenestration.

9.3.4 Considering that the Board would appear to have had no overt objection to the design and layout of development as proposed in its previous assessment of ABP Ref. No. PL04.244526, and having regard to the site context, whilst I would acknowledge that the proposed development will be visible from the adjacent public road, I am inclined to conclude that the visual impact of the proposal is within acceptable limits and could be mitigated further through an appropriate scheme of landscaping / planting.

9.4 Traffic Implications:

9.4.1 At present, the proposed development site is accessed via an existing gateway, however, it is proposed to replace this with a new splayed entrance arrangement positioned further northeast whilst the existing roadside boundary fencing will also be removed and replaced with a new 1m high earthen embankment constructed in a recessed position alongside the front boundary in order to achieve sightlines of 80m from the proposed entrance onto the public road in both directions. This proposed entrance arrangement is directly comparable to that previously assessed under ABP Ref. No. PL04.244526 wherein the reporting inspector determined that it was satisfactory from a traffic safety perspective and I would concur with his conclusions in this regard.

9.5 Wastewater Treatment and Disposal:

9.5.1 The details submitted with regard to the proposed installation of a wastewater treatment system with the subsequent disposal of treated effluent to ground by means of a soil polishing filter (including the Site Characterisation Form) are identical to those previously assessed under ABP Ref. No. PL04.244526 wherein the reporting inspector concluded that the selected system should function satisfactorily provided it is installed and maintained in accordance with the requirements of the Planning Authority. Accordingly, I have no further comments in this regard.

9.6 Appropriate Assessment:

9.6.1 From a review of the available mapping, and the data maps from the website of the National Parks and Wildlife Service, it is apparent that the proposed development site is located outside of any Natura 2000 site with the closest example of any such designation being the Cork Harbour Special

Protection Area (Site Code: 004030) approximately 15km to the northeast. In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Objective No. HE 2-1: '*Sites Designated for Nature Conservation*' of Chapter 13 of the Cork County Development Plan, 2014, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

9.6.2 Having reviewed the available information, including the screening exercise undertaken by the Planning Authority as appended to the Planner's Report prepared in respect of the subject proposal, and following consideration of the 'source-pathway-receptor' model, it is my opinion that given the nature and scale of the development proposed, the site location outside of any Natura 2000 designation, the limited ecological value of the lands in question, the absence of any direct discharge to a watercourse, and the separation distances involved between the site and the Cork Harbour Special Protection Area, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of the aforementioned Natura 2000 site. Therefore, I am inclined to conclude that the proposed development would not be likely to significantly affect the integrity of the foregoing Natura 2000 site and would not undermine or conflict with the Conservation Objectives applicable to same.

9.6.3 Accordingly, it is reasonable to conclude 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 and, in particular, specific Site Code: 004030, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

10.0 RECOMMENDATION

Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

Reasons and Considerations:

1. The proposed development would be located within an Area Under Strong Urban Influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005 and in the current development plan for the area, where it is the policy of the planning authority to discourage urban generated housing and to seek to locate such housing in the larger urban centres or the towns, villages and other settlements identified in the Settlement Network. The proposed development would further erode the rural character of this area and would lead to demands for the provision of further public services and community facilities and would be contrary to the said Ministerial Guidelines. The proposed development, by itself and by the precedent it would set for other houses in this area would, therefore, be contrary to the proper planning and sustainable development of the area.

Signed: _____

Robert Speer
Inspectorate

Date: _____