



An
Bord
Pleanála

Inspector's Report PL04.246695

Development	OPP sought for the construction of a house, garage, treatment plant and ancillary site works all at, Ballynoe, Whites Cross, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	16/4608
Applicant(s)	Mr. Michael Kiely
Type of Application	Outline Permission
Planning Authority Decision	Refuse permission
Appellant(s)	1. Mr. Michael Kiely
Observer(s)	1. None
Date of Site Inspection	22 nd August, 2016
Inspector	A. Considine

1.0 Site Location and Description

- 1.1. The subject appeal site is located on the R614, Regional Road, approximately 5km to the north of Cork City and in the townland of Ballyroe, approximately 0.6km north of White's Cross. The regional road has a stated speed limit of 80km/ph and is well trafficked.
- 1.2. The site is generally level and comprises part of a larger landholding. The landholding is currently occupied by a large two storey detached dwelling house on the southern portion of the site with two mobile homes located immediately to the north. The detached house is accessed via a large gated vehicular entrance and one of the mobile home sites is also accessed from here. The second mobile home site is accessed via a second access located to the south of the landholding roadside boundary. This second access runs along the southern elevation of the house and across the rear. This access also provides access to a large shed located to the north western corner of the landholding and the remaining lands, the subject of this appeal, which is currently used for grazing of horses. The site has a stated area of 0.54 hectares
- 1.3. The area is characterised by one off housing with three houses within 200 metres to the south. There is also a ribbon of housing, in addition to Ballyroe Nursing Home, on the opposite side of the road.
- 1.4. The site boundaries comprise hedgerow and on the date of my inspection, it is evident that new planting has occurred along the regional road boundary. The site and lands are generally open and exposed and the rural area is evidently under pressure for rural housing. The context of the subject site is presented in the appendix to this report which includes, maps and a number of photographs taken on the day of my site inspection¹.

¹ The Board should note that due to a camera malfunction on the date of my inspection, I have no personal photographs available. There are photographs of the site available from the previous appeal which I have included in the appendix. Apologies for this inconvenience.

2.0 Proposed Development

- 2.1. Outline planning permission was sought, as per the public notices, for the construction of one dwelling house plus domestic garage for the occupation of my son, Michael Jr, to include a small treatment plant providing for foul drainage, ancillary site development works and utilising the existing vehicular access to the site.
- 2.2. The application was lodged with the Planning Authority on the 16th March, 2016 and included the following documents:
- * relevant plans and layout drawings
 - * Site Characterisation Form
 - * Statement from Gardai confirming residences on the landholding since 2007.
 - * Letter from Solicitor confirming the purchase of the landholding in 2006.
 - * Supplementary Planning Application Form, SF1.
- 2.3. The covering letter which was submitted with the application requests that a number of matters be taken into account when considering this application:
- * The applicant is the son of the landowner.
 - * The applicant has been living in a mobile home on the site for the past seven years with his family.
 - * The current accommodation is not suitable for full time family occupation.
 - * It is intended to reassure neighbours that it is not the intention of the family to accommodate mobile homes on the site in the long term.
 - * The previous ABP decision has been taken into account in the making of this application. It is understood that two houses was considered too much in the context of the pattern of development in the area and the Development Plan policies pertaining to it.
 - * However, there are precedents for granting permission for the children of landowners, in accordance with the Development Plan requirements.

- * It is considered that the situation and nature of the site are such as to render it capable of accommodating the proposed development without causing any significant change to the existing character of the area or to the quality of the local environment.
- * All pillars of the existing entrance would be reduced in height to 1m as was proposed in the 14/6761 application.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development for three stated reasons. The reasons are summarised as follows:

1. Material contravention of Objectives RCI 6-3 & RCI 8-1 – relating to ribbon development and protection of the character of the Metropolitan Cork Greenbelt.
2. Non compliance with the housing need criteria set down in Policy Objective RCI 4-1, which deals with the Metropolitan Cork Greenbelt. It is considered that the development would materially contravene objectives RCI 4-1 and RCI 5-2, mitigating against the preservation of the rural environment, would lead to demands on public services and set an undesirable precedent for similar type developments.
3. The development would contravene materially, condition 4 attached to an existing permission for development on the lands granted under reg ref. 06/8494.

3.2. Planning Authority Reports

The report of the area planner can be summarised as follows:

In reaching their decision, the planning report considered the proposed development in terms of the relevant planning history, including enforcement history, EIA and flood risk, policy context and submissions made in relation to the proposed development.

In addition to the above, the SEP prepared a report agreeing with and endorsing the area planners report, also recommending refusal for the three stated reasons.

3.3. Other Technical Reports

The Area Engineer recommended deferral of decision for the following:

- No details of parking or turning movement area
- Notes shared entrance, but sightline drawing provided, 100m with a 3m setback required
- The width of the existing and proposed shared entrance has not been addressed.
- Location of soakaways
- Location of private well

The Liaison Officer recommended refusal of permission in accordance with the Planning Officers recommendation.

3.4. Third Party Observations

There is one third party submission in relation to the proposed development. The issues raised are summarised as follows:

- Questions the length of time the applicant has resided in the area
- Notes the conditions of the grant of permission for the existing house, granted to another person, with an occupancy condition attached. The existing house could not legally have been occupied by the applicants until 2012.

- The applicants are living in an unauthorised house and the proposal is contrary to the spirit of the CDP policy RCI 4-1.
- The proposal materially contravenes conditions no. 2 and 4 of permission 06/8494.
- Access arrangements are unacceptable.

4.0 Planning History

- 4.1. **PA ref: 05/1151:** permission refused to Joe O'Connor on adjoining lands on policy grounds and prematurity given route selection process for Northern Ring Road.
- 4.2. **PA ref: 06/8494:** permission granted in November 2006 to Joe O'Connor for a dwelling and septic tank on the site. Condition 2 stipulated an occupancy clause to be subject of a section 47 agreement. Condition 4 stipulates that only one house be constructed on the entire site shown on the site location map. A Section 47 Agreement in relation to this effect was signed by Mr. O'Connor.
- 4.3. **PA ref: 07/9875:** permission refused to Joe O'Connor for the construction of a conservatory to the dwelling and detached garage on the basis that the dwelling as constructed is materially different to that permitted.
- 4.4. **PA ref: 14/4367:** permission granted in July 2014 for retention to alterations to the dwelling to Mr. Kiely.
- 4.5. **PA ref: 14/6057:** permission sought by Kiely family for the construction of two houses with access directly onto the R619, invalidated due to site notices.
- 4.6. **ABP ref: PL04.244993 (PA ref: 14/6761):** permission sought by Mr. Kiely for the construction of two dwelling houses plus domestic garages including small treatment plans for each unit to provide for foul drainage, vehicular access and

ancillary site development works. Cork County Council granted permission for the development but the Board refused on appeal for the following four stated reasons:

1. Having regard to the provisions of the current Cork County Development Plan and the location of the site within an area designated 'Metropolitan Cork Green Belt' it is considered that, on the basis of the submissions made in connection with the planning application and the appeal, the applicant does not come within the scope of the housing need criteria for a dwellinghouse in this rural area. It is considered that the proposed development would, therefore, materially contravene objective RCI 4-1 of the said development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development for two dwellings, taken in conjunction with existing development to the south, would contribute to, and extend northwards, a pattern of ribbon development which would be contrary to the development plan policy as set out in Section 4.6 and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The proposed development for two dwellings would contravene materially condition number 4 attached to an existing permission for development on the lands granted under planning register reference number 06/8494.
4. It is considered that the proposed development, taken in conjunction with existing development in the vicinity, would result in an excessive concentration of development served by individual effluent treatment systems in an area classed as being at very high risk under the Environmental Protection Agency domestic wastewater risk category. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

5.0 POLICY CONTEXT

5.1. Sustainable Rural Housing Guidelines:

5.1.1. The National Spatial Strategy identified categories of rural area types requiring differing settlement policies for rural housing. The Sustainable Rural Housing guidelines issued by the Department of the Environment Heritage and Local Government, April 2005 are based on the presumption that people who are part of the rural community should be facilitated by the planning system in all rural areas. All new house in rural areas should be sited and integrated well with their physical surroundings and should be generally compatible with inter alia, the protection of water quality in the arrangements made for on-site wastewater disposal facilities. In rural areas under strong urban influences, the NSS stresses that development driven by cities and larger towns should generally take place within their built up areas or in areas identified for new development through the planning process.

5.1.2. Appendix 3 of the Guidelines deals with Development Plan Objectives and Issues for Rural Areas and describes, in box 1, Areas under strong urban influence as follows:

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. In addition policies will also normally include references to:

- *The types of situations considered as constituting rural generated housing. (See also Section 3.2.2.),*
- *Measures that will be put in place to facilitate the availability of an appropriate level of housing options in smaller settlements for other housing requirements,*

- *The criteria that will be applied by the planning authority generally in assessing rural generated housing proposals e.g. in relation to evidence of an applicant's links to the area in question, and*
- *The measures to be adopted to ensure that development permitted to meet the requirements of those with links to the rural community continues to meet the requirements for which it was permitted.*

5.2. County Development Plan, 2014

5.2.1. The subject site is located within the County Metropolitan Cork Strategic Planning Area, in an area of Co. Cork which has been identified as having a High Value Landscape and is located within the Metropolitan Green Belt.

5.2.2. In terms of the Rural Area under Strong Urban Influence designation afforded to the subject site, the following policy objectives are considered relevant:

- RCI 4-1: Metropolitan Cork Greenbelt:

Objective RCI 4-1 should be read in conjunction with Chapter 13, Section 13.8 relating to 'Prominent and Strategic Metropolitan Cork Greenbelt Areas' including Objective GI 8-1 and Figure 13.3. The Metropolitan Cork Greenbelt is the area under strongest 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 a number of identified categories including as follows:

d) Landowners including their sons and daughters who wish to build a first home for their permanent occupation on the landholding associated with their principal family residence for a minimum of seven years prior to the date of the planning application. In circumstances, where a family land holding is unsuitable for the construction of a house, consideration may be given to a nearby landholding where this would not conflict with Objective GI 8-1 and other policies and objectives in the plan.

The total number of houses within the Metropolitan Greenbelt, for which planning permission has been granted since this plan came into operation on a family farm or any single landholding within the rural area, will not normally exceed two.

- The Plan identifies the area as a High Value Landscape County Development Plan Objective GI 6-1: Landscape is considered relevant in this instance and it is the stated policy of the Council:
 - 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 landuse 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.

5.2.3. Further to the above, Section 4.6 of the Plan is considered relevant in that it sets out the general planning considerations for rural housing. In terms of ribbon development it is the policy of the Council to discourage development which would contribute to or exacerbate ribbon development (defined by Cork County Council as five or more houses on any one side of a given 250 metres of road frontage). The Planning Authority will assess whether a given proposal will exacerbate such ribbon development, having regard to the following:

- The type of rural area and circumstances of the applicant;
- The degree to which the proposal for a single dwelling might be considered an infill development;

- The degree to which existing ribbon development would be extended or whether distinct areas of ribbon development would coalesce as a result of the development;
- Local circumstances, including the planning history of the area and development pressures; and
- Normal Proper Planning and Sustainable Development Considerations.

5.2.4. In terms of the Landscape Character type, the area is identified as City Harbour & Estuary, Type 1 Landscape, to which the Landscape Character Assessment for Cork, 2007, affords a very high sensitivity and value to the landscape, which is of national importance.

5.3. Natural Heritage Designations

The site is over 5km from the nearest designated site - Cork Harbour SPA (site code 4030).

6.0 The Appeal

6.1. This is a first party appeal against the decision of Cork County Council to refuse planning permission for the proposed development. The submission seeks to provide a history and background to the appeal. The grounds of appeal can be summarised as follows:

- The Planning Authority did not take into account the evidence provided in support of the subject application, which confirmed the 9 year residency of the family in the area. It is disappointing that FI was not sought rather than the refusal issuing.

In terms of the reasons for refusal, the following is submitted:

- The applicant would agree to locate the dwelling anywhere on the landholding to minimise the visual impression of ribbon development. It is not considered that an appropriately designed and located dwelling on the site, together with the existing and additional landscaping would result in any material detriment to the existing rural character of the area.
- With regard to compliance with the Settlement location policy, it is submitted that the Kiely family have lived on the landholding since May 2006, when the land was purchased. Letter from Gardai confirming that the family have lived continuously on the landholding since 2007, and as such, complies with the policy requirements. In terms of the third party observations with regard to the status of the landholding and planning history which is irregular in terms of planning legislation, it is submitted that should this application be successful, it will be the final step in regularising the family's situation.
- The proposed development contravenes materially condition 4 of the previous grant of permission, 06/8494. It is considered however, that the application should be the reconsideration of the previous planning history, including limiting conditions. It is not reasonable to reference a 10 year old conditions without explaining why it is positively still applicable today. Policies have changed since the condition was imposed.
- In terms of engineering issues, the following is submitted:
 - With regard to roads, it was understood that CCC was satisfied with the proposal under the previous application and it was assumed that any requirements might be included as conditions in any permission to be addressed in any further planning application.
 - Surface water disposal – given that the application is for OPP, it did not seem appropriate or a requirement to provide details of soakaways.

- It was hoped that the Area Engineer would state whether or not a public water supply would be available. It is the applicants preference to connect to a public water supply.
- It is proposed to install a packaged treatment plant with a raised percolation area rather than a septic tank.
- The report concludes that the site is suitable for a dwelling house and with additional landscaping would blend the landholding into the rural landscape and would be a considerable improvement on the current open, rather bleak looking unused field. The transgressions have been fully admitted and that Mr. Kiely had good reason does not justify his actions in flouting planning legislation, but is certainly is mitigating. It would be unfair to continue to deny him the benefits of CDP policy which are available to other long term landowners in the area.

6.2. **Planning Authority Response**

The Planning Authority has not responded to this appeal.

6.3. **Other Party Responses**

An Taisce has submitted a response to the first party appeal, noting the reasons for refusal and the planning history of the site. The submission also notes the content of the Liaison Officers report and concludes that the proposed development would contravene policies and objectives in the CDP and would be contrary to the proper planning and sustainable development of the area. It is requested that the Board uphold the decision to refuse permission.

6.4. **Observations**

No observations noted

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with County Development Plan Policies
- Ribbon Development
- Site Suitability & Servicing
- Other issues
- Appropriate Assessment

7.2. Compliance with County Development Plan Policies

The subject site is located within the identified Metropolitan Cork Greenbelt, as has been its designation in previous County Development Plans for the County, and the County Development Plan, 2014, provides clear guidance that there is a presumption against the development of one off houses except where an exceptional housing need which is based in the rural area, has been clearly established. The applicant is also required to accord with one of four categories of housing need. Given its proximity to Cork City, the area is under obvious development pressure for one off housing, with ribbons of houses having developed on both sides of the road. The CDP policies for such areas seek to restrict housing and proposals for housing must comply with stated criteria as set out in objective RCI 4-1. The Objective requires exceptional rural generated housing need be established based on an applicants social and / or economic connections to a particular local area. The objective presents a number of criteria of which one must be met. The current proposal seeks to rely on the objective criteria which facilitates the children of landowners seeking to build their first home for permanent occupation. The family

must be resident in the local area for a minimum of seven years prior to the date of the planning application.

This issue has been discussed extensively as part of the previous planning applications and appeals and the Board will note the history of the landholding, which occupies 1.4ha in total. The current applicant is seeking outline planning permission to construct one house for one of his sons. The family home is located to the south of the subject site and permission for its construction was granted to Mr. J. O'Connor under 06/8494, subject to a number of conditions including an occupancy condition applicable to Mr. O'Connor. The house was constructed and as advised by the current applicant, occupied by him and his family immediately. The date of occupancy is indicated by Mr. Kiely as 2006, when he and his family resided in a caravan on the landholding. The lands were not registered to Mr. Kiely until 2008.

A third party submission to the County Council suggests that as Mr. Kiely could not have legally resided in the house until sometime after the 25th September, 2012 (application for the construction of a conservatory was refused as the dwelling under construction on the site significantly departed from that permitted under 06/8494 on the 25th September, 2007. The house was far from habitable at this time.) The third party also notes that on the 9th of September, 2010, the applicant on site did not admit to living in the house and as such, the current application cannot be considered as complying with the settlement strategy for the area. In response, the applicants agent sought to detail the events and reasons for Mr. Kiely essentially, flouting the planning laws. In any event, I am satisfied that the issues raised are matters of enforcement which are outside the remit of the Board.

Under the Boards previous consideration of a proposed development on this site by Mr. Kiely, the previous inspector considered that on the balance of evidence, occupation of the dwelling should be taken as the date by which permanent residence commenced. In this regard, 2009 is the relevant year for occupancy, and

sometime after September of that year. I also note that the Board did not object to this determination at the time. If this is the case, it might be considered that the current proposal still does not comply with the objectives of the CDP as described above, as occupancy could not have occurred before the end of September as evidenced in the photographs taken in August 2009 where the house was not inhabitable with no ground floor windows in place at that time. Objective RCI 4-1 requires that

d) Landowners including their sons and daughters who wish to build a first home for their permanent occupation on the landholding associated with their principal family residence for a minimum of seven years prior to the date of the planning application.

Taking the exact wording of the policy objective, I do not consider that the criteria has been met. Other issues of non-compliance with the parent planning permission for the landholding are matters for the County Council.

7.3. Ribbon Development

The proposed development seeks to construct a dwelling house on a site which will increase a ribbon of development to five within 250m. Ribbon Development is defined by Cork County Council as five or more houses on any one side of a given 250 metres of road frontage. Objective RCI 6-3 of the Plan deals with Ribbon Development and provides that there is a presumption against development which would contribute to or exacerbate ribbon development. In terms of the first party response to this issue, I note that the applicant is willing to locate the proposed dwelling on the landholding to minimise the visual impression of linear development. I would not consider it appropriate for the Board at this point to consider addressing the site layout in this regard. Having considered the proposed development, together with the information presented as part of the overall application, I am satisfied that the development, if permitted would result in an unacceptable density of development and would exacerbate and extend the trend of ribbon development

which would lead to an erosion of the rural landscape and would significantly impact upon the character of the area.

7.4. Site Suitability & Servicing

Waste Water:

It is proposed that the development will be serviced via a packaged treatment system and raised percolation area. The Site Characterisation Report submitted is dated June 2014 and the Board has already considered same under PL04.244993. In that case, the Board decided to refuse permission which included the following reason:

4. It is considered that the proposed development, taken in conjunction with existing development in the vicinity, would result in an excessive concentration of development served by individual effluent treatment systems in an area classed as being at very high risk under the Environmental Protection Agency domestic wastewater risk category. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

The current proposal is for one house, while the above application was for 2 houses. Taken in conjunction with existing levels of development in the vicinity of the site, I consider that the concerns raised remain.

Water Supply:

The applicant has advised that the development will be connected to public mains 'if available' or alternatively, a private well. The Site Characterisation Report is based on a public connection and comments in the appeal document suggest that 'it had been hoped that the Area Engineer would state whether or not a public water supply would be available'. I note that the Area Engineer, in his report, sought the proposed

location of a private well. This would suggest that there is no public mains connection available. I am unclear as to whether or not public mains are available, so cannot comment further. I would have thought that this issue would have been rectified at this point given the planning history associated with the site.

Surface water:

It is proposed that soakaways will be provided to deal with surface water from the site. No details have been provided and it is the opinion of the applicant that such matters can be addressed by way of condition given that this is an application for outline permission.

Access:

It is proposed that the house will be accessed via an existing agricultural access which also services the mobile homes and yard area to the rear of the dwelling. I note that the Area Engineer has raised a concern in terms of the details provided and note that a minimum of 100m sightlines, with a 3m setback, is required at the entrance. Also, the width of the existing shared entrance width is indicated as requiring further information. If the Board were minded to grant permission for the proposed development, I would consider that the use of the shared entrance is more appropriate rather than the creation of a new access onto the regional road.

7.5. Other Issues:

The planning history associated with the subject site is noted. Conditions 2 of permission 06/8494 have been raised as issues by all parties associated with the current application. While the issue of compliance with Condition 2, occupancy condition, is a matter for the County Council, condition 4 remains valid. This condition provides that one house only on the landholding will be permitted. At the

time the applicant purchased the lands, this would have been known to him. While I acknowledge the arguments made by the applicants agent in this regard, the condition remains relevant and valid.

Further to the above, I am concerned that the future use of the existing mobile homes on the site has not been clearly indicated. The Board will note from the photographs that the structures are quite permanent and well maintained. They have not been identified on the proposed site layout plan. Should the Board be minded to grant permission in this instance, I would recommend that this issue be clearly addressed.

7.6. Appropriate Assessment:

The site is located at +5km from the nearest designated site, being Cork Harbour SPA (Site Code 4030). The qualifying interests for this SPA include a number of migratory and wetland bird species. Detailed conservation objectives have been prepared for the site and it is the main objective to maintain or restore the favourable conservation status of habitats and species of community interest so as to contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.

Having regard to the nature and scale of the proposed development together with the nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

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

REASONS AND CONSIDERATIONS

1. Having regard to the provisions of the current Cork County Development Plan and the location of the site within an area designated 'Metropolitan Cork Green Belt' it is considered that, on the basis of the submissions made in connection with the planning application and the appeal, the applicant does not come within the scope of the housing need criteria for a dwellinghouse in this rural area. It is considered that the proposed development would, therefore, materially contravene objective RCI 4-1 of the said development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development for a dwelling house, taken in conjunction with existing development to the south, would contribute to, and extend northwards, a pattern of ribbon development which would be contrary to the development plan policy as set out in Section 4.6 and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The proposed development for a further dwelling on the landholding would contravene materially condition number 4 attached to an existing permission for development on the lands granted under planning register reference number 06/8494.

4. It is considered that the proposed development, taken in conjunction with existing development in the vicinity, would result in an excessive concentration of development served by individual effluent treatment systems in an area classed as being at very high risk under the Environmental Protection Agency domestic wastewater risk category. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

A. Considine

Planning Inspector

25/08/2016