



An
Bord
Pleanála

Inspector's Report PL88.247591

Development	Retention and completion of 2 No. houses with 2 No. septic tanks and associated site works.
Location	Faunmore, Kilcrohane, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	16/438.
Applicant(s)	Clogheen Development Ltd..
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party
Appellant(s)	1. Monica Keevan
Observer(s)	None.
Date of Site Inspection	11 th January 2017
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site (0.996 ha) is located in the townland of Faunmore, 200m north of the village of Kilcrohane, a small rural coastal village located on Sheep's Head peninsula, approximately 30 minutes west of Bantry, County Cork.
- 1.2. Albeit, on the periphery, the site is located within the development boundary for the village of kilcrohane, as defined in the Country Development Plan 2014.
- 1.3. While coastal and scenic the undulating landscape is rugged and barren previously used for agriculture and grazing. Panoramic views of the sea and surrounding landscape are visible from the site.
- 1.4. There is a sod and stone ditch with mature hedging along the eastern boundary and the Kilcrohane river runs along the western boundary. Ground levels rise gently from south to north.
- 1.5. Excavated soil heaps and two unfinished houses, constructed with blocks to wall plate level, were present on the site, at the time of my site inspection.
- 1.6. Residential dwellings originally granted planning permission for short term letting in phase I of an overall permitted development of 25 houses (Reg. Ref. 04/9151) are located a short distance (approx. 100m) to the south on the edge of the village. Further development to the north, north east and north west comprise sporadic one off rural housing.
- 1.7. The site adjoins a narrow, winding, vertically and horizontally challenged public road, the L- 47039 and has an existing entrance onto same. It is proposed to share this vehicular entrance for the 2no.dwellings.

2.0 Proposed Development

- 2.1. The proposal comprises

Retention and completion of:

- Two number partially constructed detached dwelling houses, each 138 sq. m

Permission for:

- Installation of 2no. individual septic tanks discharging to public sewer

- All associated site works

Inspectors Note: While the site notice and the newspaper notice states that permission is sought for installation of 2 no. individual septic tanks discharging to public sewer. The planning application form states 'proposed connection to public sewer. To be treated on site with proprietary packaged treatment plant prior to discharge to sewer'.

A Flood Risk Assessment was submitted.

3.0 Planning Authority Decision

3.1. Decision

Following a request for Additional Information with respect to evidence of compliance with Part V requirement, (ii) contoured topographical survey of the site along with cross sectional profiles which clearly illustrate the FFLs and surrounding levels in relation to the bank level and bed level of the adjoining river and (iii) confirmation that no significant alterations to the existing levels / profile of the site will be carried out as part of the site development works for these 2 no. houses, Planning permission was granted subject to 11 number conditions. Conditions of note include:

Condition 2: Notwithstanding the exempted development provisions of the Planning & Development Regulations 2001, as amended, no additional structures shall be erected within any dwelling curtilage save with the benefit of a further planning permission.

Condition 4 No dwelling shall be occupied until the water and sewage services serving such dwellings are installed and functioning in accordance with the connection agreement made with Irish Water.

Condition 6 Side walls and piers of entrance and any new road boundary shall be of (a) local natural stone, (b) sod and stone or (c) earth berm with hedge of indigenous species planted on top at 60cm intervals.

Condition 7 Sight distances of 80 metres, in both directions, at a point 3 metres back from the edge of the public road shall be provided in the centre of the vehicular entrance to the satisfaction of the Planning Authority prior to the commencement of any other development on site.

Condition 10 Further development of these lands shall not occur without the prior benefit of planning permission.

3.2. Planning Authority Reports

3.2.1. Planning Report:

A heritage assessment and AA screening exercise was carried out. It is considered that having regard to the development plan objectives for the area and the pattern of development in this rural area, it is considered that subject to compliance with conditions, that the proposed development would not seriously injure the amenities of the area and would not be prejudicial to public health.

3.3. Other Technical Reports:

Area Engineer: No objections subject to conditions

Estates Engineer: No Objections

Archaeological officer: No objections

3.4. Prescribed Bodies

Inland Fisheries Ireland (IFI): No objections subject to conditions

Irish water: No objections to the proposal

3.5. Third Party Observations

A number of objections submitted to the planning authority raise similar concerns to those raised in the third party appeal, summarised in detail below.

4.0 Planning History

- 4.1. Planning permission was originally granted on this site for 25 no. units under planning **Reg. Ref. 04/9151**.

Condition No.2 attached to this grant of permission specified the following;

The development shall be phased to the satisfaction of the Planning Authority and before development commences a full phasing programme shall be submitted to and agreed in writing with the Planning Authority. The said programme shall include provision for:

2. The first phase to include Houses 1 to 15 only
3. Subsequent phases shall not be completed and occupied until the Public Water supply facilities and Public Sewerage facilities for Kilcrohane have been upgraded.
4. Appropriate arrangements for compliance with Part V of the Planning and Development Act 2000-2004 for each individual phase of the development.

Condition No.3 attached to this grant of permission specified that “Units 1 to 12 inclusive shall be used for short-term holiday rental purposes only and no change of this use shall take place without the benefit of a new permission under the Planning Acts. The remaining dwellings permitted herein shall be not be used for short-term holiday letting”.

- 4.2. **Reg. Ref. 08/440** Permission Granted for a change of use of houses 1 -12 from short term letting to owner occupier use.
- 4.3. **Reg. Ref. 10/326** application for an extension of duration of permission. Planning permission was subsequently granted for an extension of duration of the original planning permission in 2010 under planning Reg. No. 10/326. This planning permission expired on the 22nd September 2015.

5.0 Policy Context

5.1. Development Plans

Bantry Electoral Area Local Area Plan 2011, Vol 1, 2nd Edition, January 2015.

Section 3: Settlements and Other Locations

Section 20 Kilcrohane

The site is located within the defined development boundary for the village of kilchrohane as per the Cork Country Development Plan 2014 and the Bantry LAP 2015 – see settlement Map for Kilcrohane attached as appendix to this report.

Section 20.2.10. of the Bantry LAP 2015 states:

‘The whole of the village lies within the defined Scenic and Coastal Area, and the S109 Scenic Routes traverses the village. The Sheep’s Head Way passes through the village. Sheeps Head SAC is located just outside the settlement boundary.

Nearby to the east is the Farranamanagh Lough candidate Special Area of Conservation and proposed Natural Heritage Area’.

The following policies of the Cork Development Plan 2014 are of relevance, excerpts attached as appendix to this report.

RCI 4-3: Tourism and Rural Diversification Area

HE 4-6: Design and Landscaping of New Buildings

GI 6-1: Landscape

GI 7-1: General Views and Prospects

HE 3-1: Protection of Archaeological Sites

HE 3-3: Zones of Archaeological Potential

5.2. Natural Heritage Designations

The appeal site is not subject to any natural heritage designations. There are however, three natural heritage sites located in the wider area of the appeal site, they are:

- Farranamanagh Lough SAC (site code 002189) located approximately 900 metres to the south
- Sheep's Head SAC (site code 000102) located approximately 548 metres to the west.
- Sheep's Head to Toe Head SPA (site code 004156) located in excess of a kilometre to the south west.

6.0 The Appeal

6.1. Grounds of Appeal

The issues raised, within the third party appeal from Monica Keevan, are summarised as follows:

- Negative Impact Upon the Area
- Manipulation of the planning system – the development was only started when the permission was due to expire.
- Planned approach to circumvent condition no. 2 of planning Reg. ref. 04/9151
- This application now proposes a separate access directly off the adjoining public road to the east and will significantly increase traffic on the road
- Increased traffic on this narrow road would give rise to traffic hazard
- No new access points should be created
- The phased approach was required as the infrastructure was not in place to facilitate the complete development, the services have not been upgraded to date.
- The proposal is premature pending the upgrade of services in contravention of condition 2 of Reg. Ref. 04/9151.

6.2. Applicant Response

6.2.1. A response was submitted by MCA Consultants on behalf of the applicants, Clogheen Development Ltd., it is summarised as follows:

- The site is located within the settlement boundary of Kilcrohane Village in the Bantry LAP 2011
- A reduction in the number of dwellings being constructed from that previously permitted on the site is more infitting with the semi-rural setting of the site.
- It had always been proposed to access the subject appeal site via a separate access onto the public road
- The approved site layout plan indicates a separate entrance similar in design to the subject proposal
- The applicant is willing to carry out road side works to the boundary to achieve greater sightlines at the site entrance, if the Board deem it necessary.
- At pre planning stage the councils engineer indicated that the proposal was acceptable subject to installation of a wastewater treatment plant for each house.
- Irish Water made a submission indicating that they have no objection to the proposal to discharge to the public sewer, subject to the installation of individual proprietary treatment systems
- The proposal is entirely suitable on zoned lands
- Development represents a reduction in density to that approved in the original layout
- It was not the applicant's intention to circumvent the planning process. Works commenced a number of months before the original planning permission lapsed.

6.3. Planning Authority Response

Response received which states: 'no further observations by the planning authority. The issues relate to services which are now in the control of Irish Water'.

7.0 Assessment

7.1. I consider the key issues in determining this appeal are as follows:

- **Principle of the Proposed Development**
- **Waste Water Treatment**
- **Flooding**
- **Traffic Hazard**
- **Appropriate Assessment (AA)**

7.2. Principle of the Proposed Development

The appeal proposal comprises the retention and completion of two partially constructed detached two storey dwelling houses, permission for installation of two number individual septic tanks discharging to public sewer and all associated site works. The subject appeal site with panoramic views of the sea and surrounding landscape is located on un-zoned lands on the periphery of the defined development boundary for the village of Kilcrohane, as per the Cork Country Development Plan 2014 and the Bantry LAP.

The village of Kilcrohane lies within the defined scenic and coastal area and the S109 Scenic Route traverses the village. The Sheep's Head Way passes through the village. Sheep's Head SAC is located just outside the development boundary.

Planning permission was originally granted on the subject appeal site and adjoining lands to the south for 25 no. units under planning Reg. No. 04/9151. Condition No.2 attached to this grant of permission specified that the development be phased as follows:

- a) The first phase to include Houses 1 to 15 only
- b) Subsequent phases shall not be completed and occupied until the Public Water supply facilities and Public Sewerage facilities for Kilcrohane have been upgraded.
- c) Appropriate arrangements for compliance with Part V of the Planning and

Development Act 2000-2004 for each individual phase of the development.

Condition No.3 attached to this grant of permission specified that Units 1 to 12 inclusive be used for short-term holiday rental purposes and the remaining dwellings not to be used for short-term holiday letting.

Only Phase 1 of this development was completed i.e. House No.'s 1-15. Planning permission was subsequently granted on foot of Reg. No. 08/440 for the change of use of house numbers 1 to 12 from short term letting to owner-occupier use, and on foot of Reg. No. 10/326 for an extension of duration of the original planning permission; however, this planning permission expired on the 22nd September 2015.

The first party submits that the two number partially-built dwelling houses to be retained and completed are houses numbers 23 & 24 of the original layout permitted under 04/9151. However, whereas the subject site previously was to comprise of five number separate detached houses on individual site served by an estate road and associated services, the proposed development now under consideration is for two number detached houses on much larger sites with one number shared vehicular entrance onto the public road.

The Bantry LAP envisages development in the range of up to 40 additional dwellings in Kilcrohane village up to 2020, taking the housing stock to approximately 121 units by 2020. Given the scale and development pattern of the village it is considered that any individual scheme for new housing development should not be larger than 6 units.

Albeit it is stated that restrictions in relation to availability of wastewater infrastructure are limiting the development potential of sites within the development boundary of the village I consider that the principle of the proposed development is acceptable regard being had to development plan policy, the appeal sites location within the

settlement boundary and the planning history of the site. Issues with respect to waste water treatment, flooding and traffic are assessed in further detail in the subsequent sections of this report.

7.3. **Waste Water Treatment**

I highlight that the site notice and the newspaper notice states that permission is sought for installation of two number individual septic tanks discharging to public sewer. However, the planning application form states 'proposed connection to public sewer. To be treated on site with proprietary packaged treatment plant prior to discharge to sewer'. The plans and drawings submitted also indicate proprietary wastewater treatment plants.

It appears from the proposal submitted that it is proposed to dispose of septic effluent from this development to the public sewer following treatment. I note the report from Irish water which indicates that there is no capacity in the foul sewer network, that the 'wastewater treatment plant is overloaded and requires an upgrade', that there would be a minor increase in the volumetric discharge from the proposed development and goes on to conclude that Irish Water has no objection to the proposal subject to conditions.

The public water supply and public sewer facilities in Kilcrohane have not been upgraded since Reg. Ref. No. 04/9151 planning permission was granted. While the life of the permission on foot of Reg. Ref. No. 04/9151 was extended, condition 2 b) has not been complied with.

Objective No. DB-01 (d) states:

'Notwithstanding the scale of growth outlined in objective (a) above, in the absence of a public wastewater treatment plant, development shall be limited to 10 dwelling units served by individual treatment systems. Any new dwellings with individual wastewater treatment must make provision for connection to the public system in the

future and have a sustainable properly maintained private water system. Such proposals will be assessed in line with the appropriate EPA code of practice and will have regard to any cumulative impacts on water quality’.

Treatment is proposed by way of septic tank / proprietary wastewater treatment plant, only, no percolation areas or full individual treatment systems are proposed, the applicant has not submitted a Site Characterisation Report.

The level of treatment of waste water prior to discharge to sewer is unclear in the subject proposal. The planning authority are of the opinion that this issue relates to services which are now in control of Irish Water. Irish Water, albeit, have concluded no objection to the proposal have indicated that there is no capacity in the foul sewer network.

Section 43. (1) of S.I. No. 684/2007 – Waste Water Discharge (Authorisation) Regulations 2007 Consideration of proposals by planning authorities and An Bord Pleanála, states:

‘Where a planning authority or An Bord Pleanála is considering an application for permission, an appeal or an application for approval under section 34, 37, 37E, 175 or 226 of the Act of 2000 for development being development which involves the disposal of waste water to a waste water works, or is considering such a development under section 179 of the Act of 2000, the planning authority or the Board, as the case may be, shall consider whether the discharge of waste water from the proposed development, in conjunction with existing discharges to the receiving waters, would cause non-compliance with the combined approach or, in situations where there is existing non-compliance, would result in a significant breach of the combined approach’.

Section 20.2.11. of the Bantry LAP 2015 states:

'In terms of Water Quality Kilcrohane is located within the Bantry Bay South/Dunmanus Water Management Unit. At present, the wastewater discharges are to Dunmanus Bay into a Natura 2000 site (SAC). According to the South Western River Basin District (SWRBD) Plan, the overall status of these 'Transitional and Coastal Waters' is presently unassigned. The existing wastewater treatment facilities in Kilcrohane will need to be improved and upgraded as population expands in order to ensure water quality is of good status by 2021'.

Given information on the file and the concerns raised by the third party and objectors to the proposal. I am of the considered opinion that insufficient information has been submitted with respect to the waste water quality discharging from the individual septic tank / treatment unit to the public sewer and therefore it cannot be proven that it wouldn't result in a significant breach of the combined approach.

7.4. Flooding

The Draft Preliminary Flood Risk Assessment Maps which are available on the Council's 'Planning Enquiry System' indicate that a significant portion of the site is located within an area prone to the 1 in 100year fluvial flood event and should therefore be deemed to be at risk of flooding.

The Flood Zone Maps illustrated in the current Local Area Plan Settlement Map for Kilcrohane have the entire site located within Flood Zone A i.e. prone to the 1 in 100 year fluvial flood event.

Under the General Objectives outlined in the current LAP, Objective No. DB-01(j) specifies the following;

All proposals for development within the areas identified as being at risk of flooding

will need to comply with Objectives FD1-1 to FD 1-6 detailed in Section 1 of this Plan, as appropriate, and with the provisions of the Ministerial Guidelines – ‘The Planning System and Flood Risk Management’. In particular, a site-specific flood risk assessment will be required as described in objectives FD1-4, 1-5 and 1-6.

A Flood Risk Assessment (FRA) has been submitted by the applicant, which is of the format specified in the ‘The Planning System and Flood Risk Management’ Guidelines for Planning Authorities.

The FRA identifies the adjoining watercourse (Kilcrohane River) which flows along the western site boundary as the potential source of fluvial flooding which may impact upon the site under consideration. The main points in the FRA submitted can be summarized as follows;

- Both houses are deemed to be located outside the Flood Zone identified in the OPW’s Draft Preliminary Flood Risk Assessment Map for this area.
- The western extremity of Site No. 1 may be impacted by fluvial flooding from the adjoining river but the house on this site is approximately 2.5m - 3.0m above the adjoining watercourse.
- There is no record of a previous flood event occurring on the site under consideration here.

The report concludes that the dwelling houses to be retained/completed are effectively located in Flood Zone C and therefore should be considered an appropriate development from a flood-risk perspective.

The applicants have confirmed in writing that there will be no significant alterations to the existing levels/profile of the site and that there will be no change to the levels of the site adjoining the Kilcrohane River. The cross-sectional profiles submitted illustrate that the two number houses are situated approximately 3-5m above the bed level of the adjoining river. The ground profile on the opposite bank of the river is

also lower than the appeal site. This would indicate that there is little risk of fluvial flooding having an impact on the houses to be retained/completed on this site.

Having regard to the level profile of the site coupled with the difference in level between the houses to be retained and the adjoining river, I would tend to agree with the view of the planning authority and with the findings of the FRA submitted.

Given the foregoing, it is my opinion, that the proposed development would not be at risk of flooding or would not cause an unacceptable risk of flooding to adjacent properties, provided development is carried out to an appropriate standard. I therefore do not recommend planning permission be refused on grounds of floodrisk.

7.5. Traffic Hazard

Albeit the combined access proposed to serve the two number dwellings is located within the defined settlement boundary of Kilcrohane, it is located on the periphery of same, some 200m from the village nuclei. From my site visit, it is clear, that the nature of the public road is substandard and that the provision of safe access and narrow width of the public road is an issue. The road is extremely narrow, there are no footpaths and two cars could not pass. The horizontal and vertical alignment of the road is seriously substandard.

The area engineer has no objection to the proposal, clearly the engineers report has regard to planning history and permitted development on this site.

While it appears that the road is at present a lightly trafficked, low speed road, I have concern with the proposal for two additional houses, resultant generation of additional traffic levels and turning movements along a particularly poor substandard stretch of this roadway. No sightlines are indicated on the plans and drawings submitted. The access to the site is located on a sharp bend in the road, sightlines are restricted in a north easterly direction.

I note the first party's submission that they are prepared to carry out road side works to the boundary to achieve greater sightlines at the entrance, if the Board deem it necessary. While I acknowledge that removal of sod and stone boundary wall to achieve sightlines at the entrance would be beneficial from a road safety viewpoint, it would be undesirable from a visual amenity perspective and would do nothing to resolve issues with respect to the substandard carriageway width along the length of the road connecting to the village.

7.6. Appropriate Assessment (AA)

There are three designated sites in the wider vicinity of the appeal site. Of most relevance is Sheep's Head SAC due to its proximity 548 m to the west and Farranamanagh Lough SAC (site code 002189) located approx. 900 m to the south of the appeal site. Sheep's Head to Toe Head SPA (site code 004156) is located further to the south west of the appeal site.

The Kilcrohane River runs along the western boundary of the site and is approx. 23 m from the gable of the partially complete dwelling situated on site one, and 50 m from the closest wastewater treatment plant. It appears from the proposal submitted that it is proposed to dispose of septic effluent from this development to the public sewer following treatment. As indicated in the preceding sections of this report Irish water has indicated that there is no capacity in the foul sewer network, regard being had to section 20.2.10 of the Bantry LAP which indicates that at present, the wastewater discharges from Kilcrohane waste water treatment facilities are to Dunmanus Bay into a Natura 2000 site (SAC) and regard being had to Section 43. (1) of S.I. No. 684/2007 – Waste Water Discharge (Authorisation) Regulations 2007 I am of the opinion that insufficient information has been submitted with respect to the waste water quality discharging from the individual septic tank / treatment unit / the public sewer to Dunmanus Bay which adjoins Farranamanagh Lough Natura 2000 site (SAC), no detail is provided as to the design capacity of the existing Irish Water plant or any planned upgrades. Therefore, I recommend that a cautionary approach

is required as it cannot be proven that it wouldn't result in a significant breach of the combined approach.

On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site code No. 002189 Farranamanagh Lough SAC, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. On the basis of the information provided with the application and appeal I am of the opinion that insufficient information has been submitted with respect to the waste water quality discharging from the individual septic tank / treatment unit / the public sewer, there is no capacity in the foul sewer network and no detail is provided as to the design capacity of the existing Irish Water treatment plant or any planned upgrade. Therefore, I recommend that a cautionary approach is required as it cannot be proven that it wouldn't result in a significant breach of the combined approach as required under Section 43. (1) of S.I. No. 684/2007 – Waste Water Discharge (Authorisation) Regulations 2007. It is an objective of the planning authority, as set out in the Bantry Electoral Area Local Area Plan 2011, (2nd Edition January 2015), DB-01(d) that 'any new dwellings with individual waste water treatment must make provision for connection to the public system in the future and have a sustainable properly maintained private water system.

Such proposals will be assessed in line with the appropriate EPA code of practice and will have regard to any cumulative impacts on water quality.’ The proposed development would, therefore, materially contravene an objective indicated in the Local Area Plan, would be premature pending the design of the necessary upgrade works and would be contrary to the proper planning and sustainable development of the area.

2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site code No. 002189 Farranamanagh Lough SAC, or any other European site, in view of the site’s Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

3. The site is located on a minor road which is seriously substandard in terms of width and alignment. The traffic generated by the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users.

Fiona Fair
Planning Inspector
27.01.2017