



An  
Bord  
Pleanála

## Inspector's Report PL.04.247796

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<b>Development</b>	House, waste water treatment system, associated percolation and site works.
<b>Location</b>	Lisgoold North, Lisgoold, Co. Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	16/5961
<b>Applicant(s)</b>	Yvonne Manning
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Brian Woods
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> March 2017
<b>Inspector</b>	Kenneth Moloney

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## **1.0 Site Location and Description**

- 1.1. The subject site is located on the edge of a small settlement of Lisgoold in north County Cork.
- 1.2. The appeal site is an existing agricultural field and the roadside boundary of the appeal site adjoins a field entrance. The size of the appeal site is approximately 0.263 ha (0.64 acres) and the shape of the appeal site is approximately square.
- 1.3. There is a single storey house on the site situated to the immediate east of the appeal site and there is a small housing estate located on the opposite side of the public road. The adjacent housing estate, i.e. Church Hill, comprises of large detached two-storey houses on generous sites.
- 1.4. The gradient of the appeal site rises slightly from the public road.
- 1.5. There is a hedgerow to the front of the appeal site and there are utility power lines that traverse the appeal site.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for the construction of a detached two-storey dwelling house, waste water treatment system and associated percolation area.
- 2.2. The floor area of the proposed two-storey house is approximately 130 sq. metres and the floor plan comprises of living space at ground floor level and 3 no. bedrooms at first floor level.
- 2.3. The maximum height of the proposed house is 8 metres above ground level.
- 2.4. The proposed house will be finished in render and a roof slate finish.
- 2.5. The proposed development also includes the provision of a new vehicular entrance.

Additional information sought for (a) site characterisation form and (b) map of family farm holding.

### 3.0 Planning Authority Decision

3.1. Cork County Council decided to grant planning permission subject to 13 no. conditions which are standard for the nature of development.

### 3.2. Planning Authority Reports

3.2.1. The main issues raised in the planner's report and the SEO's reports are as follows;

#### Area Planner

- The proposed height and design are generally considered acceptable.
- A completed supplementary application has not been submitted.
- In relation to policy objective RCI 4-2 of the County Development Plan Category D is the most relevant to the applicant.
- The applicant has been living in a mobile home since the sale of her previous family home, in May 2016, for which permission was received under L.A. Ref. 01/1192.
- The applicant has spent the majority of her time living inside the development boundary of Lisgould as such has no rural housing need.
- Site location which is adjacent to the development boundary is a concern as it will set precedent for other development.
- There are concerns also in relation to the submitted site characterisation form.

#### Senior Executive Planner

- A completed supplementary application form has not been submitted.
- Details are absent in relation to the extent of the family farm.
- The previous family home and the original family home are located within the Lisgould Development boundary as defined in the Middleton Electoral Area Local Plan.
- Therefore, the applicant's rural housing need is unclear.

- The site location is adjacent to the development boundary.
- The permission of a house on the subject site would set a precedent for a linear development connecting the appeal site to adjacent houses.
- Details of the percolation area are unclear.

3.2.2. Area Engineer; - Additional information sought requesting the applicant to submit a revised site characterisation form.

### 3.3. **Third Party Observations**

There is one third party submission and the issues have been noted and considered.

## 4.0 **Planning History**

- The appeal site has no recent relevant planning history.

### Applicant

- L.A. Ref. 01/1192 – Permission **granted** to Padraig & Yvonne Manning for a dwelling house within the development boundary. The site is located approximately 55 m east of the proposed site.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

The operational Development Plan is the Cork County Development Plan, 2014 – 2020. Section 4.4 of the County Development Plan sets out the ‘Categories of Rural Generated Housing Need’ and the appeal site is located within the area designated ‘Rural Area under Strong Urban Influence’.

Policy Objective RCI 4-2 sets out the categories of housing need that are compliant with this area.

Section 4.6 sets out 'General Planning Considerations' and this includes objectives in relation to;

- Design
- Servicing of individual houses
- Ribbon Development
- Occupancy Conditions

Chapter 13 relates to Green Infrastructure and Environment and sets out policies in relation to landscape.

## **6.0 National Guidelines**

### **6.1. Sustainable Rural Housing Guidelines**

The subject site is located within an 'Area under Strong Urban Influence' as identified in Map 1: Indicative Outline of the NSS rural areas types in the DOEHLG Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines note that in these areas the objective should be 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.

## **7.0 The Appeal**

7.1. The following is the summary of a third party appeal submitted by Brian Woods;

- It is contended that the proposed development is contrary to the proper planning and sustainable development of the area.
- The proposed development site has a previous refusal (L.A. Ref. 11/6088) for the construction of a dwelling house.
- It is contended that the applicants have no special housing need.

- It is submitted that two planners in Cork County Council recommended refusal and it is questioned why their refusal reasons was overturned.
- It is submitted that the applicant has already constructed a vehicular entrance without the benefit of planning permission.
- It is stated that the new entrance is not located in the same location as that indicated in the submitted drawings.
- It is submitted that the proposed entrance is located on a busy stretch of rural road on an incline with fast approaching vehicles from the west travelling at 80kph.
- There is an entrance to a housing estate located immediately opposite the proposed entrance and the proposed vehicular entrance is located beside the appellant's farm entrance. The catholic church is located further to the east.
- It is contended that given that the junction is very busy that additional entrance will create a traffic hazard.
- The adjacent farm entrance is used regularly for livestock and machinery.
- Condition no. 13 of the planning permission requires sightlines of 80m in either direction.
- It is stated that it is certainly impossible to achieve 80m sightline to the west of the proposed entrance due to the alignment of the public road and the ditch adjoining the public road located approximately 48 metres from the centre of the proposed entrance.
- The appellant states that he will not cut down his farm boundary to facilitate an 80 metre sightline.
- It is submitted that should an Bord Pleanala cut back an attractive mature hedging then it will require the relocation of the existing service poles which will be exposed on the public road.
- The proposed house will be constructed close to overhead high voltage power lines which traverse the site.
- The planning documents do not refer to the relocation of the overhead high voltage power lines and health and safety implications.

- The proposed development will involve the removal of attractive hedging and trees. This will amount to a loss of amenity in the local area.
- The destruction of mature trees will result in a loss of wildlife habitat.
- An Bord Pleanála are requested to clarify whether the established planning process is acceptable. The appellant's submission to Cork County Council on 23<sup>rd</sup> November 2016 was dismissed as being invalid.
- The Senior Staff Officer report prior to the report from the Planner stated that the applicant did not appear to meet the rural housing need. This conclusion was also reached by Senior Executive Planner. However, the Director of Services refused permission.
- In conclusion it is submitted that the proposed development is non-compliant with County Development Plan and planning legislation.
- It is submitted that legally it is not possible for vehicles to exit from the proposed entrance and traverse across the appellant's farm entrance.

## 7.2. Applicant's Response

The following is the summary of a response submitted by the applicant's agent;

- It is submitted that the appellant has not been candid in his appeal and the Board are requested to dismiss the appeal under Section 138(b) of the Act.  
Permission contrary to the proper planning and sustainable development of the area
- It is acknowledged that the site is not located within the Lisgoold settlement boundary, however the site borders the settlement boundary.
- The subject site is a short walk to the centre of the village.
- It is contended that the applicant does have a genuine rural housing need. This is demonstrated in the supporting documentation in Appendix A.
- It is submitted that the applicant would qualify for a local rural housing need under RCI 4-2(d).



- Due to the applicant's divorce they are seeking a new family home as a separate unit.
- The sale of the applicant's family home was required due to a court order.
- The applicant has four dependent children and needs to secure a family home.
- There is a lack of sites / houses for sale within the village boundary and within the budget available.
- The subject site is within the ownership of the applicant's sister and there is a legal agreement in place.
- The applicant and her four children are currently living in a mobile home on the applicant's sister's land. The current living arrangement is very stressful.
- Reference is made to L.A. Ref. 15/4884 and it is contended that non-compliance with rural housing policy was not a reason for refusal by the local authority.
- It is contended that the meaning of 'local rural area' is generally defined by reference to a townland, parish or catchment of the local rural school to which the applicant has a strong social / economic link.
- In the applicant's case there is no primary school in Lisgoold and she attended Ballincurrig national school. The applicant's four children attend Bishop Ahern national school with two of them still in attendance. This is demonstrated by letter from school principle.
- All members of the family have strong local ties to the area including membership of the local GAA Club.
- It is contended that the current stress on the family's personal circumstances leads them to have exceptional health circumstances.

#### Traffic Hazard

- The sightline provision is 70m in either direction and these are considered adequate.
- The speed limit is 80kph to 50kph.

- The sightline provision is considered adequate as cars will reduce speed as they approach the village settlement.
- The issue regarding the safety of public utilities is not a material planning matter.

#### Hedgerow Removal

- The proposed hedgerow removal will not be extensive.
- The removal of a small position of the hedgerow is considered minor.
- The removal of the hedgerow was not an issue in the planner's report.

#### Planning Process

- It is submitted that there was unique personal information supporting the applicant's case and that this information was unavailable to members of the public due to its personal nature. However, this information is now available to the public.
- This ensures that the full planning process is transparent.

#### Farm Entrance

- The farm entrance is outside the red-line boundary and therefore does not form part of this planning process.
- It is submitted that the purpose of the planning legislation is not to solve disputes about title.

### 7.3. **Observations**

None.

### 8.0 **Assessment**

- Principle of Development
- Hedgerow Removal
- Access
- Appropriate Assessment

- Other Issues

Prior to considering this assessment, it is important to note that the applicant, in their response to the appeal submission, contends that the appeal submission is frivolous. I have examined the appeal submission and I am of the opinion that the submission has raised valid planning issues and therefore I would not recommend, to the board, to dismiss the submitted appeal on the grounds that it is frivolous.

#### 8.1. Principle of Development

A key consideration in this appeal relates to the applicant's rural housing need in this area and as such whether this housing need complies with the provisions of the Cork County Development Plan, 2014 – 2020, and the Sustainable Rural Housing Guidelines, 2005.

The applicant is a mother of four children and her marriage to her husband has recently ended in divorce. The submitted Rural Place Map (scale 1:2,500) indicates the location of the the applicant's previous home in relation to the appeal site. The applicant's previous home was sold in 2016 due to a court order.

The applicant is originally from Lisgoold and her parent's home, i.e. the applicant's childhood family home, is indicated in Appendix A of the appeal documentation. I have located this house on the settlement map for Lisgoold within the Middleton Electoral Area Local Area Plan, 2015. In terms of the applicant's background I would note that the applicant attended Ballincurrig National School, as there is no national school in Lisgoold. The applicant's four children attended national school at Bishop Ahern national school and two of them are still in attendance at this school. This information is supported by an attached letter from the Principal of that school. Notwithstanding the applicant's claims that she is a local rural person I would note that there is no documentary evidence such as school records or utility bills with the

applicant's address details however I would note that the applicant's local connections to this area are not contested by the Local Authority.

I would acknowledge that Figure 4.1 of the Cork County Development Plan, 2014 – 2020, sets out the rural area types and the appeal site is located in the area designated 'Rural Area under Strong Urban Influence'. Section 4.4.3 of the Cork County Development Plan, 2014 – 2020, sets out the criteria required to be met in order to be considered eligible for a one off rural house in areas designated 'Rural Area under Strong Urban Influence'. The local need criterion includes the following;

- *Farmers, including their sons and daughters who wish to build a first home for their permanent occupation on the family farm.*

This is not the case.

- *Persons taking over the ownership and running of a farm on a full-time 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.*

This is not the case.

- *Other 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 where they work and in which they propose to build a first home for their permanent occupation.*

This would not be the case.

- *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.*

This would appear to be the case. However, the issue regarding whether the applicant lives in a local rural area or local urban area needs to be clarified.

- *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.*

This is not the case.

Although I would accept that the applicant has demonstrated that they are a genuine local person I would note that there is a distinct difference, in planning terms, between a rural generated house and an urban generated house. This difference is referred to in the Sustainable Rural Housing Guidelines, 2005. The applicant's family home, i.e. her parent's home, is located within the settlement boundary of Lisgould in accordance with the Middleton Electoral Area Local Area Plan, 2015, and as such the applicant's original family home is located within a settlement boundary area and not a rural area. This is an important distinction as the housing need is therefore not a rural housing need and would therefore clearly fall into the category of an urban generated house. The Sustainable Rural Housing Guidelines, 2005, expand on the meaning of the term rural generated housing under Section 3.2.3 of that document. The guidelines explain that persons who are an intrinsic part of the rural community and persons working full and part-time in

rural area are essentially rural persons. I would consider, based on the explanation offered by the guidelines that the applicant would not be consistent with either of these categories.

As such I would consider that the applicant has not adequately demonstrated that she has a genuine local housing need in this rural area. I would conclude, based on the information on the file that the proposed development would be contrary to Policy Objective RCI 4-2 of the Cork County Development Plan, 2014 – 2020. Therefore, I would not consider that the applicant would comply with the rural housing need policies and provisions of the Cork County Development, 2014 – 2020, and as such I would recommend a refusal to the Board on the basis that the applicant fails to comply with the local rural housing need provisions.

#### 8.2. Hedgerow Removal

The site in question is rural in character and the front boundary comprises of an established hedgerow and I would note from my site inspection that the hedgerow continues steadily in a western direction consistent with the rural character. I would consider that the quality of the hedgerow is standard and its removal would not unduly detract from the character of the local area.

#### 8.3. Traffic Hazard

I noted from a visual observation of the local area that the sightline provision in both directions from the proposed entrance are generally good. The proposed vehicular entrance is located adjacent to an existing field entrance which provides access to an agricultural field. There is an established housing estate, i.e. Church Hill, located on the opposite side of the public road. The public road onto which the appeal site faces is a local rural road and on the day of my site inspection there was a low volume of traffic travelling in either direction along this rural road.

The submitted drawings illustrate that the proposed vehicular entrance will have a sightline provision of 70m in either direction from a set-back distance of 3 metres from the road edge I would note that the report from the Area Engineer considers that the proposed vehicular entrance is acceptable.

Overall I would consider that the proposed development would be acceptable in terms of traffic access and would not give rise to a traffic hazard.

#### 8.4. Appropriate Assessment

The nearest designated Natura 2000 Sites to the appeal site are the Great Channel Island SAC (site code 001058) and Cork Harbour SPA (004030) and these sites are situated approximately 10km to the south of the proposed development.

It is intended that the proposed house will be connected to public water mains and an on-site treatment system. Having regard to the nature and scale of the development proposed, the separation distance to the existing Natura 2000 sites to the proposed development, the nature of the receiving environment and the likely effluents arising from the proposed development I recommend that no appropriate assessment issues arise.

#### 8.5. Other Issues

I would also note that it is claimed by the appellant that the proposed development will impact on the adjoining field entrance in terms of ownership and traffic safety. I have addressed traffic safety above. In relation to the legal question the Board are unable to adjudicate on this within the remit of the Planning and Development Act. It is important to note Section 34(13) of the Planning and Development Act, 2006, which states 'a person shall not be entitled solely by permission under this section to carry out any development'. There is therefore an obligation on the applicant to

ensure that they have full legal title before proceeding with any permitted development.

## 9.0 Recommendation

- 9.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be refused for the reason set out below.

## 10.0 Reasons and Considerations

1. The proposed development would constitute random residential development in a rural area which is under development pressure, and which is lacking in certain public services. It is the policy of the planning authority, as expressed in the current Cork County Development Plan, 2014 – 2020, to focus rural housing developments to certain categories of applicants. The applicant does not come within the scope of the rural housing need criteria as set out in the Development Plan or the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005. The proposed development would be contrary to Policy RCI 4-2 of the Cork County Development Plan, 2014 - 2020, would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Kenneth Moloney  
Planning Inspector

21<sup>st</sup> March 2017