



An
Bord
Pleanála

Inspector's Report PL04.247917.



Development	Demolish house and construct a new house with domestic garage, wastewater treatment system and vehicular entrance bridge.
Location	Ballybeg, Mallow, Co Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	16/6689.
Applicant(s)	Colman and Richelle Lane.
Type of Application	Planning Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party versus decision.
Appellant(s)	Colman and Richelle Lane.
Observer(s)	None.
Date of Site Inspection	18 April 2017.
Inspector	Stephen Rhys Thomas.

1.0 Site Location and Description

- 1.1. The appeal site is located west of New Twopothouse Village on a rural road towards Ballyclough. The site is approximately 800 metres outside the built up area of the village. The rural road in the vicinity is bound by high hedges on both sides of the road and a single solid white line runs along the road centre. There are few other houses west of the site.
- 1.2. The appeal site comprises a single storey derelict cottage and its remnant and overgrown garden. To the rear of the former garden is demarcated by a steeply banked watercourse which eventually joins the river Blackwater at Ballynafeaha. The majority of the site comprises a large agricultural field to the rear of the cottage and garden. The field slopes gently uphill from the stream. The overall site is marked out from the remainder of the large agricultural field which is currently in tillage use.
- 1.3. The northern boundary of the site, including the cottage garden is characterised by mature trees and hedging. The eastern boundary of the site is characterised by a strong and mature hedgerow and mature trees. Other boundaries are not defined and there is a large overgrown and banked area of ground to the southern extremity of the site.

2.0 Proposed Development

- 2.1. The applicant proposes to demolish an existing single storey cottage of 40 sq.m. and construct a two storey dwelling house, 8.4 metres in height and with a floor area of 239 sq.m. A domestic garage is proposed which has a floor area of 56 sq.m. and a height of 5.2 metres. The overall site has a stated area of 0.68 Hectares.
- 2.2. A new vehicular entrance is proposed with a bridge structure to cross a watercourse which traverses the northern part of the site.
- 2.3. A wastewater treatment system will serve the dwelling house and drinking water will be supplied from the public water supply.
- 2.4. The application is supported by a site characterisation assessment for wastewater treatment and a flood risk assessment was submitted as unsolicited further information.

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused permission for three reasons summarised as follows:

1. The applicant has not demonstrated an identifiable rural generated housing need and therefore materially contravenes Objective RCI 4-2 of the County Development Plan. Nor does the development comply with Objective RCI 5-8 of the CDP which seeks to prevent linear roadside frontage development leading out of villages.
2. The bulk of the site is located within a fluvial flood risk zone and a large section of the site is located within areas identified as being susceptible to flooding, flood zone A and B of the Mallow LAP 2011. Having regard to objective WS 6-1 and WS 6-2 of the CDP and the provisions of ministerial guidelines, the planning authority is not satisfied that the proposed development would not contribute to an increased fluvial flood risk and pollution of the stream, and would therefore be prejudicial to public health.
3. Objective GI 6-1 of the CDP discourages the extensive removal of trees, hedgerows and historic walls and Objective HE 2-3 seeks to retain the biodiversity value, ecological corridors and habitats. The extensive removal of natural roadside boundary to facilitate the development would be contrary to these stated policies.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Area Planner's Report can be summarised as follows:

- Identification of relevant planning history in and around the site.
- Notes the existing dwelling on the site and assesses CDP policy with respect to replacement dwellings. The existing dwelling is not a habitable dwelling and the applicants do not satisfy the requirements of the CDP with regard to demonstrating genuine local need.

- The location of the site on an approach road to New Twopothouse Village, the existing and permitted development in the vicinity would result in an excessive density of development.
- There are no residential amenity issues, given the rural context of the site.
- The bulk of the site is located in indicative 100 year (1% AEP) and 1,000 year (0.1%) event of flooding, and there are overlaps with flood risk zones A and B. There are serious issues, given the vulnerable development type (residential) with respect to flooding and the risk of pollution from the proposed wastewater treatment system.
- There are concerns that the design of the proposed wastewater treatment system proposed shows inconsistencies.
- The issue of crossing the watercourse which is present on a number of sites in the vicinity is examined. The removal of a large quantity of hedgerow is of concern. Sight line drawings are not correct and there is a concern that the multiplicity of entrances along this stretch of road will be problematic.
- Given the existence of a stream through the site and its eventual discharge to an SAC, there are concerns that an AA screening report should be prepared.
- The report concludes that permission should be refused with regard to the issues outline above.

A supplemental report was prepared by the Acting Senior Planner, in which the issues above are reiterated and the initial Planner's report and recommendation is endorsed.

3.2.2. Other Technical Reports

Area Engineer. Incorrect sight lines are shown on drawings. Clarity is required with regard to the length of percolation piping to service the development, there are concerns too with regard to the proximity to flooding. Despite the submission of a Flood Risk Assessment as unsolicited further information, permission should be refused with regard to flood risk and potential for water pollution.

Heritage Unit. Further information is required with regard to the submission of a Habitats Directive Screening Report which should address impacts to the Blackwater River SAC and a water quality assessment methodology during construction.

Liaison Officer. Refusal is recommended as recommended by the Area Engineer and Case Planner.

3.3. **Prescribed Bodies**

Irish Water. No objections to the proposed development subject to standard technical conditions.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

Appeal site

Planning register reference 16/4743. Refusal of an agricultural vehicular entrance. May 2016.

Planning register reference 14/6814. Refusal of a dwelling house and effluent treatment system. February 2015.

Sites in the vicinity

Planning register reference 09/6743. Permission for a dwelling house and effluent treatment system. May 2010.

Planning register reference 11/5882. Permission for a change of house design regarding 09/6743. October 2011.

Planning register reference 13/5938. Permission for a change of entrance and boundaries regarding 09/6743. Nov 2013.

Planning register reference 14/5061. Incomplete application to extend the duration of permission regarding 09/6743.

Planning register reference 10/8465 and ABP reference PL04.238442. Refusal of a dwelling house and effluent treatment system. February 2011.

5.0 Policy Context

5.1. Development Plan

The Cork County Development Plan, 2014 is the relevant planning policy document. The appeal site is located in an area of County Cork which has been identified as being a Rural Area under Strong Urban Influence, and a Fertile Plain with Moorland Ridge.

The following policy objectives are considered applicable:

- Objective RCI 4-2: Rural Area under Strong Urban Influence:

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 a number of identified categories including:

- a) Farmers, their sons and daughters who wish to build a first home for their permanent occupation on the family farm.
- b) Persons taking over the ownership and running of a farm on a fulltime basis, who wish to build a first home on the farm for their permanent occupation, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.
- c) Other persons working fulltime in farming, forestry, inland waterway or marine related occupations, for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.

d) Persons who have spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation.

e) Returning emigrants who spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation, who now wish to return to reside near other immediate family members (mother, father, brother, sister, son, daughter or guardian), to care for elderly immediate family members, to work locally, or to retire.

- Objective RCI 4-8: Exceptional Health Circumstances: This policy objective seeks to facilitate the housing needs of persons who are considered to have exceptional health circumstances that require them to live in a particular environment or close to family support in the rural area. The application for a rural dwelling must be supported by relevant documentation from a registered medical practitioner and a qualified representative of an organisation which represents or supports persons with a medical condition or a disability.

This objective applies to all rural housing policy area types.

The subject site is located within the North Cork Strategic Planning Area. In terms of CDP objectives for the area – Objective CS 4-3 states:

c) Facilitate the development of the villages and rural areas so that the rate of future population growth compliments the strategy to achieve a critical mass of population in the towns and provide protection for those areas recognised as under pressure from urban development;

d) Strengthen and protect the rural communities of the area by encouraging sustainable growth in population, protecting agricultural infrastructure and productivity and focusing other employment development primarily in the main towns and key villages;

g) Protect and enhance the natural heritage of the Blackwater catchment.

The County Development Plan identifies the area, in terms of Landscape Character Type, as being a Fertile Plain with Moorland Ridge. This landscape is identified as having a very high landscape value and a very high sensitivity with a county level importance. 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.

Section 4.6 of the Plan deals with the general planning considerations for rural housing.

Objective RCI 6-1 of the CDP deals with Design and landscaping of new dwelling houses in rural areas while RCI 6-2 deals with Servicing individual houses in rural areas.

Cork Rural Design Guide: Building a New House in the Countryside - Cork County Council 2010.

Development Plan objectives *WS 6-1: Flood Risks – Overall Approach and WS 6-2: Development in Flood Risk Areas*, are relevant to the appeal site.

Mallow Electoral Area Local Area Plan, Second Edition, January 2015

The site is located within the LAP modelled flood extent Zone A – high probability of flooding.

Chapter 16 New Twopothouse

16.3.5. The village itself and the rural hinterland surrounding the village has experienced unprecedented pressure for the construction of one-off dwellings. The

Council will encourage the development of serviced sites within the development boundary in an attempt to offset the proliferation of ribbon development on the approach roads into the village.

National Guidance

Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses - Environmental Protection Agency 2010.

Sustainable Rural Housing Guidelines for Planning Authorities - Department of the Environment, Heritage and Local Government 2005.

The Planning System and Flood Risk Management, Guidelines for Planning Authorities November 2009

5.2. Natural Heritage Designations

The Blackwater River (Cork/Waterford) SAC (site code 002170) is located approximately 5.3 kilometres to the south.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal prepared by McCutcheon Halley Planning Consultants on behalf of Colman and Richelle Lane, has been lodged against Cork County Council's decision to refuse permission. The main grounds of appeal can be summarised as follows:

- The applicant sets out information to refute the first reason for refusal which relates to rural generated housing need and issues of linear roadside frontage. Firstly, Colman Lane is a permanent teacher, a member of the board of management and after hours volunteer at Baltydaniel National School a kilometre from the site, Colman's sister lives close by and their children will attend that school, Colman works weekends on his sisters family farm in the area, Colman has a friend in the area and helps on his farm, the applicants are members of the local golf driving range and wish to live in the area. Secondly, it is incorrect to apply CDP Objective RCI 5-8 Greenbelts around

Settlements to the appeal site. There are significant breaks in development on the approach road to New Twopothouse and the proposed dwelling will not impact upon ribbon development or create excessive roadside frontage.

- There is a suggestion that the existing dwelling could be renovated in keeping with the Action Plan for Rural Development.
- The Council did not fully assess the flood risk assessment prepared by the applicant. The proposed floor level of the house will be 1.3 metres above the 100 year flood level.
- The percolation area associated with the wastewater treatment system will be located outside the flood plain extent and therefore not cause pollution. In addition, a revised more southerly location for the house and percolation area is proposed.
- Since the construction of embankments, the site has not been the subject of an active floodplain for decades.
- It is stated that permitted development to the west (13/5938) means that the appeal site food plain area will not be available for either storage or conveyance.
- The applicant disagrees with the assessment of the Council's Engineer with regard to available sight lines and the removal of significant portions of hedgerow. The applicant contends that from a point 2.4 metres back from the road edge 90 metre sight lines can be achieved with minimal removal of vegetation and therefore comply with the CDP objective GI 6-1(d) and objective HE 2-3.

6.2. Planning Authority Response

The planning authority reiterates its decision to refuse permission based upon the nature of the proposed development, its location and site context, policy context and the potential impacts and the recommendation of the Area Engineer.

6.3. Observations

None.

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:

- Rural Housing Policy
- Ribbon Development
- Traffic and Access
- Flood Risk
- Wastewater Treatment
- Appropriate Assessment

7.2. Rural Housing Policy

7.2.1. This is an application for single one off house and treatment system in a rural area of County Cork. The site is located in an area designated as a “Rural Area under Strong Urban Influence”. Objective RCI 4-2 of the Cork County Development Plan, and other policies and objectives to do with landscape, hedgerows and rural house design all refer to the appeal site. In a rural area under strong urban influence it is an objective of the Development Plan that single house proposals should constitute a genuine rural generated housing need based on the applicant’s social and / or economic links to a particular local rural area or returning immigrants who wish to reside in the local area in which they have ties. In addition, the County Development Plan seeks to facilitate the development of designated villages in order to provide protection for those areas recognised as under pressure from urban development.

7.2.2. In respect of identifying if an applicant satisfies the rural housing need objectives of the Council, it is noted that the applicants have completed the supplementary planning application form and supplied supporting correspondence. Both applicants state that they have not lived in the local rural area where the site is situated. Both applicants attended primary and secondary school in Mallow and the exceptional circumstance that would support the application is that Colman Lane is a permanent teacher in Baltydaniel National School in New Twopothouse Village. The applicants

further expand their lack of an identifiable rural generated housing need within their grounds of appeal. It is contended that as a teacher in a rural school, the applicant has an intrinsic link with the area. The applicant volunteers for after school activities and a family relative will be attending the school soon. The applicant has a sister who lives in the local area, they also like to visit a friend in the locality and help out on their farm. The applicants are members of the local golf driving range.

- 7.2.3. Cork County Council have implemented the guidance provided by the Sustainable Rural Housing Guidelines and developed a rural housing policy, articulated by Objective RCI 4-2 of the County Development Plan. Though the applicants have a strong desire to live in the rural area around New Twopothouse Village, they do not qualify under any of the categories identified by Objective RCI 4-2. On the basis of the available information, I am not satisfied that the applicants have adequately demonstrated links to the area or that they satisfy the relevant eligibility criteria set out in Development Plan.

7.3. **Ribbon Development**

- 7.3.1. The applicant disputes the second part of refusal reason number 1 with regard to the use of Objective RCI 5-8 'Greenbelts and Settlements'. The site is not located in a Town Greenbelt and there are numerous gaps in development leading into New Twopothouse Village. Therefore, to determine that the proposed development would add to linear roadside frontage development on an approach to the village is inaccurate. Given that there are significant breaks in development leading into the village the proposed dwelling would not contribute to ribbon development as defined by the County Development Plan.
- 7.3.2. The applicant is correct insofar as the site is not located in land zoned as Town Greenbelt. The closest Town Greenbelt to consider is around Buttevant to the north and extends to Doneraile, New Twopothouse Village and Lisgriffin Cross. Though the Town Greenbelt objective seeks to prevent linear roadside frontage development on the roads leading out of towns and villages, it would appear not to be relevant in this instance. I agree, there are significant breaks along the approach road to the village, the addition of the proposed dwelling would not in itself contribute to ribbon development as defined by the County Development Plan.

7.3.3. However, the site is located approximately 600 metres from the settlement boundary of New Twopothouse Village. The Mallow Electoral Area LAP guides development for the village and its environs. Specifically, it is recognised that there has been unprecedented pressure for the construction of one-off dwellings in the rural hinterland of the village. In this context the LAP seeks to encourage serviced sites within the development boundary in an attempt to offset the proliferation of ribbon development on the approach roads into the village. I consider this to be the relevant guidance with respect to the approach road to the village. In my mind, the cumulative impact of permitting development along this road would ultimately lead to linear roadside development on the approaches to the village. It would also undermine the objective of the LAP to encourage serviced site development within the village's development boundary. Though the proposed development would not conform to the strict definition of ribbon development found in the County Development Plan, the Board may wish to consider the cumulative impact of the proposed development in context of the LAP objectives for New Twopothouse Village.

7.4. Traffic and Site Access

7.4.1. The applicant believes that the Council's Area Engineer inadequately assessed the availability of sight lines for the site. This resulted in a conclusion that a large amount of vegetation should be removed to achieve sight lines and consequently the incorrect application of County Development Plan objectives GI 6-1 (e) and HE 2-3.

7.4.2. The local road which provides access to the site is narrow with a single white line and bound on both sides by a mature hedgerow. There are intermittent areas of grass verge and there are gentle bends along the road. Close to the proposed entrance at the western extent of the site there is a grassed area and the bank of the stream. Though the site is relatively open in the immediate vicinity of the proposed entrance, there is thick vegetation to the east and west, which could restrict sightlines.

7.4.3. Layout drawings submitted by the applicant detail a 90 metre sight line in each direction taken from a point 5 metres from the road edge. I note that the Area Engineer required an 80 metre sight distance in both directions taken from a point 3 metres from the road edge. Given my experience of the road conditions, the lack of a grass verge and the dense hedgerow to the back of the road edge in both directions,

I have doubts about the information provided by the layout drawings and the sightlines represented thereon. I viewed the road in both directions from the road edge at the approximate location of the proposed entrance, in my opinion significant amounts of hedgerow would need to be removed to obtain adequate sight line distances. The amount of hedgerow removal would be contrary to the County Development Plan objectives to retain such features in an area identified as having a very sensitive and high value landscape.

7.5. Flood Risk

- 7.5.1. The applicant is critical of the Council's evaluation of the Flood Risk Assessment (FRA) Report they submitted as unsolicited further information. The proposed dwelling will be lifted out of the predicted floodplain area by an amount of earthen fill and the proposed percolation area is a further 15 metres south of the floodplain extent. Given the existing substantial earthen embankments along the stream and the proposed works in relation to an adjacent permission there will be no impact upon the floodplain hydraulics or an increase of flood risk elsewhere as a result of the proposed development.
- 7.5.2. Firstly, I note that the Council's Area Engineer had regard to the submitted FRA Report and still had concerns despite the report's recommendations. I have examined the FRA Report prepared by Irish Hydrodata Limited and note its contents. The report acknowledges the site's partial location within the indicative 1% AEP (100 year) fluvial flood zone and within the LAP modelled flood extent Zone A – high probability of flooding. The report models the existing and permitted development in the vicinity and the conclusions are aligned with the grounds of appeal.
- 7.5.3. The proposed development relies on a significant amount of earth works on the site in order to provide a level platform for the dwelling out of the reach of potential floodwaters. The FRA Report calculated that the floodplain volume within the site is 600m³ and that 180m³ will be required for a raised area around the dwelling. A large part of the raised platform will be constructed on the predicted flood plain inundation area and I am unsure what impact the removal of the natural flood plain will have. In addition, I note that specific design dimensions of culverts are dependent upon consultation with the Office of Public Works, further raising doubt in my mind as to the potential risks associated with developing the site. Lastly, I have concerns too

with regards to the location of the wastewater treatment percolation area, this is discussed in detail in section 7.6 below.

7.6. Wastewater Treatment

- 7.6.1. The applicant intends to install a packaged wastewater treatment system and polishing filter to service the house. Having considered the information provided on the planning authority file with regard to the proposed development, it is clear that consideration of the sites suitability with regard to the treatment and disposal of waste water has been considered. In this regard, the applicant submitted a completed site suitability assessment carried out by Brian O’Riordan, a qualified site assessor, regarding the suitability of the proposed site in terms of the treatment and disposal of wastewater generated on the site.
- 7.6.2. The site characterisation assessment, submitted by the applicant, notes bedrock was found at 1.2 metres comprising limestone boulders and the presence of clay soil may impede downward flow. The Standard Method to derive a T value was carried out, $T = 53.44$, the site is not suitable for a septic tank and percolation area. Therefore, P tests were carried out at the site at a level of 0.4m bgl, and yielded a P value of 45.67. The report concludes by recommending a secondary treatment system with a polishing filter at ground surface or over ground due to the likelihood of ponding. The system will discharge to groundwater.
- 7.6.3. Despite the applicant’s testing of the site and conclusion that a packaged wastewater treatment system and polishing filter is adequate for the purposes of treating wastewater generated by the dwelling; I am concerned at the layout of the site. The site slopes gently upwards from the stream to the north and no details have been submitted with regards to any requirement to pump wastewater to the treatment system. In addition, the extent of the indicative flood inundation plain is located approximately 10 metres downslope of the polishing filter. The polishing filter 9 metre trenches will be laid against the natural slope and contrary to the direction of groundwater flow indicated on the site assessment drawings. All, of these factors lead me to conclude that the site assessment has not satisfactorily addressed key issues and the proposed wastewater treatment system has the potential to result in a public health hazard in combination with the flood risks associated with the site.

7.7. Appropriate Assessment

The nearest European site is The Blackwater River (Cork/Waterford) SAC (site code 002170), located to the south and approximately 8 kilometres downstream of the appeal site. The conservation objectives for the site seek to maintain or restore the favourable conservation status of habitats and species of community interests so as to contribute to the overall maintenance of favourable conservation status of those habitats and species at national level.

- 7.7.1. The appeal site is considered to be a greenfield site within a rural area. The Ballyclough stream passes through the appeal site leading to the River Finnow and ultimately the River Blackwater. A wastewater treatment system and polishing filter is proposed and the site is located within the indicative 1% AEP (100 year) fluvial flood zone and within the LAP modelled flood extent Zone A – high probability of flooding. I would have concerns that the site suitability for wastewater treatment and the influence of flood risk cannot rule out the potential for impacts on a Natura 2000 site. However, the significance and extent of any impact is likely to be slight given the domestic nature of the development and the distance from the River Blackwater.
- 7.7.2. Having considered the nature of the proposed development, together with the separation distance to the nearest Natura 2000 site and given the scale of the proposed development, 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 should be refused for the proposed development, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. Having regard to the location of the site within a Rural Area under Strong Urban Influence as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Cork County

Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the site in an area which is prone to flooding and on the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the proposed development would not give rise to an increased risk of flooding of the site or of property in the vicinity. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

3. The proposed development would necessitate the removal of large sections of mature hedgerow along the public road, this would adversely impact upon the character and visual amenities of the area, which would be contrary to stated objectives of the Cork County Development Plan which seek to protect high value landscapes. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Stephen Rhys Thomas
Planning Inspector

5 May 2017