



An
Bord
Pleanála

Inspector's Report PL04.248235

Development	Permission to construct a dwelling house, domestic garage and new entrance together with all other ancillary site works.
Location	Farnanes TD, Farnanes, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	16/06807
Applicant(s)	Charles Kenneally
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party
Appellant(s)	Noreen Murphy O'Mahony
Observer(s)	None
Date of Site Inspection	6 th June, 2017
Inspector	A. Considine

1.0 Site Location and Description

- 1.1. The subject site is located in an elevated position in the townland of Farnanes, approximately 10km to the east of the town of Macroom. The area is very rural and sparsely populated. To the north east of the site there is an existing derelict house with a traditional storey & and half, three bay house to the south west.
- 1.2. The appeal site has a regular configuration being rectangular in its shape and is stated to be 0.3 hectares. The site rises gently from the front towards the rear and has existing boundaries along the road frontage and the north eastern boundary. The site itself has been taken from a larger field. The front boundary comprises a mature sod and stone ditch with trees / hedges.
- 1.3. Access to the site is via the public road network with the N22 approximately 2km to the south of the site and over the R619. The access road off the regional road is a cul-de-sac and is narrow and lightly trafficked.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a dwelling house, domestic garage and new entrance together with all other ancillary site works. The proposed house is a single storey building laid out in an L shape and provides for a large kitchen / diner, utility, living room, sitting room, master bedroom with two further double bedrooms and WC. The house will have a stated floor area of 213.32m². The drawings note that the attic area of the house will have a head room height of 2.4m.
- 2.2. The proposed house will have a ridge height of approximately 6.271m. The front of the house, ie the elevation with the proposed front door, is to face in a westerly direction with the side elevation which houses the living room, kitchen / dining and sitting rooms will face south towards the front boundary of the site. The proposed development will provide for a wrap-around driveway which will run from the entrance in a north westerly direction along the 'front' of the house and then in an easterly direction towards the proposed garage, which is to be located along the eastern boundary of the site.
- 2.3. The finished floor level of the proposed house is indicated at +178.55m, the road level is indicated at 176.92m at the proposed entrance metres. The external finish of

the house includes a smooth plater finish with natural stone used as a feature finish in the area around the living room. The roof will be finished in slate.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to twenty-one conditions, standard in the main.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officers report considered the proposed development in terms of the County Development Plan policies and objectives as it relates to rural housing, expert reports and third party submissions. The report also addresses issues in terms of roads and access, site services, design, layout and visual amenity issues and concluded that further information was required with regard to the following two issues:

1. Visual impact
2. Land ownership details.

Following receipt of the response to the FI request, the Planning Report concludes that the proposed development is acceptable in terms of visual impact. With regard to the issue of land ownership, the Planning Report refers to Section 5.13 of the Development Management Guidelines for Planning Authorities 2007 which states that 'the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts'. The report also references Section 34(13) of the Planning & Development Act, 2000 as amended, which states 'a person is not entitled solely by reason of a permission to carry out6 any development.' The report recommends that permission be granted, subject to conditions.

3.2.2. Other Technical Reports

There is a report from Cork County Councils Area Engineer advising no objection to the proposed development.

3.3. Prescribed Bodies

An Taisce submitted a report on the proposed development requesting that the proposed development be determined with regard to relevant rural housing provisions and the potential impacts associated with the proposed effluent treatment system, both individually and cumulatively with other treatment systems, on both surface and ground waters.

3.4. Third Party Observations

There one third party objections noted from Ms Noreen Murphy O'Mahony. The objections are summarised as follows:

- The submitted map includes an area of land which encroaches onto their property.
- No permission was given for the making of the application and the applicant does not have legal title to the identified area.
- The applicant failed to display a planning notice on the main public road, the R619.

4.0 Planning History

4.1. There is no relevant planning history associated with the subject site.

Adjacent site:

4.2. **Reg. Ref. 99/794** – Permission granted to Mr. Scott for the retention of extension to dwelling house and septic tank.

5.0 Policy Context

5.1. Sustainable Rural Housing Guidelines:

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. The '*Sustainable Rural Housing, Guidelines for Planning Authorities*', 2005 promote the development of appropriate rural housing for various categories of individual as a means of ensuring the sustainable development of rural areas and communities. The proposed development site is located in an '*Area under Strong Urban Influence*' as indicatively identified by the Guidelines. 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.

5.2. Development Plan

5.2.1. The Cork County Development Plan, 2014 is the relevant policy document and chapter 4 deals with Rural, Coastal and Islands, which includes housing policy. The subject site is located within an area of County Cork which has been identified as a Rural Area Under Strong Urban Influence. In this regard, the following policy objectives are relevant:

5.2.2. RCI 2-2: Rural Generated Housing

5.2.3. RCI 4-2: Rural Area under Strong Urban Influence and Town Greenbelts (GB 1-1):

The rural areas of the Greater Cork Area (outside Metropolitan Cork) and the Town Greenbelt areas are under significant urban pressure for rural housing. Therefore, applicants must satisfy the Planning Authority that their proposal constitutes a genuine rural generated housing need based on their social and / or economic links

to a particular local rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

- a) Farmers, their sons and daughters who wish to build a first home for their permanent occupation on the family farm.
- b) Persons taking over the ownership and running of a farm on a fulltime basis, who wish to build a first home on the farm for their permanent occupation, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.
- c) Other persons working fulltime in farming, forestry, inland waterway or marine related occupations, for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- d) Persons who have spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation.
- e) Returning emigrants who spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation, who now wish to return to reside near other immediate family members (mother, father, brother, sister, son, daughter or guardian), to care for elderly immediate family members, to work locally, or to retire.

5.2.4. Section 4.6 of the Plan deals with General Planning Considerations, where the following policy objectives are considered relevant:

- RCI 6-1: Design and Landscaping of New Dwelling Houses in Rural Areas
- RCI 6-4: Occupancy Conditions

5.2.5. Chapter 12 of the Plan deals with Heritage and the following policy objective is considered relevant in that it deals with design and landscaping of new buildings:

- HE 4-6: Design and Landscaping of New Buildings

a) Encourage new buildings that respect the character, pattern and tradition of existing places, materials and built forms and that fit appropriately into the landscape.

d) Require the appropriate landscaping and screen planting of proposed developments by using predominantly indigenous/local species and groupings and protecting existing hedgerows in rural areas.

5.2.6. The Plan, in Chapter 13, Green Infrastructure & Environment, identifies the area as a High Value Landscape. The CDP advises that 'Landscape Character Types which have a very high or high landscape value and high or very high landscape sensitivity and are of county or national importance are considered to be our most valuable landscapes and therefore it is proposed to designate them as High Value Landscapes (HVL).' Within such landscapes, the Plan requires that developments be considered such that they are not unduly obtrusive. 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.

5.2.7. In terms of the Landscape Character type, the area is identified as 'Hilly River and Reservoir Valley', Type 8 Landscape, to which the Landscape Character Assessment for Cork, 2007, affords a high sensitivity and value to the landscape, which is of national importance. Part of the site is also identified as landscape

character type 6a which is described as 'Broad Fertile Lowland Valleys' which has a high landscape character and sensitive and is of county importance.

5.3. **Natural Heritage Designations**

None affecting the site directly. The Gearagh SAC, Site Code 000108 is located approximately 10km to the west of the subject site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

John Morrisson, Consulting Engineer, on behalf of Ms. Noreen Murphy O'Mahony submitted a third party appeal against the decision of Cork County Council to grant permission for the development as proposed. The grounds of appeal are similar to those issues raised in the course of the PAs assessment of the development and are summarised as follows:

- The appellant has no objection in principle to the proposed development but lands of which they are the registered owners are included as part of the application without their knowledge.
- The Planning Authority failed to advise the appellant of receipt of the further information response in contravention of Article 35(d) of the Planning & Development Regulations, 2006.
- The response to the FI request was inadequate and was insufficient for the local authority to make their decision, raising more questions than it answered. No proof of ownership was submitted by the applicant.
- It is requested that the application be refused until the matter has been resolved.

There are a number of enclosures with the appeal submission including

- copies of relevant folio for land
- letter from Solicitor to Cork County Council, and subsequent response
- copy of site layout

- letter from applicants architect in response to FI request

6.2. Applicant Response

The Applicant has responded to this third party appeal noting that the objection is not a planning objection, but rather a boundary dispute issue. It is submitted that the issue of the boundary only arose after the application was lodged. The issue is a legal issue which has to be settled through the courts and not by ABP. The applicant does not accept that there is an error in the boundary. The proposed development is not affected by the disputed area in any event. It is requested that permission be granted.

6.3. Planning Authority Response

The Planning Authority has not responded to this multiple third party appeal.

6.4. Observations

There are no observers to the appeal noted.

6.5. Further Responses

None.

7.0 Assessment

7.1. Having considered all of the information submitted with the planning application, third party submissions and technical reports, together with the appeal documentation and responses, and having undertaken a site visit, I consider it appropriate to assess the proposed development application under the following headings:

1. The principle of the development
2. Visual & Residential Amenity Issues
- 3: Servicing issues
- 4: Appropriate Assessment
- 5: Other Issues

7.2. Principle of development

- 7.2.1. The subject site is located within the townland of Farmanes, Co. Cork and in an area identified as a rural area under strong urban influence in the County Development Plan, 2014. The Plan, together with the Sustainable Rural Housing Guidelines, provide clear guidance that there is a presumption against the development of one off houses except where the proposal constitutes a genuine rural generated housing need based on social and / or economic links to the particular rural area. The applicant is required to accord with one of five categories of rural housing need in accordance with Policy Objective RCI 4-2.
- 7.2.2. The applicants have advised that they have lived in the area in the family home all of his life (23 years) and are therefore can be considered as local rural persons. The applicants family home is located 1.88km as the crow flies to the south west of the site, at Inchirahilly, Crookstown, Co. Cork. It is noted that the applicants family have a landholding of 20.23ha in the area. This landholding is in the immediately vicinity of the subject site and the family home would appear to be at a remove from this holding. The applicant advises that he does not own his own home and the proposed house will be his permanent place of residence. He is currently employed by O'Donovan's Engineering, Agricultural Contractors.
- 7.2.3. In terms of compliance with Cork County Councils settlement location, having regard to the information presented as part of the planning application, it would appear that the applicant can be considered as complying in principle. The proposed development is therefore, considered acceptable in principle. All relevant site suitability issues however are to be addressed.
- 7.2.4. In addition to the above, the Board will note that the receiving landscape has been afforded a high landscape value and sensitivity with a national level importance. In addition, the CDP provides clear guidance in terms of the provision of new developments in terms of design and landscaping in order to protect the landscape. The site itself is elevated and in order to access the site, the existing front boundary is to be removed. I note that the issue of visual impact was raised a concern during the PAs assessment of the proposed development. In the Planning Report, the reporting planner noted that a follow up site inspection was carried out to inspect poles which were erected to show the ridge height of the proposed house. The

Planning Officer was satisfied that the proposed development was acceptable. On the date of my inspection, the poles had been removed and no photographic evidence of the poles was included for the Boards file.

- 7.2.5. I also note that there is an existing derelict house located adjacent to the site to the east with a mature boundary in place along its boundary with the subject site. In support of the proposed development, the applicant has submitted a landscaping plan. I note that the plan is not very clear, and is somewhat confused in its labelling, but would suggest that the existing trees along the front boundary are to be removed and replaced with three new trees, 2 Alder and one Ash tree. The submitted details do not clearly identify which trees are to be removed to facilitate the access to the site and no indication of the ESB lines which traverse the site have been noted. That said, in principle, I have no real objection to the proposed development and consider that the inclusion and compliance with appropriate conditions will minimise any potential visual impacts associated with the proposed development.

7.3. **Visual & Residential Amenity Issues**

- 7.3.1 In terms of the proposed design of the house, I have no objection in principle. I am satisfied that the existing front and eastern site boundaries should be substantially retained save for the provision of the access to the site. This recessed access section, should be relocated from the proposed location by 6meters in a north easterly direction, so that it is located 17m from the north easterly corner of the proposed site. The retention of the existing trees along the front boundary, together with additional landscaping, would be adequate to assimilate the proposed house into this landscape. I am satisfied therefore, that the general amenities of this rural landscape would be not be significantly impacted upon if the development is permitted as proposed and the house, would not represent a significant visual intrusion in the landscape, when viewed from the wider area.

7.4. **Site Suitability**

Water Services:

- 7.4.1. In terms of site suitability, the Board will note that it is intended to install a septic tank waste water treatment system to service the house with a discharge to ground water. It is also noted that the house is to be serviced by a private well for its water supply. Having considered the information provided on the planning authority file with regard

to the proposed development, it is clear that 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 regarding the suitability of the proposed site in terms of the treatment and disposal of wastewater generated on the site.

7.4.2. The site characterisation assessment, submitted as part of the planning application, notes that bedrock was identified at 2m bgl. The assessment identifies that the site is located in an area where there is no Groundwater Protection Scheme but categorises the site as being a locally important aquifer (LI) with extreme vulnerability. A Groundwater Protection Repeal of R2¹ is indicated. The soil type is described as 'Till derived chiefly from Devonian Sandstones' while the subsoil type is identified as Silt. The bedrock type is 'Devonian Old Red Sandstone'. *T tests were carried out on the site, and the report notes that no P tests were carried out. *T tests were carried out at a level of 0.89m, 0.85m and 0.8m bgl, yielded an average value of 43.11. The report concludes recommending a septic tank and percolation area with a capacity of 3.4m³ and a percolation area comprising of 6 trenches of 18m in length and at an invert level of 176.85m. The system will discharge to groundwater with a hydraulic loading rate of 20l/m²d advised.

7.4.3. I am satisfied that overall, if permitted, the development is acceptable in terms of site suitability for the treatment and disposal of waste water arising from the development.

Roads & Traffic Issues:

7.4.4. Access to the site is via the local road network and off the Regional Road, the R619. The actual access will be onto a local cul-de-sac which is lightly trafficked. I am satisfied that there are no roads and traffic issues arising with regard to the proposed development.

7.5. Other Issues:

7.5.1. Public notices:

The Board will note the submission of the third party during the PAs assessment of the proposed development in relation to the positioning of public notices. The third party considered that a notice should have been placed on the Regional Road. I am

satisfied that the public notices were adequately positioned to advise the public of the proposed development in accordance with the legislative requirements.

7.5.2. Development Contributions:

Development contributions, in accordance with the Cork County Council's Development Contribution Scheme, apply in this instance.

7.5.3. Site Boundary / Land title issues:

The Third Party's appeal primarily relates to a dispute over the title of a section of the subject development site. While I acknowledge the submission of the appellant, I refer the Board to Section 34(13) of the Planning & Development Act, 2000, as amended, which states that 'A person shall not be entitled solely by reason of a permission under this section to carry out any development.' I also note section 5.13 of the Development Management Guidelines for Planning Authorities, 2007, which provides that the 'planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the courts.'

I am further satisfied that sufficient legal interest in the land has been shown by the first party to make the planning application. In this regard, I am satisfied that the dispute over the title of the area of land is a civil matter and not for the determination of the Board.

7.6. **Appropriate Assessment:**

The subject site is located at a distance of +10km from the nearest European site, being the Gearagh SAC, Site Code 000108, located to the west of the subject site. The subject development site itself can be considered a greenfield site within a rural area. Having considered the nature of the proposed development, together with the separation distance to the nearest Natura 2000 site and given that there is no hydrogeological connection between the subject site and the Natura 2000 site, together with 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

I recommend that planning permission be granted of the proposed development for the following reasons and considerations and subject to the stated conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the current Cork County Development Plan, 2014 – 2020, the location of the site within the rural area and the pattern of existing and permitted development in the vicinity together with the information submitted as part of the planning application, and the appeal, the Board is satisfied that the proposed development of a house, generally accords with the policy requirements of the Cork County Development Plan as it relates to rural housing in an area under Strong Urban Influence. It is further considered that the development is acceptable in terms of design and scale and would not adversely impact the residential amenities of existing adjacent properties, or the visual amenities of the area, subject to compliance with appropriate conditions, and would therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter. Prior to commencement of development, the

applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The existing front boundary hedge shall be retained except to the extent that its removal is necessary to provide for the entrance to the site. The entrance gates to the site shall be relocated from the proposed location by 6 meters in a north easterly direction, so that it is located 17m from the north easterly corner of the proposed site.

Reason: In the interest of visual amenity.

4. (a) The site shall be landscaped in accordance with a scheme of landscaping (including timescale), details of which shall be submitted to the planning authority for agreement before development commences.
(b) Details of measures for the protection of trees to be retained shall be agreed in writing with the planning authority and shall be implemented prior to commencement of development.
(c) Details of boundary treatment and screen walling shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. Prior to commencement of development, details of the materials colours and textures of all the external finishes of the proposed house shall be submitted to the planning authority for agreement.

Reason: In the interest of visual amenity.

6. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of orderly development and the visual amenities of the area.

7. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

8. The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.

Reason: In the interest of public health.

9. The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

10. The proposed house shall be used as a single dwelling unit only.

Reason: To prevent unauthorised development.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

A. Considine

Planning Inspector

15th June, 2017