



An
Bord
Pleanála

Inspector's Report PL04.248350

Development

Construct a dwelling house, retention of demolition of a derelict dwelling house, retention of renovations to the existing garage as now constructed, retention of relocated entrance and front boundary wall, retention of upgrade of effluent disposal system.

Location

Farranlaheshery West Td., Glanworth, Co. Cork.

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

166382

Applicant(s)

Orla Healy

Type of Application

Permission & Permission for Retention

Planning Authority Decision

Grant subject to conditions

Type of Appeal

Third Party v. Decision

Appellant(s)

Marion Kelly

Observer(s)

None.

Date of Site Inspection

18th July, 2017

Inspector

Robert Speer

1.0 Site Location and Description

The proposed development site is located in the rural townland of Farranlaheshery West, Co. Cork, approximately 1.3km southeast of the village of Glanworth and 250m southwest of the River Funshion, along a narrow local road which extends south-westwards from the main carriageway before terminating in a cul-de-sac. The surrounding area can be described as comprising a gently undulating rural landscape which is interspersed with intermittent instances of one-off housing and farmsteads. The site itself has a stated site area of 0.1767 hectares, is generally rectangular in shape, and is presently vacant with the exception of a redeveloped garage structure situated in the south-western corner of the site (*N.B.* In this regard it would appear that the site was formerly occupied by a derelict dwelling house and assorted outbuildings which were demolished during the course of recent site clearance works). It is bounded by timber post and rail fencing to the south whilst the remaining site boundaries are predominantly defined by stone walling. There is an existing cottage-style dwelling house located further west on the opposite side of the roadway whilst the adjacent lands to the immediate north, south and east are presently in agricultural use.

2.0 Proposed Development

2.1. The proposed development consists of the following:

- The retention of the demolition of a derelict dwelling house.
- The construction of a new single-storey, bungalow-style dwelling house with a stated floor area of 158.35m² and a ridge height of 6.322m. The overall design of the proposed dwelling is conventional and is based on a principle rectangular plan with an asymmetrical front elevation and vertically emphasised fenestration. External finishes will include blue / black roof slates, a smooth plaster render, and uPVC guttering etc.
- The retention of renovations carried out to an existing garage structure (floor area: 47m²) located to the rear of the site.
- The retention of the front boundary walling and the relocation of the site entrance to the north-western corner of the property.

- The retention of the installation of an upgraded effluent disposal system.

In response to a request for further information, amended proposals were submitted to the Planning Authority which detail the removal of an existing percolation area and the replacement of same with a 'Proposed Filter Pod & Percolation Area'.

3.0 **Planning Authority Decision**

3.1. **Decision**

Following the receipt of a response to a request for further information, on 23rd March, 2017 the Planning Authority issued a notification of a decision to grant permission and permission for the retention of the proposed development subject to 15 No. conditions. These conditions are generally of a standardised format and relate to issues including occupancy, external finishes, landscaping, servicing, infrastructural works and development contributions.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports:

An initial report noted the site location within a 'Stronger Rural Area' and the associated requirement for the applicant to demonstrate compliance with one of the housing need categories set out in Objective RCI 4-4 of the County Development Plan. In this respect it was considered to be unclear from the submitted documentation as to whether the circumstances of the applicant satisfied the provisions of Objective RCI 4-4, particularly as a Supplementary Planning Application Form had not been provided. Accordingly, it was recommended that additional details would be required by way of a request for further information in order to establish if the applicant would be eligible for a relaxation of policy within a rural housing control area.

Following the receipt of a complete response to a request for further information, a final report was prepared which concluded that the applicant was a 'qualifying person', and as all the other outstanding issues had been addressed, it was recommended to grant permission for the proposed development subject to conditions.

3.2.2. Other Technical Reports:

Area Engineer: An initial report recommended that further information should be sought with regard to the siting of the foundations of the proposed garage structure, the proposals for surface water drainage at the site entrance, the availability of a public water supply, and the submission of a site suitability assessment.

Following the receipt of a response to a request for further information, a further report was prepared which recommended a grant of permission subject to conditions.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

A single submission was received from the appellant and the principle grounds of objection contained therein can be summarised as follows:

- The absence of a site suitability assessment as regards the proposal to dispose of treated wastewater to ground.
- The inadequacy of the submitted details as regards the disposal of surface water runoff.
- The failure to provide a suitably annotated site layout plan detailing the original buildings on site.
- Detrimental impact on residential amenity by reason of overlooking / loss of privacy and a loss of natural daylight / overshadowing.
- Security concerns given the proximity of the proposed development to the objector's property.
- The overbearing visual impact of the proposed construction.
- Obstruction of the roadway and encroachment into the public road.
- Traffic safety concerns.
- The failure of the applicant to satisfactorily establish a genuine housing need.

A representation was also received from Deputy Kevin O’Keeffe T.D. in support of the application.

4.0 Planning History

On Site:

None.

On Adjacent Sites:

None.

On Sites in the Immediate Vicinity:

PA Ref. No. 084304. Was granted on 23rd June, 2008 permitting Michael & Joan Healy permission for the demolition of a dwelling house and the construction of a dwelling, garage and installation of treatment unit at Laharan, Glanworth, Co. Cork.

PA Ref. No. 086392. Was granted on 24th July, 2008 permitting Conor O’Brien permission for a dwelling house, wastewater treatment plant and ancillary works at Farranlaheshery West, Glanworth, Co. Cork.

PA Ref. No. 116658. Was granted on 8th May, 2012 permitting John & Collette Hannon permission for A) demolition of existing single storey extension to dwelling B) construction of single storey extensions to front and rear of dwelling C) installation of new windows and velux windows to front of dwelling D) installation of new septic tank, percolation area and ancillary works, all at Laharan, Glanworth, Co. Cork.

Other Relevant Files:

PA Ref. No. 931796. Was granted on 10th November, 1993 permitting Michael Healy, permission for renovations and extension to dwelling at Laharahan, Co. Cork.

PA Ref. No. 051562 / ABP Ref. No. PL04.213824. Was granted on appeal on 16th February, 2006 permitting Paula Healy and Andrew Burke permission for the construction of a storey and a half type dwelling at Labbacallee, Fermoy, Co. Cork.

5.0 Policy Context

5.1. National and Regional Policy:

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. Notably, the proposed development site is located in a ‘*Stronger Rural Area*’ as indicatively identified by the Guidelines. Furthermore, in accordance with the provisions of the Guidelines, the Cork County Development Plan, 2014 includes a detailed identification of the various rural area types specific to the county at a local scale and ‘*Figure 4.1: Rural Housing Policy Area Types*’ of the Plan confirms that the site is located within a ‘*Stronger Rural Area*’, although the proximity of nearby lands which have been identified as a ‘*Rural Area under Strong Urban Influence*’ would appear to indicate that the site is perhaps located in a transitional area between the respective designations.

5.2. Development Plan

Cork County Development Plan, 2014:-

Chapter 2: Core Strategy:

Section 2.3: *The Network of Settlements*

Chapter 4: Rural, Coastal and Islands:

RCI 1-1: Rural Communities:

Strengthen rural communities and counteract declining trends within the settlement policy framework provided for by the Regional Planning Guidelines and Core Strategy, while ensuring that key assets in rural areas are protected to support quality of life and rural economic vitality.

RCI 2-1: Urban Generated Housing:

Discourage urban-generated housing in rural areas, which should normally take place in the larger urban centres or the towns, villages and other settlements identified in the Settlement Network.

RCI 2-2: Rural Generated Housing:

Sustain and renew established rural communities, by facilitating those with a rural generated housing need to live within their rural community.

Section 4.3: Identifying Rural Area Types:

Section 4.3.8 These Stronger Rural Area rural areas to the north of the County have traditionally had a strong agricultural base. Population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong agricultural economic base, that is restructuring to cope with changes in the agricultural sector and the level of individual housing development activity in these areas tends to be lower and confined to certain areas as pressure for urban generated housing is less.

Section 4.4: Categories of Rural Generated Housing Need:

Section 4.4.2: This plan recognises the positive benefits for rural areas to sustain and strengthen the vibrancy of rural communities by allowing qualifying applicants to build a first home for their permanent occupation in a 'local rural area' to which they have strong economic or social links as defined in the following objectives RCI 4-1 to RCI 4-5. The meaning of 'local rural area' is generally defined by reference to the townland, parish or catchment of the local rural school to which the applicant has a strong social and / or economic link.

RCI 4-4: Stronger Rural Area:

These rural areas generally have stable population levels based on a traditionally strong agricultural base. Therefore, in order to recognise these characteristics and to consolidate and sustain the stability of the rural population, it is an objective that applicants shall 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) 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.
- d) Persons working fulltime in farming, forestry, inland waterway or marine related occupations, for a period of over three years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- e) Persons whose predominant occupation is farming / natural resource related, for a period of over three years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- f) Persons whose permanent employment is essential to the delivery of social and community services and intrinsically linked to a particular rural area for a period of over three consecutive years and who can demonstrate an economic and social need to live in the local rural area where they work, within which it is proposed to build a first home for their permanent occupation.
- g) 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.

RCI 4-8: Exceptional Health Circumstances:

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.

Section 4.6: General Planning Considerations:

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

- a) Encourage new dwelling house design that respects the character, pattern and tradition of existing places, materials and built forms and that fit appropriately into the landscape.
- b) Promote sustainable approaches to dwelling house design by encouraging proposals to be energy efficient in their design, layout and siting.
- c) Require the appropriate landscaping and screen planting of proposed developments by using predominantly indigenous/local species and groupings.

RCI 6-2: Servicing Individual Houses in Rural Areas:

Ensure that proposals for development incorporating septic tanks or proprietary treatment systems comply with the EPA Code of Practice: Wastewater Treatment and Disposal Systems serving Single Houses (p.e. < 10) or any requirements as may be amended by future national legislation, guidance, or Codes of Practice.

RCI 6-4: Occupancy Conditions:

In order to take a positive approach to facilitating the housing needs of the rural community, where permission has been granted for a rural housing proposal, an occupancy condition shall normally be imposed under Section 47 of the Planning & Development Act 2000.

Section 4.8: Replacement Rural Dwellings and Refurbishment of Derelict Dwellings in the Countryside:

Section 4.8.1 In circumstances involving the replacement of an existing habitable dwelling, the Planning Authority will consider proposals for the replacement or refurbishment of such a house on a case-by-case basis having regard to the requirements of other relevant policies and objectives in this plan and subject to normal planning considerations. The definition of what constitutes a house will be as described in planning legislation. The policy in relation to the refurbishment of disused or derelict dwellings in rural parts of the County is outlined in objective RCI 81 below.

RCI 8-1: Refurbishment of a Derelict Dwelling:

Encourage proposals for the sensitive renovation and conservation of existing disused or derelict dwellings subject to normal proper planning and sustainable development considerations as well as the requirements of other objectives in this plan and provided that it satisfies the following criteria:

- The original walls must be substantially intact.
- The structure must have previously been in use as a dwelling.
- The dwelling must be physically capable of undergoing renovation / conversion without demolition.
- Where the building is derelict, a structural survey by a qualified engineer must be submitted as part of any planning application to include measures to protect the building from collapse prior to, and during, the construction works.
- The design, scale and materials used in any renovation / and or extension should be sympathetic to the character and setting of the existing dwelling.
- Mature landscape features are retained and enhanced, as appropriate.

- No damage shall be caused to sites used by strictly protected wildlife.

In the interests of clarity, the provisions of Objective RCI 22 (i.e. the 'Rural Generated Housing Need' requirement) and Objective RCI 64 (i.e. Occupancy Clause) will not apply except where the total or substantial demolition of the existing structure and a new dwelling is proposed.

Chapter 13: Green Infrastructure and Environment:

Section 13.5: *Landscape*

Section 13.6: *Landscape Character Assessment of County Cork*

GI 6-1: Landscape:

- 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 land use 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.

GI 6-2: Draft Landscape Strategy:

Ensure that the management of development throughout the County will have regard for the value of the landscape, its character, distinctiveness and sensitivity as recognised in the Cork County Draft Landscape Strategy and its recommendations, in order to minimize the visual and environmental impact of development, particularly in areas designated as High Value Landscapes where higher development

standards (layout, design, landscaping, materials used) will be required.

Section 13.7: *Landscape Views and Prospects:*

GI 7-1: *General Views and Prospects:*

Preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty as recognized in the Draft Landscape Strategy.

Fermoy Electoral Area Local Area Plan, 2011 (2nd Ed., 2015):-

Section 1: *Introduction to the Fermoy Electoral Area Local Area Plan*

Section 2: *Local Area Strategy*

Draft Fermoy Municipal District Local Area Plan, 2016:

Section 1: *Introduction*

Section 2: *Local Area Strategy*

5.3. **Natural Heritage Designations**

None.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- The landowners have engaged in unauthorised development on site, including the demolition of a dwelling house, assorted site clearance works, the reconstruction of boundary walls, and the relocation of the site entrance, and the subject application has been submitted in response to enforcement action taken by the Planning Authority on foot of a complaint lodged by the appellant.
- Contrary to the description of the proposed works as including for the renovation of an existing garage, it is submitted that the structure in question

is essentially new build as it has replaced the former building which was substantially demolished, save for a small section of walling alongside the rear site boundary.

- No details have been provided in the application documentation of the floor areas of those structures demolished on site and for which permission for retention has been sought.
- It is evident from a review of the planning history of the applicant's wider family that her specific medical and health needs were previously considered in the assessment of past planning applications (i.e. PA Ref. Nos. 05/1562 / ABP Ref. No. PL04.213825 & 08/4304). In this regard the Board is advised that in PA Ref. No. 05/1562 / ABP Ref. No. PL04.213825, Ms. Paula Healy (the applicant's sister) indicated that she was the applicant's legal guardian and that the applicant had special needs and was in need of full-time care. With regard to PA Ref. No. 08/4304, it is submitted that the applicant's parents indicated in that application that the dwelling then proposed had been specifically designed to accommodate the medical needs of Ms. Healy.
- The planning application is deficient in a number of respects as follows:
 - No details have been provided of the floor areas of those structures demolished on site for which permission for retention has been sought.
 - Drg. No. H-374-34 refers to a 'Proposed filter pod and percolation area', however, these items have already been installed within that area formerly occupied by the now demolished dwelling house.
 - The 'existing garage' was constructed in 2015 following the demolition of the previous structures on site (the accompanying photos also show the ongoing installation of the wastewater treatment unit and the percolation areas around the same date).
 - The subject application was not accompanied by a completed Supplementary Planning Application Form in order to establish compliance with the relevant rural housing needs criteria.
 - No site suitability report was submitted and this should have been sufficient reason to invalid the planning application.

- The subject application did not include for a site-specific proposal as regards wastewater treatment and disposal.
 - The ‘former’ site layout plan does not detail any services or access.
- It is unclear if the applicant has obtained the approval of Irish Water as regards the existing connection to the public water supply.
- The notification of the decision to grant permission does not include any requirement for the applicant to enter into an on-going maintenance agreement in respect of the proposed wastewater treatment system.
- The accompanying photographs detail the original structures on site in 2014 prior to their demolition.
- The proposed development site is located within a ‘Rural Housing Control Area’ and thus the applicant is required to comply with the requirements of Objective RCI 4-4 of the County Development Plan. In this respect it is submitted that it appears from previous planning applications that the applicant is in need of full time care for health reasons and that she has lived with her parents in the family home since c. 2008, close to her legal guardian (her sister) who resides c. 2km away. It is further noted from the submitted information that the applicant presently resides at COPE in Cork during weekdays and that she returns home for weekends. Therefore, it is considered questionable if the applicant satisfies Objective RCI 4-4(c) as it is unclear if she will occupy the proposed dwelling on a permanent basis, although it is acknowledged that *the ‘Sustainable Rural Housing, Guidelines for Planning Authorities’* state that recognition should be given to exceptional health circumstances which require a person to live in a particular environment or close to family support.
- The proposed development site is located in an area of very high landscape value, however, it is considered that no regard has been given to the applicable landscape designation or the objectives of the County Development Plan and the Landscape Strategy.
- The overall design, scale, form, character and layout of the proposed development is not in keeping with the landscape objectives for the area.

- The planning application is deficient / contains incorrect details as follows:
 - Inadequate details of the wastewater treatment proposals (including a site suitability report).
 - Inadequate detail of the proposed surface water disposal arrangements.
 - No details of foul or storm water drainage are shown on the site layout plan.
 - The ‘Former’ site layout drawing does not indicate the original, or any, access point to the site.
- The proposed development will have a detrimental impact on the residential amenity of the appellant’s property by reason of overlooking with an associated loss of privacy.
- The overall size, scale, massing and location of the proposed structures when compared to those buildings which previously occupied the site, in addition to the removal of hedgerows and boundaries, will have a negative visual impact on the surrounding area.
- The roadside boundary wall as constructed encroaches onto the public roadway and results in the obstruction of road users. It also causes difficulties as regards access to the appellant’s property.
- Given that the original dwelling house on site was demolished prior to the lodgement of the subject application, it is considered that the proposed development involves the construction of a new dwelling house as opposed to the refurbishment or extension of an existing property and, therefore, it should be assessed in this context.

6.2. Applicant’s Response

- The address provided by the appellant in both the grounds of appeal and her original objection is incorrect and, therefore, the subject appeal should be declared invalid on the basis that it does not accord with the requirements of the Planning and Development Regulations 2001, as amended.

- By way of background, the Board is advised that the subject site originally formed part of a small farmholding occupied by the Bermingham family and that Ms. Mary Ellen Bermingham subsequently disposed of the farmlands in 1996 whilst retaining ownership of the dwelling house. Over time it would appear that living conditions in the original dwelling house deteriorated significantly with Cork County Council seemingly having inspected the property in 2002 and declaring it to be uninhabitable. Subsequently, in 2003 the Local Authority placed a second-hand mobile home on site which was occupied by Ms. Bermingham up until 2010 when she secured a place in sheltered housing at which point the mobile home was removed. The applicant's parents then acquired the site in 2014 before proceeding to clear-out the original cottage, which had fallen into a state of dilapidation, and then demolishing same on the basis that the structure was in a dangerous condition and was no longer salvageable. Recovered stonework from the original building was then used in the construction of the existing walls on site.
- When the site was inspected by the applicant's appointed agent, the buildings which previously occupied the lands had been demolished and thus it was not physically possible to provide any detail of net floor areas in the application documentation. However, in order to assist the Planning Authority, photographs of the structures prior to their demolition were provided. This matter was also discussed with the Planning Authority and the applicable planning fee agreed.
- By way of clarification, it is submitted that the applicant (Ms Orla Healy, an adult of 35 years of age) has a moderate intellectual disability with epilepsy which is controlled by medication. She lives an independent life with supervision and care.
- The applicant's sister (and her family) and her parents continue to reside locally.
- With regard to PA Ref. No. 084304, the Board is advised that all of the conditions attached to that grant of permission were complied with.
- In relation to Drg, No. H-374-3, the filter pod and percolation were shown as being retained, however, in response to a request for further information

issued by the Planning Authority, tests were carried out on site and a detailed proposal submitted in respect of the wastewater treatment system to serve the proposed dwelling house. On the basis of these results etc. the Planning Authority was satisfied that the proposed system would be adequate to cater for the loadings generated by the dwelling house.

- It is of relevance to note that the original dwelling house on site was not served by an adequate effluent disposal system and thus the subject proposal represents a considerable improvement over same.
- When the application site was surveyed by the applicant's agent, the garage had been constructed.
- There is no requirement to submit a Supplementary Planning Application Form with a planning application and this form was subsequently provided in response to a request for further information.
- With regard to the submitted drawings, it should be noted that most of the structures etc. on site, including the building services, had been removed. In the absence of any record of the route of previous services any drawings detailing same would be fictitious.
- The connection to the public water supply was made in the 1960s and is still available. In addition, all water charges have been paid.
- The septic tank system and soakpit which served the original dwelling house have been emptied and filled in whilst a modern replacement sewage treatment system has been installed. This new treatment system is awaiting connection to the filter pod and percolation area which will be constructed upon receipt of planning permission. Once the plant is commissioned a maintenance contract will be put in place.
- Upon receipt of the grounds of appeal, the previous owner of the application site supplied the accompanying photograph which shows the site prior to 1987.
- The photographs supplied with the grounds of appeal were taken without the consent of the landowner (i.e. the applicant's father).

- The applicant clearly qualifies for a dwelling house at this location as evidenced by the decision of the Planning Authority.
- The proposed development effectively involves the provision of a replacement dwelling house.
- The applicant is the fourth generation of her family to reside at Laharn, Glanworth, Co. Cork.
- The applicant's medical condition is well documented and it should be noted that such persons should be integrated into their local communities where possible. In this respect it is considered that there is no better way of integrating someone into the local community than having them reside in their own dwelling house close to their family.
- The Board is referred to the following documents which inform national policy as regards the delivery of housing for people with disabilities in the community:
 - *Time to Move on from Congregated Settings – A strategy for community inclusion*, HSE, 2011.
 - *National Housing Strategy for People with a Disability, 2011-2016*, Department of the Environment, Community and Local Government.
 - *Social Housing Strategy, 2020: Support, Supply & Reform*, Department of the Environment, Community and Local Government.
- Landscaping of the proposed development site will be carried out pursuant to Condition No. 8 of the notification of the decision to grant permission.
- Prior to the applicant's parents' acquisition of the site, it was overgrown whilst several of the buildings had partially collapsed and fallen into a state of disrepair.
- The site entrance was reconstructed so as to provide for adequate sight distance onto the public road in accordance with good planning practice and design.

- The stonework used in the new entrance has been recycled from within the site.
- It is not accepted that the Planning Authority had to go to considerable lengths in order to process the application and requests for further information are a frequent occurrence. In the subject case, the Planning Authority was satisfied to grant permission on foot of the application documentation and the additional details supplied in response to the request for further information.
- Additional details of the proposals for the upgrading of the wastewater treatment system were submitted in response to the request for further information issued by the Planning Authority.
- In light of the results of the percolation tests, it is considered that the site is suitable for the disposal of surface water. It is also notable that there was previously a greater extent of impermeable area present on site.
- The 'Former Site Layout' plan is derived from Ordnance Survey mapping and in this regard it should be noted that such OSi mapping does not show the location of gateways to rural properties in instances where the gate in question is positioned in line with the roadside boundary fence.
- At the time when the application documentation was being prepared, the subject site had already been altered and thus evidence of the former site entrance was not available. However, the Board is referred to imagery available from 'Google Earth' which would appear to show the former entrance arrangement located in the south-western corner of the site.
- The subject proposal involves the replacement of a former derelict dwelling within the confines of an established residential property.
- The proposed development site is located at a lower elevation than the appellant's dwelling house whilst that property is also screened by a substantial mature hedgerow along its roadside boundary. Accordingly, it is unclear how the subject proposal could possibly give rise to a loss of privacy to the appellant's property.
- It is considered that the proposed development will improve significantly the visual amenity of the surrounding area given the state of repair of those

structures to be replaced as evidenced from imagery available on 'Google Earth'.

- The suggestion that the roadside boundary wall has encroached into the roadway is rejected, particularly as that wall has been set back in order to provide for adequate sightlines.
- The layout of the application site has taken due cognisance of the applicable landscape designation.

6.3. **Planning Authority Response**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- Rural housing policy / the principle of the proposed development
- Overall design and layout / visual impact
- Traffic implications
- Wastewater treatment and disposal
- Appropriate assessment
- Other issues

These are assessed as follows:

7.2. **Rural Housing Policy / The Principle of the Proposed Development:**

In terms of assessing the principle of the proposed development having regard to the applicable rural housing policy, it is of relevance in the first instance to note that the proposed development site is located in a 'Stronger Rural Area' as indicatively

identified by the *'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005'* whilst the detailed identification of the various rural area types at a county level as outlined in *'Figure 4.1: Rural Housing Policy Area Types'* of the Cork County Development Plan, 2014 similarly indicates that the site in question is located within a *'Stronger Rural Area'*, although I would advise the Board that the proximity of nearby lands identified as a *'Rural Area under Strong Urban Influence'* would appear to indicate that the site is perhaps located in a transitional area between the respective designations. In this respect I would refer the Board to Section 4.3.8 of the Plan which states that these 'stronger rural areas' have generally stable population levels (both within the well-developed town and village structure and the wider rural surrounds) and are supported by a traditionally strong agricultural economic base that is restructuring to cope with changes in the agricultural sector whilst the level of individual housing development activity within these areas tends to be lower and confined to certain areas as the pressure for urban-generated housing is less. Accordingly, within these 'Stronger Rural Areas' the Planning Authority has adopted a somewhat restricted approach as regards the eligibility of prospective applicants for rural housing and in this respect Objective RCI 4-4 of the County Development Plan states that 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, demonstrate compliance 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) 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.

- d) Persons working fulltime in farming, forestry, inland waterway or marine related occupations, for a period of over three years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- e) Persons whose predominant occupation is farming / natural resource related, for a period of over three years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- f) Persons whose permanent employment is essential to the delivery of social and community services and intrinsically linked to a particular rural area for a period of over three consecutive years and who can demonstrate an economic and social need to live in the local rural area where they work, within which it is proposed to build a first home for their permanent occupation.
- g) 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.

From a review of the available information, with particular reference to the completed *'Supplementary Planning Application Form SF1'* and the supporting correspondence submitted in response to the requests for further information and subsequent clarification issued by the Planning Authority, in addition to the further details provided in the submission lodged on behalf of the applicant in response to the grounds of appeal, it is clear that the applicant satisfies the eligibility criteria set out in Part (c) of Objective RCI 4-4 of the Development Plan on the basis that she has resided with her parents in the family home, approximately 250m north of the application site, since birth (i.e. 35 No. years) whilst the proposed dwelling house is intended for her own use as her principle and permanent place of residence. Further support is lent to the application by the submission that the applicant is acquiring the subject site from her father (Mr. Michael Healy) and that she has several family members residing in the locality.

At this point I would advise the Board that the submitted information also indicates that the applicant has a moderate intellectual disability and that she presently attends the Cope Foundation in Montenotte, Cork (having previously attended St. Paul's, Montenotte, Cork from 1994 to 2001 and the Cope Foundation in Fermoy between 2001 and 2011). In this respect it should be noted that supporting documentation provided by the applicant's parents has referenced their desire to provide long-term supported living accommodation for their daughter so that she may live an independent life with suitable supervision and care. In support of the foregoing, it has also been asserted that persons with the applicant's medical condition should be permitted to integrate into their local community pursuant to the relevant policy provisions which inform the national approach to the delivery of housing for people with disabilities in the community (*N.B.* A summation of the relevant national policy documents prepared by Ms. S. Moloney, a National Disability Specialist with the Health Service Executive, has accompanied the applicant's response to the grounds of appeal).

With regard to the foregoing, I would advise the Board that Objective No. RCI 4-8: '*Exceptional Health Circumstances*' of the Cork County Development Plan, 2014 acknowledges the need to facilitate the housing requirements 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 and that this provision applies to all rural housing policy area types in the county. Similarly, Section 4.3 of the '*Sustainable Rural Housing, Guidelines for Planning Authorities*' states the following:

'In particular, planning authorities should recognise that exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation – may require a person to live in a particular environment or close to family support. In such cases, and in the absence of any strong environmental, access or traffic reasons for refusal, a planning authority should consider granting permission, subject (where appropriate) to conditions regarding occupancy.'

On balance, in my opinion, the applicant satisfies the wider eligibility requirements of Objective RCI 4-4 of the Development Plan and has adequately demonstrated a

need to reside at the subject location for the purposes of family care and support in light of her continuing and future health circumstances.

In addition to the foregoing, it is of relevance to note that the case has also been put forward that the subject proposal involves the construction of a replacement dwelling house. In this respect it has been asserted that the site in question was previously occupied by a dilapidated / derelict dwelling house which was demolished by the applicant's parents following their acquisition of the property in 2014 as the structure was in a dangerous condition and was no longer salvageable. It has been further submitted that the previous residential usage of the subject site is evidenced from a review of the photographs and other imagery provided with the application documentation and the response to the grounds of appeal. In this regard, it should be noted that some of the imagery which has accompanied the grounds of appeal also lends credence to the former presence of a derelict dwelling house on site.

Section 4.8: *'Replacement Rural Dwellings and Refurbishment of Derelict Dwellings in the Countryside'* of the County Development Plan states that consideration will be given to proposals for the replacement of a dwelling house on a case-by-case basis, subject to any other relevant policies and objectives in the Plan and normal planning considerations, however, it would appear that the associated policy objective (i.e. RCI 8-1: *'Refurbishment of a Derelict Dwelling'*) only concerns proposals for the refurbishment of 'existing' disused or derelict dwellings and thus is not applicable in those instances when the original dwelling house has already been demolished. More notably, Objective RCI 8-1 expressly states that the provisions of Objective RCI 2-2 (i.e. the 'Rural Generated Housing Need' requirement) and Objective RCI 6-4 (i.e. the occupancy clause provision) *'will not apply except where the total or substantial demolition of the existing structure and a new dwelling is proposed'*. Therefore, it is apparent that in circumstances when the original dwelling house has already been removed in its entirety, as is the case in the subject application, there will continue to be a requirement for a prospective applicant to establish a rural-generated housing need and to be amenable to the imposition of an occupancy clause. Accordingly, whilst I would concede that the former use of the application site for residential purposes lends weight to the subject proposal, I do not propose to rely exclusively on same. In any event, I would reiterate that the applicant satisfies the

wider eligibility requirements of Objective Nos. RCI 4-4 & RCI 4-8 of the Development Plan.

7.3. **Overall Design and Layout / Visual Impact:**

In terms of assessing the visual impact of the proposed development it is of relevance in the first instance to note that the wider landscape type within which the subject site is located has been classified as '*Fertile Plain with Moorland Ridge*' as per the landscape character mapping set out in the County Development Plan, 2014. Furthermore, it should also be noted that whilst the site is located within a '*High Value*' landscape, it will not be visible from any Scenic Route identified in the Development Plan.

In a local context, the proposed development site is located along a minor roadway in a gently undulating rural landscape where it occupies a position approximately mid-way between the 40m and 50m contour lines with the lands to the south rising over same whilst on travelling northwards the terrain falls into a shallow valley towards the River Funshion. Whilst it would appear that the dwelling house and the outbuildings which previously occupied the site were screened in part by various mature hedging and intermittent tree planting throughout the property and along its boundaries, this planting has since been removed (presumably as part of the site clearance works undertaken by the landowner i.e. the applicant's father).

In terms of the overall design and siting of the proposed development, the submitted proposal involves the construction of a conventionally designed, single storey bungalow-style dwelling house based on a principle rectangular plan with an asymmetrical design incorporating vertically emphasised fenestration and a shallow-pitched roof. External finishes will include blue / black roof slates, a smooth concrete plaster render, and black uPVC guttering etc. The dwelling house will be located in a recessed position set back from the adjacent roadway whilst its principle elevation will be sited along an east-west axis in order to avail of the available views northwards. With regard to the renovated garage which is proposed for retention, this structure occupies the position of a former outbuilding situated within the south-eastern corner of the site.

Having regard to the foregoing, whilst I would acknowledge that the subject site is located within a higher value landscape and that Objective No. GI 6-2 of the

Development Plan places an increased emphasis on the need for any development proposals within such areas to be designed and sited to a higher standard in an effort to avoid any undue impact on the visual and scenic amenity qualities of the surrounding area, and although the overall design of the submitted proposal is typically conventional and somewhat suburban in appearance, having regard to the specifics of the site location, including its limited visibility in a wider context and the likely visual impact previously associated with the multiplicity of structures that formerly occupied the site prior to the demolition of same and the site clearance works, I am inclined to conclude that the visual impact of the proposal is within tolerable limits and could be mitigated further through an appropriate scheme of landscaping / planting.

Therefore, on the basis of the foregoing, it is my opinion that the overall design and siting of the proposed development is generally acceptable and will not unduly detract from the visual amenity or rural character of the surrounding area.

7.4. **Traffic Implications:**

The proposed development involves the retention of the demolition of a former dwelling house that previously occupied the subject site and the subsequent construction of a new dwelling house as a 'replacement' for same. Accordingly, having regard to the historical use of the application site for residential purposes (as evidenced from the assorted photographs and imagery supplied with the application documentation and the grounds of appeal etc.) and the likely traffic volumes / movements attributable to same, in my opinion, the proposed development of a new 'replacement' dwelling house will not give rise to any additional traffic impact on the surrounding road network over and above that which could reasonably be held to have been associated with the previous use of the site.

With regard to the design and siting of the existing access arrangement which is proposed for retention, it would appear from the available aerial photography that the original dwelling house was previously accessed via an entrance located in the south-western corner of the site whereas the subject proposal provides for the retention of the existing access in a relocated position to the north-western end of the roadside frontage. In this respect, whilst I would concede that visibility from the proposed access is somewhat restricted, having regard to the historical use of the

site for residential purposes, and the limited traffic volumes and speeds likely to be encountered along this section of minor rural roadway, I am inclined to conclude that the available sightlines are within acceptable limits and do not give rise to any traffic hazard beyond that which would have been associated with the previous use of the site.

In relation to those concerns expressed in the appellant's original objection to the proposed development that the new (existing) entrance / front boundary wall construction serves to encroach into the carriageway of the adjacent roadway, from a review of the submitted plans and particulars, with specific reference to the site layout plan, it would appear that all of these works have been carried out within the confines of the applicant's property. In any event, I note that neither the Area Engineer nor the Planning Authority has raised any objection to this aspect of the proposal and thus they would not appear to have any concerns in this regard.

7.5. Wastewater Treatment and Disposal:

The subject proposal, as initially submitted to the Planning Authority, provided for the retention of a 'Tricel' packaged wastewater treatment system which discharged to an existing percolation area, however, whilst the application documentation included details of the manufacturer's specifications of the existing treatment system, it was not accompanied by the necessary Site Suitability Report / Site Characterisation Form demonstrating the overall suitability of the underlying ground conditions on site for the discharge of treated effluent. In this respect I would concur with the appellant that the failure of the applicant to provide these details at the outset of the planning process is regrettable, however, I would advise the Board that a completed Site Characterisation Form and other supporting documentation was submitted by the applicant in response to a request for further information issued by the Planning Authority. Therefore, in order to ascertain if the subject site is suitable for the proposed disposal of treated effluent to ground I would refer the Board to that Site Characterisation Form which states that the trial hole encountered 200mm of gravel overlying 2,400mm of varying gravelly clay to the depth of the excavation at 2.6m below ground level at which point bedrock was encountered. Notably, no evidence of water ingress was recorded and the water table was not encountered. With regard to the percolation characteristics of the soil, a 'T'-value of 55.19 minutes / 25mm was recorded which would constitute a pass in accordance with EPA guidance. In

addition, in terms of deriving an appropriate groundwater protection response for the proposed development, from a review of the data available from the Geological Survey of Ireland, it would seem that the submitted Site Characterisation Form has correctly identified a groundwater protection response of R2² on the basis that the site location overlies a 'regionally' important aquifer with an 'extreme' vulnerability rating.

On the basis of the foregoing, the applicant subsequently submitted amended proposals as part of the response to the request for further information which provided for the retention of the 'Tricell' wastewater treatment system on site and the replacement of the existing percolation area with a new tertiary treatment arrangement incorporating a 'BioCell Filter Pod' overlying a new percolation area.

Accordingly, having reviewed the available information, it would appear that the subject site is generally suitable for the installation of the proposed wastewater treatment system with discharging to ground, subject to conditions. Furthermore, in light of the historical residential use of the subject site and the former usage of a substandard septic tank system to serve the now demolished 'original' dwelling house, I would suggest that the subject proposal represents a considerable improvement in terms of on site wastewater treatment and disposal.

7.6. **Appropriate Assessment:**

From a review of the available mapping, including the Cork County Development Plan, 2014 and the data maps available from the website of the National Parks and Wildlife Service, it is apparent that although the proposed development site is not located within any Natura 2000 designation, it is situated approximately 3.8km north of the Blackwater River (Cork / Waterford) Special Area of Conservation (Site Code: 002170) and c. 6.8km northwest of the Blackwater Callows Special Protection Area (Site Code: 004094). In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Objective No. HE 2-1: '*Sites Designated for Nature Conservation*' of Chapter 13 of the Cork County Development Plan, 2014, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the

vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

Having reviewed the available information, including the screening exercise contained in the initial Planner's Report prepared in respect of the subject proposal, and following consideration of the 'source-pathway-receptor' model, it is my opinion that given the nature and scale of the development proposed, the site location outside of any Natura 2000 designation, the limited ecological value of the lands in question, and the separation distances involved between the site and the closest Special Area of Conservation and Special Protection Area, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of the aforementioned Natura 2000 sites. Therefore, I am inclined to conclude that the proposed development would not be likely to significantly affect the integrity of the foregoing Natura 2000 sites and would not undermine or conflict with the Conservation Objectives applicable to same.

Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site and, in particular, specific Site Codes: 002170 & 004094, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

7.7. Other Issues:

Procedural Issues:

It has been suggested in the applicant's response to the grounds of appeal that the third party appeal as lodged does not comply with the statutory requirements of the Planning and Development Regulations, 2001, on the basis that the address supplied by the appellant is incorrect and thus the appeal should be declared invalid. In this regard, it should be noted that the applicant has already been informed in

correspondence dated 7th June, 2017 that the Board is satisfied that the appeal complies in full with the provisions of Section 127 of the Planning and Development Act, 2000, as amended. Having reviewed the available information, I am similarly satisfied that the third party appeal as lodged is valid whilst it is also of relevance to note that the appellant's property is readily identifiable from the grounds of appeal and that the applicant's representatives (i.e. her parents) have acknowledged that the appellant is known to them.

With regard to the appellant's concerns pertaining to the unauthorised works undertaken on site, in the first instance, it should be noted that the subject application would seem to have been purposely lodged in order to regularise same. Secondly, the Board has no function in respect of issues pertaining to enforcement and the pursuit of such matters is the responsibility of the Planning Authority.

In relation to the adequacy of the submitted plans and particulars, in my opinion, there is sufficient information on file to permit a balanced and reasoned assessment of the proposed development which in turn supports a recommendation to grant permission. Furthermore, having conducted a site inspection, I am satisfied that the description of the subject proposal, including those aspects which are proposed for retention, as set out in the public notices and the accompanying application documentation, complies with the requirements of the applicable legislative provisions.

Impact on Residential Amenity:

Having regard to the site context, including the separation distance between the proposed dwelling house and the appellant's residence, in addition to the presence of an intervening roadway between the respective properties, in my opinion, it is clear that the proposed development will not give rise to any detrimental impact on the residential amenity of the appellant's property by reason of overlooking.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission & permission for retention be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

9.0 Reasons and Considerations

Having regard to the “Sustainable Rural Housing, Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, to the location of the site in a ‘Stronger Rural Area’ as defined in the current development plan for the area, and to the historical use of the site for residential purposes, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 23rd day of January, 2017 and the 24th day of February, 2017, 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 unless consent is granted by the planning authority for its occupation by other persons

who belong to the same category of housing need as the applicant. 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.

- a) The external wall finishes of the proposed dwelling house shall have a neutral coloured nap plaster render, using colours such as grey or off-white.
- b) The roof colour of the proposed dwelling house shall be blue-black, or slate grey using tiles or slates. The colour of the ridge tiles/cappings shall be the same as the colour of the roof.
- c) White uPVC shall not be used for windows, external doors and rainwater goods

Reason: In the interest of visual amenity.

4. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

5. 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.

6.

- a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details lodged with the application, as amended by the further plans and particulars submitted on the 23rd day of January, 2017, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

7.

- a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface

water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

- b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

- 8. The garage shall not be used for human habitation or for the keeping of pigs, poultry or pigeons, ponies or horses or for any other purpose other than a purpose incidental to the enjoyment of the house.

Reason: In the interest of protecting the residential amenities of neighbouring property.

- 9. The site shall be landscaped, using only indigenous deciduous plants and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

- 10. 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, as amended. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Robert Speer
Planning Inspector

27th July, 2017