



An
Bord
Pleanála

Inspector's Report PL88.249007

Development	To construct a dwelling house and all associated site works.
Location	Castle Upper, Timoleague, Bandon, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	17/00216
Applicant(s)	Emer O'Sullivan
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	Rory Murphy
Observer(s)	None.
Date of Site Inspection	10 th November, 2017
Inspector	Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located in the rural townland of Castle Upper, Co. Cork, approximately 750m north of the village of Timoleague, where it occupies an elevated position on a hillside overlooking the Ardigeen River valley. The surrounding landscape is primarily one of undulating rural countryside with intermittent instances of one-off housing and agricultural outbuildings whilst the immediate site surrounds include an existing complex of farm buildings, a mobile home, and a recently renovated cottage-style dwelling house to the southwest with a further 3 No. dwelling houses located along the roadside beyond same. The site itself has a stated site area of 0.54 hectares, is irregular in shape, and presently comprises part of a larger agricultural field set as grassland / pasture which rises gradually over the level of the adjacent roadway. To the immediate northeast and northwest the site adjoins agricultural lands whilst the public road is to the southeast with the adjacent lands to the southwest occupied by an existing farmyard and associated outbuildings. The site is bounded by post and wire fencing to the north, northwest and southwest whilst the roadside boundary is defined by mature hedging and a drainage channel.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a two-storey 'cottage'-style dwelling house based on a simple rectangular plan with a stated floor area of 157.4m² and a ridge height of 6.524m. The overall design of the proposed dwelling house is somewhat conventional although it does utilise some more traditional features such as vertically emphasised fenestration whilst the chimney stack is positioned over the ridge line. External finishes will include blue / black roof slates and a white plaster render.
- 2.2. Access to the site will be obtained via a new dual entrance arrangement shared with an existing farm access / right of way. It is also proposed to install a packaged wastewater treatment system which will discharge to a percolation area whilst a water supply will be obtained from an existing private well on site.

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of a response to a request for further information, on 10th July, 2017 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 21 No. conditions. These conditions are generally of a standardised format and relate to issues including occupancy, external finishes, entrance details, wastewater treatment and development contributions. However, the following conditions are of particular relevance in the context of the subject appeal:

Condition No. 19:

'No works shall take place that would undermine the adjoining farm access lane. Adequate permanent retaining structures shall be used in the area of any excavation in the vicinity of the farm access lane and works shall be carried out under the supervision of a suitably qualified engineer.'

Reason: In the interest of orderly development'.

Condition No. 20:

'One common entrance recess shall be formed to serve both the application site and the existing farm lane and the entrance shall be recessed a minimum of 4.5m from front boundary fence and side walls shall be splayed at an angle of 45dgs. and walls and piers shall not exceed a height of 1m over the levels of the adjoining public road.'

Reason: In the interests of road safety and to provide for proper sight distance for emerging line traffic'.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report noted the site location within a 'Tourism and Rural Diversification Area' in the Cork County Development Plan, 2014 and the requirement for the applicant to establish a housing need pursuant to Objective RCI 4-3. The report

subsequently referenced the planning history of the area and noted that recommendations were previously made to refuse permission for PA Ref. Nos. 14460 (on an adjacent site) & 14461 (on site) although both of these applications were ultimately withdrawn prior to any decision being issued. The proposal to provide a shared entrance arrangement was also noted. It was also considered that the third party concerns with regard to a boundary fence and right of way / access lane could be addressed through adherence to good practice construction and were civil matters for resolution between the relevant parties. The report concluded by recommending that further information be sought in order to establish if the applicant complied with the relevant rural housing policy objectives of the Development Plan and to ensure that the right of way alongside the site would not be impacted by the proposed development.

Following the receipt of a response to a request for further information, a final report was prepared which noted that the applicant complied with the rural housing policy and that the third party right of way was located outside of the site development boundary. It was thus recommended that permission should be granted, subject to conditions.

3.2.2. Other Technical Reports:

Area Engineer: No objection, subject to conditions.

Engineering: No objection, 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 position of the proposed site boundary fence would appear to infringe on a right of way in favour of the objector.
- Given the proximity of the proposed excavations to a right of way in favour of the objector, clarification is required as to the stability of the passage in

question which should take account of the surcharge loading from agricultural equipment using the passageway in order to ensure that said passage remains stable and is not undermined.

- Clarification is required as regards the adequacy of the sightlines available from the proposed entrance onto the public road.

4.0 Planning History

4.1. On Site:

PA Ref. No. 14461. Application by James O'Sullivan for permission for the erection of a single storey dwelling and associated site works. This application was withdrawn.

PA Ref. No 162. Application by Emer O'Sullivan for permission for the erection of a dormer dwelling house and associated site works. This application was withdrawn.

4.2. On Adjacent Sites:

PA Ref. No. 14460. Application by Emer O'Sullivan for permission for the erection of a single storey dwelling house and associated site works at Castle Upper, Timoleague, Bandon, Co. Cork. This application was withdrawn.

4.3. On Sites in the Immediate Vicinity:

PA Ref. No. 15158. Was granted on 23rd June, 2015 permitting James O'Sullivan permission for the partial demolition of an existing dwelling and for alterations and extensions to existing dwelling for use as a dwelling and ancillary granny flat and all associated site works, all at Castle Upper, Timoleague, Bandon, Co. Cork.

5.0 Policy Context

5.1. 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 4-3: Tourism and Rural Diversification Area:

This rural area has experienced high housing construction rates and above average housing vacancy rates which has led to concerns that a higher demand for holiday and second homes is depriving genuine rural communities the opportunity to meet their own rural generated housing needs. Therefore, in order to make provision for the genuine rural generated housing needs of persons from the local community based on their social and / or economic links to a particular local rural area and to recognise the significant opportunities for tourism and rural diversification that exist in this rural area, it is an objective that applicants must demonstrate that their proposal complies 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 full time in farming, forestry, inland waterway, marine related occupations or rural based sustainable tourism, 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.
- 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) 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.

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.

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.

West Cork Municipal District Local Area Plan, 2016:

Section 1: *Introduction*

Section 2: *Local Area Strategy*

Section 4: *Key Villages*

Section 4.10: *Timoleague*

The strategic aims for Timoleague are to encourage the consolidation of this village within its coastal setting, preserve the unique architectural character and landscape setting of the settlement and to promote sympathetic development in tandem with the provision of services.

DB-02: Protect and enhance the attractive coastal setting and landscape character of the village.

5.2. Natural Heritage Designations

The following Natura 2000 sites are located approximately 200m east of the proposed development site:

- Courtmacsherry Estuary Special Area of Conservation (Site Code: 001230)
- Courtmacsherry Bay Special Protection Area (Site Code: 004219)

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development is to be undertaken on those lands contained in Folio CK2434F and in this respect the Board is referred to the accompanying copy of Folio CK2434F and, in particular, to Item No. 7 of Part 3 of same wherein a right of way is detailed as being registered in favour of Patrick Murphy and Margaret Murphy. The appellant (Mr. Rory Murphy) is the successor in title of that right of way.
- It is considered that the grant of permission as issued by the Planning Authority has the potential to adversely impact the appellant. In this regard it is submitted that Condition No. 7 of the notification of the decision to grant permission should be amended to take account of the existing agricultural entrance in order to ensure that it does not have a negative impact on the appellant's right of way / access. Accordingly, construction details should be submitted for agreement with the appellant and the Local Authority prior to the commencement of development on site.
- It is contended that Condition No. 19 of the notification of the decision to grant permission does not provide the necessary cover to the appellant who uses the existing farm access on a daily basis for general and heavy agricultural vehicular movements of up to a gross weight of 25 No. tonnes. Therefore, it is submitted that the aforementioned condition should be revised in order to provide for the following:
 - A permanent retaining structure to be designed by a structural engineer with a structural design & specification, proposed site layout, and confirmation of the proposed supervision and sign off arrangements, to be submitted for the approval of the appellant and the Local Authority prior to the commencement of development. In addition, on completion of the works, the appellant is to be provided with a certificate from a supervising engineer which should confirm that the load characteristics of the retaining walls have been designed in accordance with the

provisions of the EC1 & EDC2 Codes of Practice (Design Codes for Loads / Action and Concrete Structures).

- The site boundary as delineated in red would appear to encroach on the legal / identified right of way as shown in the Land Registry documentation. Whilst the appellant has no objection in principle to the relocation of the legal right, this is subject to minimum widths being maintained for suitable access by agricultural machinery.

6.2. Applicant's Response

- The accompanying updated copy of Folio CK2434F shows that Entry No. 7(3) has been removed and, therefore, it is submitted that there is no such right of way registered in the folio.
- The right of way in question is located outside of the application site and is disputed in the first instance. Furthermore, it is of relevance to note that the appellant (Mr. Rory Murphy) is not the registered owner of the lands to which the right of way refers. Grainne Murphy is the registered owner of Folio No. CK135635F and she has made no observation on either the planning application or the subject appeal.
- It is considered that the subject appeal is vexatious and opportunistic as the appellant is seeking to exert influence with regard to a disputed right of way which is unrelated to the subject application.
- Whilst the applicant's legal representatives have established that the appellant does not have a right of way over the applicant's land, the applicant is prepared to relocate the proposed driveway eastwards in the event that such a revision would make it easier for her to obtain planning permission for the proposed dwelling house.

6.3. Planning Authority's Response

No further comments.

6.4. Observations

None.

6.5. 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 grounds of appeal are:

- The principle of the proposed development / rural housing policy
- Overall design and layout / visual impact
- Traffic implications
- Wastewater treatment and disposal
- Impact on an adjacent right of way / accessway
- Appropriate assessment

These are assessed as follows:

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

7.2.1. 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 whilst the proposed development site is located in an 'Area under Strong Urban Influence' as indicatively identified by the 'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005', 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 indicates that the site in question is located within a 'Tourism and Rural Diversification Area'. In this respect I would refer the Board to Section 4.3.7 of the Plan which states that these 'Tourism and Rural Diversification Areas' comprise parts of rural and coastal Co. Cork which exhibit characteristics such as evidence of considerable pressure for rural housing and, in

particular, a higher demand for holiday and second home development. These areas are more distant from the major urban centres and the associated pressure from urban-generated housing, however, they also have higher housing vacancy rates and evidence of a relatively stable population compared to weaker parts of the County. In addition, it is stated that these areas have higher levels of environmental and landscape sensitivity and a weaker economic structure with significant opportunities for tourism and rural diversification. Accordingly, within these *'Tourism and Rural Diversification 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 4-3 of the County Development Plan states that in order to make provision for the genuine rural-generated housing needs of persons from the local community based on their social and / or economic links to a particular local rural area, and to recognise the significant opportunities for tourism and rural diversification that exist in these rural areas, applicants must demonstrate that their proposal complies 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 full time in farming, forestry, inland waterway, marine related occupations or rural based sustainable tourism, 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.
- 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) 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.

7.2.2. In respect of the subject proposal the applicant has indicated that she has lived in the surrounding rural area of Castle Upper, Timoleague, for her entire life and that she is acquiring the subject site from her mother (Mrs. Margaret O'Sullivan). In this regard it is of relevance to note that the application site would appear to form part of a larger landholding in her family's ownership, which is presently farmed by her brother (Mr. James O'Sullivan), and that a review of the planning history pertaining to same would appear to corroborate the applicant's connections to the landholding, particularly as the grant of permission issued in respect of PA Ref. No. 15158 would appear to have concerned the extension of the applicant's original family home and the provision of an ancillary granny flat. In further support of the proposal, it is also of relevance to note that the applicant has indicated that she is presently residing in rented accommodation in the area and that she has never previously owned a residential property nor has she ever received planning permission for a dwelling house whilst the proposed dwelling is intended for her own use as her permanent place of residence. In addition, the applicant has submitted that she attended school locally, that she is the driver of the local school bus for Timoleague and Barryroe National Schools (in addition to her employment with Kinsale Executive Travel), and that it is her desire to live close by to her mother in order to provide for continuing support and care etc.

7.2.3. At this point, I would refer also the Board to Section 3.2.3 of the '*Sustainable Rural Housing, Guidelines for Planning Authorities*' which states that examples of persons

who would form an intrinsic part of the rural community would include *‘people who have lived most of their lives in rural areas and are building their first homes’*.

- 7.2.4. Whilst I would concede that there are some aspects of the subject application which would perhaps benefit from further clarity, such as the reference on the site location map to the landholding being in the ownership of the applicant’s father as opposed to her mother, and the location of the applicant’s current place of residence (*N.B.* Documentation supplied with PA Ref. No. 162 included a copy of a Fixed Term Residential Agreement in respect of the applicant’s then residence at a property with an address at Cloundereen, Kilbrittain, Co. Cork, which would appear to be c. 2.5km northeast of the application site), in my opinion, there is sufficient information available on file to support the conclusion that the applicant complies with the eligibility criteria set out in Parts (a) & (d) of Objective RCI 4-3 of the Development Plan as regards the construction of a rural dwelling house at this location and, more particularly, as detailed in the *‘Sustainable Rural Housing, Guidelines for Planning Authorities’*. In this respect I would emphasise that the applicant would seem to have resided in the family home on this landholding for most of her life and has a clear connection to the area and a genuine housing need.

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

- 7.3.1. 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 *‘Indented Estuarine Coast’* as per the landscape character mapping set out in the County Development Plan, 2014. Furthermore, it should 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 and in this regard I would specifically advise the Board that although the site is situated in relative close proximity to Scenic Route Nos. S67 (Road from Old Head to Timoleague via Garrettstown, Coolmaine and Harbour View), S73 (Road between Timoleague and Clonakilty via North Ring) and S69 (Road between Timoleague and Courtmacsherry), it will not be overtly visible from same.
- 7.3.2. In a local context, the application site is situated along a minor local roadway where it occupies an elevated position on a hillside overlooking the lower-lying lands to the east formed by the Ardigeen River valley. It is screened in part by mature hedgerow

along the roadside (the remaining site boundaries are not physically defined at present) and although the rising topography of the site on travelling north-westwards will serve to diminish the effectiveness of this localised screening it should be noted that the lands further north / northwest will provide a backdrop to the site. In addition, it is notable that although there are intermittent views of the site available from the R602 Regional Road to the east, which is situated at a lower elevation on the opposing side of the river valley, the site is generally well screened from vantage points in this area given the presence of a mature tree stand located on the opposite side of the roadway fronting the site and the presence of further intervening vegetation.

7.3.3. With regard to the specifics of the actual design of the proposed dwelling house, at the outset I would advise the Board that the prevailing pattern of development in the immediate site surrounds is characterised by single storey / dormer dwelling houses and in this regard the proposed cottage-style dormer construction would appear to be in keeping with the area. The house design itself is based on a simple rectangular plan and has sought to evoke the traditional modest cottage vernacular through its use of features such as a plain plaster render, vertically emphasised fenestration and the positioning of the chimney stack over the roof ridge line.

7.3.4. On balance, whilst I would acknowledge that the proposed development will be clearly visible from the adjacent public road, particularly in the event that it is necessary to set back the roadside boundary in order to achieve adequate sightlines from the proposed entrance arrangement, having regard to the site context, including its location within a high value landscape as designated in the Development Plan, the screening of the site from more heavily trafficked routes / vantage points, the limited visibility of the site in a wider context, the modest nature of the development proposed, and the siting of the proposal relative to an existing cluster of structures which includes the family home and adjacent farm buildings, 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.

7.4. **Traffic Implications:**

7.4.1. At present, the proposed development site forms part of a larger agricultural landholding which includes an adjacent farmyard and can be accessed via an

existing entrance arrangement to the immediate southwest that also serves to provide access to a right of way to third party lands. The subject proposal seeks to develop a new recessed dual / shared entrance in combination with the aforementioned agricultural / farmyard access and in this regard I would suggest that the proposed entrance arrangement is acceptable in principle and is preferable to the construction of an entirely new standalone site entrance.

7.4.2. With regard to the adequacy of the available sightlines, whilst I would accept that the proposed development provides for the remodelling of an established farm access, it must be acknowledged that any usage of the existing entrance arrangement for agricultural purposes is likely to be more intermittent and less frequent than that which would typically be associated with a domestic / residential property. Accordingly, having conducted a site inspection, and in light of the positioning of the proposed entrance on the inside of a bend in the roadway, I am inclined to conclude that there is a clear need to improve the available sight distance. In this regard I would advise the Board that whilst the applicant has indicated on the submitted site layout plan that it is proposed to retain the existing roadside boundary and to maintain same at a height not exceeding 1m, the reports of both the Area Engineer and the case planner would appear to have acknowledged the need to actually recess the roadside site boundary in order to achieve adequate sightlines (*N.B.* Notwithstanding the contents of the aforementioned reports, Condition No. 13 of the notification of the decision to grant permission requires the existing roadside boundary to be retained, with the exception of that area necessary for the construction of the proposed entrance, although I note that Condition No. 11 does require sightlines of 80m in both directions to be provided to the satisfaction of the Planning Authority prior to the commencement of development).

7.4.3. In my opinion, the sightlines from the existing access arrangement are clearly substandard to the northeast on exiting onto the public road and thus it will be necessary to improve same in order to accommodate the increased vehicular traffic movements consequent on the proposed dwelling house. However, I am satisfied that adequate sight distance can be achieved from the new shared / dual entrance arrangement (thereby also benefitting the existing farm access) by removing a suitable extent of the existing roadside site boundary and reinstating same in a recessed position. Therefore, in the event of a grant of permission, I would

recommend the imposition of a condition whereby details of the recessing of the roadside boundary in order to achieve the required sightlines can be agreed with the Planning Authority prior to the commencement of development.

7.5. Wastewater Treatment and Disposal:

- 7.5.1. It is proposed to install a wastewater treatment system followed by a percolation area to serve the proposed dwelling house and, therefore, it is necessary to review the available information in order to ascertain if the subject site is suitable for the disposal of treated effluent to ground. In this respect I would refer the Board to the submitted Site Characterisation Form which states that the trial hole recorded 300mm of SILT / CLAY loam overlying 400mm of sandy SILT with *'frequent closely spaced cobbles'* followed by 1,500mm of sandy SILT / CLAY with *'angular fines to coarse GRAVEL with frequent closely spaced cobbles and medium spaced boulders'* to the depth of the excavation at 2.2m below ground level. No rock or water ingress were recorded in the trial hole. With regard to the percolation characteristics of the soil, a 'T'-value of 17.28 minutes / 25mm and a 'P'- value of 16.42 minutes / 25mm were 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 R2¹ on the basis that the site location overlies a locally important aquifer with an 'extreme' vulnerability rating.
- 7.5.2. However, I would advise the Board that the Site Specific Report prepared by 'Anua Bord Na Móna with Nature' which has accompanied the subject application contains conflicting information as regards the results of the trial hole and percolation tests undertaken on site (particularly in respect of the presence of rock at 1.1m below ground level in the trial hole), although the photographic record of the testing would appear to support the results set out in Site Characterisation Form.
- 7.5.3. In addition, during the course of my site inspection it was noted that the south-western extremity of the application site alongside the existing farm access was quite wet and boggy underfoot. Whilst this may be attributable to runoff from the up-gradient access laneway it was also noted that there appeared to be pipework discharging into this section of site. However, the remainder of the site, including that

part proposed for the siting of the percolation area, appeared to benefit from drier ground conditions.

- 7.5.4. On the basis of the foregoing, and having reviewed the additional supporting documentation supplied by the applicant, I am generally satisfied that the subject site is suitable for the installation of the proposed wastewater treatment system, subject to conditions, and that sufficient separation distance has been provided between it and the on up-gradient well on site in order to accord with Table B.3: *'Recommended Minimum Distance between a Receptor and a Percolation Area or Polishing Filter'* of the EPA Code of Practice.

7.6. **Impact on an Adjacent Right of Way / Accessway:**

- 7.6.1. Concerns have been raised in the grounds of appeal that the proposed development will adversely impact on or otherwise interfere with a right of way in favour of the appellant through the adjacent lands to the immediate southwest of the application site. In this respect it has been submitted that Item No. 7 of Part 3 of Folio No. CK2434F identifies a right of way registered in favour of Patrick Murphy and Margaret Murphy and that the appellant (Mr. Rory Murphy) is the successor in title of that right of way. In addition to the concerns that the site boundary may encroach into the aforementioned right of way it has also been submitted that the proposed works may serve to undermine the structural integrity of the existing laneway and that there is a need for suitable retaining structures to be provided as part of the proposed development.
- 7.6.2. In response to the foregoing, the applicant has disputed the existence of any right of way to the appellant through the lands in question in the first instance and has sought to lend credence to same by submitting an updated copy of Folio CK2434F which seemingly shows that Entry No. 7(3) has been removed and thus there is no such right of way registered in the folio. It has also been submitted that the disputed right of way is located outside of the application site and that, without prejudice to the existence of same, the applicant is amenable to relocating the proposed driveway eastwards in the event that such a revision would make it easier for her to obtain planning permission.
- 7.6.3. Having reviewed the available information, it is my opinion that the concerns raised in the grounds of appeal with regard to the right of way involve a civil matter that

should be resolved between the parties concerned and that it is not the function of the Board to adjudicate on same. Accordingly, I would direct the Board to the provisions of Section 34(13) of the Planning and Development Act, 2000, as amended, which is specific in citing that '*A person shall not be entitled solely by reason of a permission granted under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property.

7.7. Appropriate Assessment:

- 7.7.1. 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 200m west of the Courtmacsherry Estuary Special Area of Conservation (Site Code: 001230) and the Courtmacsherry Bay Special Protection Area (Site Code: 004219). 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.
- 7.7.2. 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.

- 7.7.3. 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 001230 & 004219, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

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 be granted for the proposed development for the reasons and considerations 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 and the location of the site in a ‘Tourism and Rural Diversification Area’ as defined in the current development plan for the area, 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 carried out 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 June, 2017 and the 30th day of June, 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) A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the planning authority. Details of the system to be used, and 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.

Reason: In the interest of public health.

7. 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.

8.

- 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.

9.

- a) The entrance gates to the proposed house shall be set back not less than four metres and not more than six metres from the edge of the public road. Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees and shall not exceed one metre in height
- b) The existing front boundary hedge / ditch shall be retained except to the extent that its removal is necessary to provide for the site entrance and the achievement of adequate sightlines.
- c) That section of the front boundary hedge / ditch which is to be removed in order to achieve adequate sightlines from the site entrance pursuant

to item (b) above shall be reinstated in a recessed position and shall match the remainder of the existing roadside boundary ditch. The exact height and location of the recessed boundary shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety and visual amenity.

10. 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.

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, 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

17th November, 2017