



An
Bord
Pleanála

Inspector's Report PL.04.249211

Development	Construction of a storey and half style dwelling house, wastewater treatment system and associated site works.
Location	Killowen, Nohoval, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	17/04907
Applicant(s)	Gearoid Kingston and Aoife Brohan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Joan Roberts, Cheryl Roberts, Sara Roberts and Joy McLoughlin
Observer(s)	None
Date of Site Inspection	22 nd November 2017
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site is located within a relative short distance of the Atlantic coast of county Cork situated approximately 12 km east of Kinsale, as the crow flies.
- 1.2. The character of the local area is predominately rural characterised by rolling countryside.
- 1.3. The overall size of the appeal site is approximately 0.4ha and the shape of the subject site is irregular.
- 1.4. The appeal site is an existing agricultural field and adjoins an existing private laneway.
- 1.5. The gradient of the subject site slopes downwards from the public road.
- 1.6. There is a hedgerow along the eastern side of the site and a hedgerow / embankment adjoins the laneway.

2.0 Proposed Development

- 2.1. Planning permission is sought for the construction of a detached storey and half house.
- 2.2. The floor area of the proposed house is approximately 240 sq. metres. The floor plan comprises of living space and study at ground floor level and 3 no. bedrooms at first floor level.
- 2.3. The maximum height of the proposed house is 7.1 metres above ground level.
- 2.4. The proposed house will be finished in render and selected natural stone.
- 2.5. The proposed development also includes the provision of a new vehicular entrance.
- 2.6. The proposal will be served by a waste water treatment system/ percolation area and a private well.

Additional information sought for (a) a soil filter design details, (b) sightline provision, (c) surface water issues, and (d) legal issues.

3.0 Planning Authority Decision

Cork County Council decided to grant planning permission subject to 6 no. conditions which are standard for the nature of development.

3.1. Planning Authority Reports

3.1.1. The main issues raised in the planner's report are as follows;

Area Planner

- The applicant meets the requirements of the housing eligibility in Policy RCI 4-2 in the County Development Plan, 2014.
- No adverse visual impacts anticipated.
- Local Engineer requires additional information in relation to sewage system.
- Information with the solicitor's letter is incomplete.
- No AA impacts.

3.1.2. Area Engineer; - Additional information sought requesting the applicant to submit details in relation to drainage and sightline provision.

3.2. Third Party Observations

There are three third party submissions and the issues raised have been noted and considered.

4.0 Planning History

There is no recent relevant planning history on the subject site.

5.0 Policy Context

5.1. Development Plan

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

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

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

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

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

6.0 National Guidelines

6.1. Sustainable Rural Housing Guidelines

The subject site is located within an ‘Area under Strong Urban Influence’ as identified in Map 1: Indicative Outline of the NSS rural areas types in the DOEHLG Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines note that in these areas the objective should be on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated

development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

7.0 The Appeal

The following is the summary of a third party appeal submitted by Joan, Cheryl and Sarah Roberts and Joy McLoughlin;

Safety Issues

- The greatest concern is the safety of the laneway.
- The width of the laneway prevents two vehicles passing at the same time.
- The laneway does not provide for good visibility.
- There are currently 6 households living down the lane. This amounts to 15 car users, pedestrians, cyclists, joggers and service vehicles.
- It is submitted that should the medical services require to access the lane there would be serious consequences.
- The Board are referred to the traffic report by Mr. John O'Connell, BE. This report concludes that a safe means of access cannot be achieved for an additional dwelling.
- None of the existing houses have direct access to the laneway.
- The granting of permission for the proposed development would exacerbate an already dangerous situation.
- It is submitted that due to the age of the laneway, i.e. 200 years old, and the mature trees it is not possible to facilitate large vehicles without causing damage.
- The sightline provision is inadequate.
- During nesting season it is not possible to trim the hedgerows and trees. The lane therefore narrows during nesting season.

Right of Way

- It is contended that the applicant's proposed use of the laneway is not consistent with their existing right of way.
- A right of use was granted to the applicant by the appellant's father during the 1960's. The purpose of the right of use was to allow the transfer of cattle from one field to another field.
- The information contained in the declaration is therefore disputed.
- It is submitted that the applicant has not used the laneway for all purposes as stated in the statutory declarataion.
- The applicant's have at all times used the laneway for agricultural purposes.
- It is submitted that there is no legal right to use the laneway for purposes other than agriculture.
- It is submitted that access to the proposed site can be provided across lands already owned by the applicant's family rather than using a private laneway.

Environmental Concerns

- There are concerns in relation to the welfare of the wildlife, particularly badgers and bats.
- There are also concerns in relation to the old stone wall which forms the boundary ditch.

Engineer's Report

- The existing lane is generally 3600mm wide. This is not wide enough for vehicles to pass each other. This is illustrated in drawing no. 2 submitted.
- The hedge is not the subject of hedge trimming or the same level of maintenance that one would expect from a public road.
- The relevant section of the lane is 130m long.

- The available sight distance of 70m would suggest a speed limit of less than 50kph. The laneway has no speed limit.
- The DMRS sightline provisions are on the basis that roads are well used and maintained. This is not the case. Photographs 4 and 5 illustrate the level of debris on the public road.
- Debris build-up on the surface road will not provide the level of traction needed to achieve the design stopping distances.
- The construction and geometry of the lane is not in accordance with any guidance for public roads.
- It is submitted that the removal of trees along the laneway would require permission. These trees will impact on the sightline provision.
- It is contended that the entire lane is within the ownership of the Robert's family and that right to create a new access is in dispute.

Ecology Report

- A bat survey in 1st September 2017 recorded a common pipistrelle.
- Bats were recored along the entire laneway.
- It is estimated that approximately as many as 10-16 bats were using the laneway during the survey.
- A single Leisler Bat was recorded flying over the lane.
- Both common and soprano pipistrelles were recorded in equal numbers.
- The lane is an important feeding feature for bats.
- The local landscape is largely treeless and the tree-lined laneway provides habitates for bats.

7.1. Applicant's Response

The following is the summary of a response submitted by Martin O'Callaghan, Dip. Arch. Tech. on behalf of Gearoid Kingston.

Applicant's Profile

- The applicant is from the local area.
- It is intended that the applicant will take-over the running of his parent's farm as they are due to retire in the short term.
- The applicant intends to marry his partner and build a house as they are renting locally.
- The applicant complies with the housing need policy of the Cork County Development Plan, 2014.

Pre-planning

- The applicant had a pre-planning meeting with the Roberts family (appellants) on several occasions.
- At no time did the appellants express a concern about the principle of the development other than the protection of trees and hedgerows.
- The appellants did ask questions in relation to the vehicular entrance.

Site Access

- It is submitted that the access to the appeal site is by a private laneway which the Kingston family have a universal right of way.
- It is contended that the right of way was used by the applicants in agreement with the previous owners of the estate.
- It is submitted that folio map CK76063F indicates that the legal ownership of the Kingston family includes half the private lane.
- A copy of the registry map dated June 1920 confirms this.

- The applicant's have a legal right to create an access onto this roadway.

Environmental

- The existing hedgerow along the applicant's property will be retained.
- The location of the proposed entrance will ensure minimum disruption to the hedgerow.
- It is noted that the appellants were previously granted permission for a dwelling house (Ref. 06/7506). This development required the removal of a significant amount of hedgerow.

Exitsing private roadway

- The Kingston family have always contributed to maintaining the surface of the existing roadway in conjunction with a no. of adjacent property owners.
- This involves filling potholes and clearing debris.
- The Kingston family also contributed financially to the upgrade of the roadway.

Safety

- It is proposed to remove and reconfigure a maximum of 12 metres of existing hedgerow and stone wall.
- The natural stone from the removed existing boundary will be reused in the new entrance walls and piers.
- It is submitted that there is no difficulty for two vehicles to pass along the existing private roadway.
- The private roadway is used daily by pedestrians, farm animals, private vehicles and agricultural machinery for many years.
- It is noted that one of the pillars was structurally damaged and was repaired by the appellant's father.

7.2. Observations

None.

8.0 Assessment

- Principle of Development
- Access
- Legal Issues
- Appropriate Assessment
- Other Issues

8.1. Principle of Development

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

The primary applicant is the son of a local farmer and intends to construct a house, with his partner, on the family land. The primary applicant grew up on the family farm and attended primary school locally, i.e. Rennies National School, Nohaval, between the years 1991-1999.

The primary applicant is currently employed in the pharmaceutical industry, based in Ringaskiddy. The application documentation also states that the applicant works part-time on the family farm. The applicant currently resides in Passage West with his partner.

I would acknowledge that Figure 4.1 of the Cork County Development Plan, 2014 – 2020, sets out the rural area types and the appeal site is located in the area

designated 'Rural Area under Strong Urban Influence'. Section 4.4.3 of the Cork County Development Plan, 2014 – 2020, sets out the criteria required to be met in order to be considered eligible for a one off rural house in areas designated 'Rural Area under Strong Urban Influence'. The local need criterion includes the following;

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

This is the case.

- *Persons taking over the ownership and running of a farm on a full-time basis, who wish to build a first home on the farm for their permanent occupation, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.*

This is not indicated on the application documentation. However the applicant's response submission states that it is the intention of the applicant to take over the running of the family farm as his parents will retire in the short term.

- *Other persons working full-time in farming, forestry, inland waterway or marine related occupations, for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.*

This is not the case.

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

This would also appear to be the case.

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

This is not the case.

Therefore, I would consider that the applicant would comply with the rural housing need policies and provisions of the Cork County Development, 2014 – 2020, and as such the principle of the proposed development is acceptable.

8.2. Access

The subject site is currently a green field site that adjoins an existing private laneway. I note from the submitted drawing (PL-104), received by the Local Authority on 19th July 2017, that the proposed development includes a vehicular entrance situated to the south of the appeal site.

The Area Engineer, in his report dated 2nd June 2016, requested additional information requiring the applicant to demonstrate a 80m minimum distance for the sightline provision in either direction of the vehicular entrance. The sightline provision for the proposed vehicular entrance is 80m in a northern direction and 67.5m in a southern direction. The Area Engineer's subsequent report (dated 10th August 2017) stated that there was no objections to the proposed development. The laneway in

question is not a public road and therefore would not have a designated speed limit as is required for all public roads. The laneway is generally narrow in width however the traffic along the laneway is generally light having regard to the amount of users along the laneway. It is also notable that there is no public lighting along the laneway.

I would acknowledge the comments by the appellant that maintenance of the existing trees which form a line along either side of the private laneway is a concern. The argument submitted is that when the trees are poorly maintained they will impede on the sightline provision.

Overall I would consider that having regard to the proposed sightline provision and the volume of users along the laneway that the proposed vehicular access would be acceptable and would not give rise to a traffic hazard.

8.3. Legal Issues

The appellants argue that the applicant would not have the legal right of way to use the existing laneway. I note from the file documentation that the applicants have used the laneway for agricultural purposes.

In relation to the legal question the Board are unable to adjudicate on this within the remit of the Planning and Development Act. It is important to note Section 34(13) of the Planning and Development Act, 2006, which states 'a person shall not be entitled solely by permission under this section to carry out any development'. There is therefore an obligation on the applicant to ensure that they have full legal title before proceeding with any permitted development.

8.4. Appropriate Assessment

The nearest designated Natura 2000 Site to the appeal site is Cork Harbour SPA (004030) and this site is situated approximately 7km to the south of the proposed

development. It is worth noting that Cork Harbour SPA has 24 qualifying interests of which 23 are waterbirds and the final qualifying interest is a wetland.

It is intended that the proposed house will be connected to an on-site treatment system and a private well. Having regard to the nature and scale of the development proposed, to the nature of the receiving environment and the likely effluents arising from the proposed development I recommend that no appropriate assessment issues arise.

8.5. Other Issues

I have noted the report by the Ecologist outlines concerns in relation to wildlife including bats. The Ecologist states, based on a survey, that the existing trees situated along either side of the laneway form a habitat for bats. However I note from the submitted drawings that apart from a stretch of approximately 12 metres along the laneway the established boundary adjoining the laneway will largely be retained. Therefore I would conclude that the proposed development will have no significant adverse impacts on the established habitat for bats.

9.0 **Recommendation**

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

10.0 **Reasons and Considerations**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended by plans and particulars submitted to Cork County Council on 19 July 2017 and, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of

written agreement and shall be implemented 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. 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 by any person deriving title from such a sale.

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

3. The entire premises shall be used as a single dwelling unit only.

Reason: To prevent unauthorised development.

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

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

5. The proposed vehicular entrance shall be designed and constructed in accordance with the requirements of the planning authority. Details shall be agreed with the planning authority prior to the commencement of development.

Reason: In the interests of traffic safety.

6. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

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

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

Reason: In the interest of public health and to ensure a proper standard of development.

8. Surface water from the site shall not be permitted to drain onto any public roads.

Reason: In the interest of traffic safety.

9. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

10. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of amenities and public safety.

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

application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

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

Kenneth Moloney
Planning Inspector

10th January 2018