



An  
Bord  
Pleanála

## Inspector's Report ABP-300111-17

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<b>Development</b>	Outline Permission to construct a dwelling house, on-site effluent disposal and percolation area, entrance onto public road and all associated site works.
<b>Location</b>	Ballinascartha, Midleton, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	17/5679
<b>Applicant(s)</b>	Edmond and Susan O'Donovan
<b>Type of Application</b>	Outline Permission
<b>Planning Authority Decision</b>	Grant Outline Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Franz and Regina Limmer
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> February 2018
<b>Inspector</b>	Fiona Fair

## 1.0 Site Location and Description

- 1.1. The appeal site (0.32 ha) is located in Ballinascartha, Midleton, County Cork. Ballinascartha is located north of the N25 between Castlemartyr and Midleton and is a rural area.
- 1.2. The site is located off the east side of a third-class local road which has a restricted carriageway width and is in a very poor state of repair. For the most part the unnamed road is wide enough for, only, one vehicle to transverse slowly at any one time. The surface condition is in a very poor state of repair with extensive pot holes and loose gravel / grit surface.
- 1.3. The site itself comprises part of an open agricultural field which is in use for agricultural purposes, it slopes gradually from east to west towards the public road. The southern boundary comprises mature hedgerow with sporadic trees. The appellants existing cottage is located to the south west of this boundary. The site is open along its eastern boundary being positioned in the middle of a large agricultural field. There is an adjoining bungalow to the north which is part of an existing farm complex. The driveway to this dwelling runs to the north of the appeal site field boundary, which comprises a steel post and wire mesh fence and hedgerow. The site is accessed via an existing agricultural entrance off the local road to the west.
- 1.4. The surrounding area comprises rural countryside. There is a farm complex located to the north of the appeal site and there are several one-off dwellings, in the immediate vicinity of the site and dotted along this rural local third-class road.

## 2.0 Proposed Development

- 2.1. The proposal comprises Outline Permission to:
  - Construct a dwelling house,
  - On-site effluent disposal and percolation area,
  - Entrance onto public road and
  - Associated site works.

The following information is attached to the File:

- A letter of consent from the owner of the site.
- A Land Ownership Map, scale 1:5000, indicating adjoining lands in the ownership of the landowner.
- A Site characterisation Report. Stated P Test Results 0.00 and stated Average T test Results of 51.00 It is recommended that a packaged wastewater treatment system and polishing filter be installed (40 sq. m of a sand / soil polishing filter) with discharge to groundwater with a Trench Invert level 0.30
- A supplementary planning application form SF1 and further supplementary letters in support of the application. Subsequent to Further Information Additional letter from Fr. Pat Beecher O.D.C in relation to applicant's involvement locally, St. Marys Secondary School Middleton confirming applicant attended school there (1995 – 2000). Prize Bond in applicant's name, letter from applicant's mother re dates her daughter lived at home in Ballinascatha (1982 – 2007).
- A letter from the applicant herself, setting out that the applicant's family do not own the landholding. The applicant states that she was originally from the Ballinascatha area, where she lived for some 24 years. She currently resides at 5 Cork Road, Killeagh, County Cork. It is contended that the 3 bedroom dwelling which she owns is no longer suitable for her and her family's needs. The applicants have two children currently. They have strong family and friendship connections to Ballinascatha, Susan O'Donovan's mother resides there and she wishes to move back to rare her family and be close to her aging mother.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission was Granted subject to 11 number conditions. Conditions of note include:

C 2 Occupancy clause for 7 years

C 3 Siting design, external finish and architectural standard to be agreed. Any dwelling constructed on site to be single storey.

C 4 Landscaping

C10 Septic tank

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report:**

It was considered following further information that the applicant has demonstrated that she spent a substantial period of her life living in the local area in which she now wishes to build.

### **3.3. Other Technical Reports:**

- Cork National Roads Office: No comment
- Area Engineer: No objection subject to condition
- IW: No objection

### **3.4. Third Party Observations**

One submission received, issues raised are similar to the issues raised in the third-party appeal, summarised below.

## **4.0 Planning History**

4.1. None.

## **5.0 Policy Context**

### **5.1. Development Plans**

Cork County Development Plan 2014

CS4-1 County Metropolitan Cork strategic planning area

RCI 1-1 Rural communities

RCI 2-1 Urban generated housing

RCI 2-2 Rural generated housing  
RCI 4-1 Metropolitan Cork Greenbelt  
RCI 6-1 Design and landscaping of new dwelling houses in rural areas  
RCI 6-2 Servicing individual houses in rural areas  
RCI 6-4 Occupancy conditions  
TM3-2 Regional & Local Roads  
GI6-1 Landscape  
GI7-1 General views and prospects

The site is located within an area classed as a 'Rural area under strong urban influence' as per the CDP 2014

Policies in relation to same are set out under objective RC1 4-2

## 5.2. **Natural Heritage Designations**

The appeal site is not subject to or approximate to any natural heritage designations. Great Island Channel SAC site code 1058 is located some 6 Km distant approx.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The issues raised, within the First party appeal from Franz and Regina Limmer, are summarised as follows:

- Public Road access and safety.
  - The narrow public road could best be described as a laneway which is in an extremely poor state. Presently the road is servicing 9 large dwelling houses.
  - Access for emergency vehicles and school buses is very difficult.
  - Large machines have difficulty travelling on the road and opposing traffic has to back up out of the way to pass-by.

- Additional traffic on the road would give rise to traffic hazard and exacerbate existing traffic problems on the road.
- Access proposed is located on a bad bend with inadequate sightlines.
- Multiplicity of entrances is hazardous
- Sewerage System
  - Appellants have a well located downstream of the proposed percolation area
  - The vulnerability is defined as high
  - Dungourney river is also located down gradient of the site
  - Impervious rock in the area, just below ground surface at 1.1m or higher and rock outcrops to the west.
  - The applicant has incorrectly marked out the appellants sewerage treatment system which is actually located to the other side of the boundary fence to the west of the proposed treatment system.
- Flooding
  - Concern with regard to surface water run off given the change in ground level between proposed site and appellants property.
- Contrary to County Development Plan Policy
  - The CDP does not support ribbon development in rural areas.
  - Proposal is unsustainable and contrary to rural planning principles.
  - Proof of address given by the applicants and the landowner should be further examined.
- Wildlife Trees and Loss of Heritage
  - Removal / loss of large mature trees is of concern.
  - Trees along the boundary should be retained and protected
- Concerns of overlooking and loss of privacy.

## 6.2. Planning Authority Response

None.

## 6.3. First Party Response

- Queries the validity of the objection submitted to the planning authority and hence validity of the appeal.
- The proposed development of one single dwelling will be negligible in traffic terms.
- It is submitted that most damage being caused on the road is likely due to large farm machinery. This will not change regardless of whether the applicant's build their proposed dwelling or not.
- The applicants qualify under CCC rural housing guidelines to live in this area.
- The council engineer in his report had absolutely no objection to the proposal.
- The proposed entrance is located in the exact position as the existing agricultural entrance. Although there is a slight curve the sight lines are adequate, with no requirement to alter the appellants property in any way.
- A site specific characterisation form including site specific test holes were carried out on the proposed site. The report, including conclusions and recommendations contained therein were submitted to CCC.
- It is submitted that the site is well capable of taking the proposed effluent created by the proposed dwelling.
- The appellant's reference to the vulnerability being high has no relation to any possibility of contamination from the proposed treatment unit and subsequent polishing filter.
- The site-specific report recommends a package treatment system from Ireland Waste Water discharging to a 40 sqm polishing filter.
- The proposal will not contribute to flooding and permission consequent to outline planning permission will include soakways and measures to deal with surface water.
- This proposal is an infill development, not ribbon development
- There is no proposal to remove trees.

- The preservation of existing trees will help screen the proposal and afford privacy.
- CCC conditioned a single storey dwelling and that is what will be proposed in any subsequent application.
- The separation distances between the proposed dwelling and the appellants dwelling is some 60.0m.

## 7.0 **Assessment**

7.1. I consider the key issues in determining this appeal are as follows:

- **Principle of the Development and Compliance with Policy**
- **Access and Traffic Safety**
- **Wastewater Treatment & Flooding**
- **Impact Upon Residential Amenity & Removal of Trees**
- **Appropriate Assessment**

### 7.2. **Principle of the Development and Compliance with Policy**

7.2.1. The appeal site, currently utilised for agricultural purposes is within an area classed as a 'Rural area under strong urban influence' as per the Cork County Development Plan 2014.

7.2.2. County Development Plan Objective RCI 4-2: 'Rural Area under Strong Urban Influence and Town Greenbelts (GB 1-1) is applicable policy. It states:

'The rural areas of the Greater Cork Area (outside Metropolitan Cork) and the Town Greenbelt areas are under significant urban pressure for rural housing. Therefore, applicants must satisfy the Planning Authority that their proposal constitutes a genuine rural generated housing need based on their social and / or economic links to a particular local rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

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



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

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

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

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

7.2.3. The applicants are seeking outline planning permission for the construction of a one-off dwelling on the basis that Susan O'Donovan has a genuine rural generated housing need in accordance with category (d) of RCI 4-2. It is submitted by way of a supplementary planning application form SF1 and further supplementary documentation that the applicant's family do not own the landholding. The applicant submits that she was originally from the Ballinascartha area, where she lived for some 24 years. The applicants 'home place', where it is stated her mother still lives is indicated approx. 1 Km to the south of the appeal site. The applicants currently resides at 5 Cork Road, Killeagh, County Cork (a village some 10 Km to the east of the appeal site). It is contended that the 3 bedroom dwelling which she owns is no longer suitable for her and her family's needs. The applicants have two children, plan on extending their family and require more space.

7.2.4. By way of further information, the applicant submitted documentary evidence in the form of a letter from Fr. Pat Beecher O.D.C (St. Josephs, Berkley Rd, D7) in relation to applicant's involvement locally in Ballinascartha and confirming that Susan

O'Donovan lived in Ballinascartha, Midleton from birth until 2007. Letter confirming that the applicant attended St. Marys Secondary School Midleton (1995 – 2000). Prize Bond in applicant's name, Invoice from Cork IT and Dairygold Co-Operative Society Limited with the applicant's address stated as in Ballinascartha, Midleton, Cork. Letter from applicant's mother re dates her daughter lived at home in Ballynascarty (1982 – 2007).

- 7.2.5. The further information also includes a letter from the applicants stating that they own the property at 5 Cork Road, Killeagh, Co. Cork and it is their intention to sell this property, if they are successful in gaining planning permission.
- 7.2.6. Given that the applicants currently own a house, which I note is located within the settlement boundary of Killeagh, it is my opinion that they have not adequately demonstrated a genuine housing need in accordance with the criteria set out in the Cork County Development Plan, under objective RCI 4-2 (d) wherein it is the policy of the Planning Authority to restrict rural housing development to certain limited categories of applicants for a first home. Clearly the applicants currently own their own home.
- 7.2.7. Based on the information submitted with the application, I disagree with the planning authority that the applicant has demonstrated that she comes within the scope of the housing need criteria for a dwelling at this location as set out under objective RCI 4-2. The proposal is speculative, the applicant who currently resides within the development boundary of Killeagh is proposing to purchase the site. While the applicant Susan O'Donovan has demonstrated adequate social and / or economic links to this particular rural area, she currently owns her own home and she and her partner work as a Business Analyst, at Laya Healthcase, Eastgate Road, Eastgate Business Park, Little Island and at Innovative Enzymes, Unit 17B Foto Business Park, Carrigtwohill, Co. Cork. The proposed development would, therefore, be contrary to objective RCI 4-2.
- 7.2.8. The appeal site is located within an Area Under Strong Urban Influence. It is considered that the applicant does not come within the scope of the housing need criteria, as set out in the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in April 2005, for a house at this location.

7.2.9. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

### **7.3. Traffic Hazard**

7.3.1. The applicant proposes to access the site via an existing agricultural access off the east side of the unnamed local road, which has a restricted carriageway width and is in a very poor state of repair. Two cars cannot pass simultaneously along the road and pull in opportunities are few. Just north of the appeal site at the entrance to the adjoining farm complex the roadway turns into a dirt track which is not easily navigated by motorcar. There are approximately 9 dwelling houses dotted along this roadway from the crossroads to the south.

7.3.2. The area engineer has stated 'No issues, the road is well used by local farmers and needs an overlay'. Condition 5 of the draft decision requires the entrance to be recessed a minimum of 4.5m from the front boundary fence and side walls splayed at an angle of 45 dgs and walls and piers shall not exceed a height of 1m. Condition 11 requires a development contribution, 'in respect of infrastructure and facilities benefiting development in the area', in accordance with the Council's Development Contribution Scheme.

7.3.3. From my site visit, it is clear, that the nature of the public road is substandard. I would have serious concern with respect to traffic safety given the winding nature, lack of a surface in parts with deep potholes and lack of pull in or overtaking opportunities.

7.3.4. Cognisance is had that this outline permission relates to a single dwelling house. While it appears that the road is at present a lightly trafficked, low speed road, I have concern with respect to the precedent which would be established for additional traffic and turning movements along a particularly poor substandard stretch of this roadway, should permission be granted.

- 7.3.5. I note the concern raised by appellants with respect to sightlines at the entrance, however, from observations made during my site visit I am of the opinion that the sightlines would be acceptable.
- 7.3.6. I am of the opinion that the issue in this instance is the seriously substandard nature of the public road. The proposed development is located along an unsurfaced minor road which is inadequate in width, alignment and structural conditions and would, therefore, endanger public safety by reason of traffic hazard

#### **7.4. Wastewater Treatment and Flooding**

- 7.4.1. The third party submits that they have a well located downstream of the proposed percolation area and that the Dungourney river is also located down gradient of the site. That there is impervious rock in the area, and that vulnerability is defined as high. It is also submitted that the applicant has incorrectly marked out the appellants sewerage treatment system which is located to the other side of the boundary fence to the west of the proposed treatment system.
- 7.4.2. I note the Site Characterisation Report indicates that due to the location of the neighbouring well to the southwest of site and due to proximity of shaley rock to surface, the proposal is to install a treatment unit discharging to a sand / soil filter.
- 7.4.3. The site characterisation report sets out: 'stated modified P Test Results as 0.00' and stated 'Average T test Results of 51.00'. It is recommended that a packaged wastewater treatment system and polishing filter be installed (40 sq. m of a sand / soil polishing filter) with discharge to groundwater.
- 7.4.4. I note a T value of  $3 < T > 50$  indicates that a site is potentially suitable for on-site waste water treatment discharging to ground water. Despite the submitted Site Characterisation Report recommending that a packaged wastewater treatment system and polishing filter be installed with discharge to groundwater with a Trench Invert level 0.30, the area engineer's report states 'per SST recommendations.... septic tank'. I highlight that C10 of the draft decision to grant permission requires that 'The proposed septic tank and percolation area shall be designed and constructed, laid out and maintained to conform with the provisions of the Code of Practice, wastewater Treatment and Disposal Systems Serving Single Houses (p.e.<10) EPA 2009'.

- 7.4.5. The ground water protection response is 'R1', vulnerability is 'high' and aquifer category is 'locally important'.
- 7.4.6. Given the evidence on file I am of the opinion that subject to a package treatment system discharging to a 40 sqm polishing filter as per the site characterisation report the proposed development would be acceptable from a wastewater disposal perspective and would not be prejudicial to public health. Therefore I recommend that in the event that the Board decide that permission should be forthcoming C10 of the draft decision should be amended.
- 7.4.7. With regard to the issue of flooding I did not witness any evidence of flooding, the site is not located within lands identified as prone to flooding. I note the applicant's response that permission consequent to outline planning permission will include soakways and measures to deal with surface water. I consider the proposal acceptable in this regard.

#### **7.5. Impact Upon Residential Amenity & Removal of Trees**

- 7.5.1. The third party has raised concerns with respect to overlooking and loss of privacy to their property (a cottage) which adjoins the subject site to the south west.
- 7.5.2. The first party submit that there is in excess of 60 separation distance from the location of the proposed dwelling and the appellants dwelling. I can confirm, from the plans and drawings submitted, that this is accurate.
- 7.5.3. I highlight that the planning authority have attached a condition to the draft grant of permission C. 3 requiring that the siting, design, external finish and architectural standard of any proposed dwelling shall be to the satisfaction of the p.a. and in harmony with the environment of the locality. Any dwelling constructed on site shall be single storey only. I note also C4 requires that the site be landscaped and planted in accordance with a comprehensive scheme to comprise predominantly native and naturalised species indigenous to the local area.
- 7.5.4. From observations made during my site visit I can confirm that the south-western boundary is heavily screened with hedgerow and trees. Views to the appellants dwelling are intermittent only from the appeal site. I do not recommend that permission be refused on grounds that the 3<sup>rd</sup> party's residential amenity would be negatively impacted.

7.5.5. With respect to third party concern raised to loss of wildlife and trees. I note the applicant's response that there is no proposal to remove trees. Cognisance is had to the rural nature of the site, however, no evidence has been submitted that there are any protected species using the site. It is submitted that the preservation of existing trees will help screen the proposal and afford privacy. I have no significant concern in this regard.

#### 7.6. **Appropriate Assessment (AA)**

7.6.1. The appeal site is not subject to or approximate to any natural heritage designations.

7.6.2. Having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### 8.0 **Recommendation**

8.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

### 9.0 **Reasons and Considerations**

1. Having regard to the location of the site within an area classified as a Rural Area Under Strong Urban Influence, as identified in Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Cork County Development Plan 2014, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed

development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development is located along an unsurfaced minor road which is inadequate in width, alignment and structural conditions and would, therefore, endanger public safety by reason of traffic hazard.

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Fiona Fair

Planning Inspector

09.03.2018