



An  
Bord  
Pleanála

## Inspector's Report 302282-18.

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<b>Development</b>	Construction of house.
<b>Location</b>	Reencarrigeen, Ballinascarthy, Clonakilty County Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	18/48.
<b>Applicant</b>	Michael and Gillian Ryan.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refusal of permission.
<b>Type of Appeal</b>	First Party.
<b>Appellants</b>	Michael and Gillian Ryan.
<b>Observers</b>	1. Gerard Murphy. 2. Christine Murphy.
<b>Date of Site Inspection</b>	8 <sup>th</sup> January 2019.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- 1.1. The appeal site is in the townland of Reencarrigeen a rural area approximately 2 kilometres east of the village of Ballinascarthy and 11 kilometres southwest of the town of Bandon. The proposed site fronts onto an untarred laneway, which defines the site's eastern boundary approximately 50 metres north of the junction of the laneway with a county road. This county road in a westerly direction in turn has a junction with the N71 Bandon Clonakilty National Secondary Route approximately 1,800 metres west of the site.
- 1.2. The site is part of a field and the laneway as already indicated defines the site's eastern boundary and the remaining boundaries adjoin open lands. A sod and stone ditch with mature trees and planting defines the roadside boundary. The laneway is below the level of the lane and the site and adjoining lands fall in northerly direction towards the Owenkeagh River.
- 1.3. The site is rectangular in configuration with a stated area of 0.5287 hectares.
- 1.4. The overall pattern of development in the general area is dispersed one off houses and farm dwellings fronting onto the local public road network. There is an old house (Carriga Lodge) with outbuildings on lands to the southwest of the site fronting onto the public road.

## 2.0 Proposed Development

- 2.1. The proposed development as submitted to the planning authority on the 1<sup>st</sup> of February 2018 was for a dwelling house and associated site works including landscaping, drainage and access to the public highway. The proposed dwelling is a two storied dwelling, located in the southern area of the site which is of modern construction though retaining traditional elements. The development provides for a main section two storied with an overall height of 8350mm to roof ridge level with a one storied annexe on the eastern gable. The house has a long axis with a front elevation of 23.4 metres with a depth, which varies between 5.6 and 12.8 metres in the central section of the dwelling. The overall area of the development is indicated as 295 m<sup>2</sup>.

- 2.2. It is proposed to service the site with a public mains water supply as stated on the application form submitted with the application, but the drawings indicate a bored well. It is proposed to treat foul effluent by means of a septic tank and percolation area located in the northern area of the site. A site characterisation assessment was submitted indicating the suitability of the ground to treat the effluent arising. Surface water arising it is proposed to discharge to soak pits.
- 2.3. It is indicated that the site has a previous permission and that the applicants own the adjacent farmland and that permission was granted for a farm building on these lands. A supplementary form in relation housing in a rural area was submitted indicating that the applicants operate an agricultural supplies business in Ballinascarthy.
- 2.4. Further information was submitted on the 18<sup>th</sup> of June 2018 clarifying
- Land ownership and location of current residence indicating that the current dwelling is too remote from the landholding to provide a farmyard and dwelling to farm the land indicated.
  - Details relating to improvement of the junction with the public road. The Board were satisfied with details submitted in the previous permitted application.
  - Minimal improvements are proposed in relation to the laneway to maintain the bridleway feel of the laneway with minimal use of surface dressing.
  - Details of the entrance onto the laneway.
  - The principle of development is established by the previous Board decision.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The decision of the planning authority was to refuse planning permission and two reasons were stated. The first reason refers to the site's location in a rural housing area defined as tourism and rural diversification area, to the provisions of objective RCI 4-3 of the current county development plan, to the issue of rural generated housing need, and that the applicants have built a house in the vicinity and as such

the proposed development does not comply with objective RCI 4-3. The second reason refers to traffic hazard.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planning report dated the 23<sup>rd</sup> of March 2018 refers to

- The provisions of the current county development plan in particular objectives RCI 4-3, GI 6-1, RCI 6-1, RCI 6-2, GI 10-5, CS 3-2 and RCI 6-4
- The planning history.
- Submissions received.
- An assessment of the issues including principle of the development, policy, and traffic. Further information was recommended.

The planning report dated the 10<sup>th</sup> of July 2018 in relation to the further information submitted accepts a local connection to the local area however permission was granted for a dwelling in which they reside in 1993 and there is no genuine local need. Reference is made to roads concerns. Refusal of permission was recommended.

The SEP report dated the 13<sup>th</sup> of July 2018 recommend refusal of permission,

#### 3.2.2. Other Technical Reports:

Area Engineer Report dated 21<sup>st</sup> of March 2018 refers to the narrow nature of the lane serving the site which would require to be widened and also to the junction of the laneway and the public road and the absence of sightline visibility and that the applicants have no control of lands to effect improvements required which would also impact on existing trees. The current access to the lands from the public road may also have issues in relation to sightline visibility. Reference is made to a watermain on the public road and to a proposal for a bored well. Permission was not recommended based on the information submitted and the report outlines further details required to be submitted.

A further report dated the 5<sup>th</sup> of July 2018 in relation to the further information and recommends refusal as there is a safety issue at the junction of the laneway and public road which is not resolved by the information submitted.

### 3.3. Other submissions

Third party submissions were received raising concerns in relation to the destruction of the track leading to the proposed dwelling and there are alternative and safe means of access to the applicants' lands. The boreen should be retained, conserved and protected as a local amenity and is unsafe for traffic.

## 4.0 Planning History

There is history relating to the site and area associated with the applicants including;

ABP PL88.225069/P.A. Ref. No.07/676

Permission granted for a dwelling

P.A. Ref. No.07/1926

Permission granted for a farm building.

## 5.0 Policy Context

### 5.1. National Policy.

### 5.2. Guidelines on Sustainable Rural Housing 2005.

- 5.2.1. The guidelines refer to the need for a development plan approach and to having similar defined the rural area types as set out in the NSS within the development plan. The guidelines also indicate that planning authorities must then tailor policies that respond to the different housing requirements of both urban and rural communities and the varying characteristics of rural areas.
- 5.2.2. The Guidelines differentiate between rural and urban-generated housing. The guidelines refer to rural generated housing; to sustaining and renewing rural communities; to accommodating people of a rural area in their area of origin and in section 2.4 to tailoring policies to local circumstances.

- 5.2.3. Section 3.2.3 refers to rural generated housing and there is reference to “persons who are an intrinsic part of the rural community” and also reference in this regard to “members of an established rural community, and persons who wish to return to reside near other family members or to care for elderly family members”. There is in addition reference to working in rural areas including full and part time farming.
- 5.2.4. The guidelines indicate, however, that having defined rural generated housing needs, the development plan should make very clear that subject to satisfying normal considerations the planning authority will look favourably upon an applicant’s proposal for an individual house in a rural area where that applicant comes within the development plan definition of need. Chapter 4 outlines the criteria to be assessed in determining applications in rural areas.
- 5.2.5. In summary, the Guidelines provide that people who are part of the rural community should be facilitated by the planning system in all rural areas and to take a positive approach to applications from such persons in the areas referred to, in circumstances where permission might otherwise be refused.

### 5.3. **Environment Protection Agency.**

- 5.3.1. The EPA publications Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) 2009 and its subsequent clarifications.
- 5.3.2. The Code of Practice outlines the importance of proper site assessment methodology, the identification of the minimum environmental protection requirements, the need for design of on-site wastewater disposal systems specific to the local conditions and the need for installation, commissioning and maintenance as per design and attendant recommendations/conditions.

### 5.4. **Development Plan**

- 5.4.1. Cork County Development Plan 2014.
- 5.4.2. Chapter 4 refers to Rural Coastal and Islands. The site would appear to be in an area defined as a tourism and rural diversification area. In paragraph 4.3.7 this area is defined as “*these parts of rural and coastal County Cork exhibit characteristics such as evidence of considerable pressure for rural housing in particular higher demand for holiday and second home development. These rural areas are more*

*distant from the major urban areas and the associated pressure from urban generated housing. These areas also have higher housing vacancy rates and evidence of a relatively stable population compared to weaker parts of the County. These areas have higher levels of environmental and landscape sensitivity and a weaker economic structure with significant opportunities for tourism and rural diversification”*

5.4.3. Housing need in these areas are defined in Objective RCI 4-3 where it stated that “*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.*

5.4.4. Section 4.6 sets out general requirements in relation to design the provision of services and where considered appropriate the inclusion of an occupancy condition.

## **6.0 The Appeal**

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

The appellant in a submission dated the 7<sup>th</sup> of August 2018 refers to;

- The access at the laneway to the public road is an existing situation and both roads are in the ownership of Cork County Council.
- The laneway is used by cars and large agricultural vehicles and the appellants are not aware of any accidents occurring.
- Reference is made to permissions granted for development using the laneway including a Board permission.
- The appellants have indicated improvements to be made to the laneway and have agreed to contribute to any improvements made.
- The appellants are local to Ballinascarthy and live on the other side of Ballinascarthy.
- The farmland was purchased in 2007.
- The housing need is based on employment in local business and farming.
- The appellants need a house on the farm holding.
- The need is the same as established in the previous Board decision.
- A certificate in farming is included in the appeal submission.



## 6.2. **Planning Authority Response**

The planning authority in a submission dated the 29<sup>th</sup> of August 2018 have nothing to add to the reports as stated on the file

## 7.0 **Observer Submissions**

7.1. Gerard Murphy in a submission dated the 29<sup>th</sup> of August 2018 refers to;

- A significant part of the breen is overgrown and there is barely enough room for a pedestrian to squeeze through and it is not used by cars to access the river as stated in the grounds of appeal.
- The lands on either side of the junction at the public road are in the ownership of other landowners and unlikely to cede lands to improve visibility.
- The housing need is questionable, and the farming certificate submitted is 30 years old.
- The appellants do not need another house to start a farm and could manage a farm from the existing house.

7.2. Christine Murphy in a submission dated the 30<sup>th</sup> of August 2018 refers to;

- The observer restates her objection to turning the heritage trail into an entrance for a house.
- Photographs are submitted with the submission outlining the track/ laneway and also the current access from the appellants lands to the public road and a copy of the submission made to Cork County Council

## 8.0 **Assessment**

8.1. The planning authority stated two reasons for refusal of the proposed development. The first reason refers to the site's location within a Tourism and Rural Diversification Area Under Strong Urban Influence as designated in the current Cork County Development Plan 2014. Reference is made to objective RCI 4-3 of the plan and the need to demonstrate a genuine rural generated housing need and that this need is not demonstrated and that the proposal would conflict with the settlement policy RCI

4-3 as stated. The second reason refers to the issue of traffic safety in particular restricted sightlines at the access point of the laneway serving the site onto the public road.

8.2. In relation to the first reason for refusal the wording as stated refers to the proposed development would materially contravene a stated objective of the plan.

8.2.1. I would in this regard refer to section 37(2)(b) of the planning and Development Act 2000 as amended which indicates that “*where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that;*

*(i) the proposed development is of strategic or national importance,*

*(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*

*(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*

*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan”.*

8.2.2. In relation to the above provisions;

- (i) does not apply;
- in relation to (ii) there are conflicting objectives in the plan and the objective stated does not in itself preclude consideration and permitting the development proposed,
- (iii) does not preclude consideration and
- in relation to (iv) permissions would have appear to have been granted having regard to the objectives of the plan and objective RCI 4-3. In assessing this proposal, the Board are not precluded from granting permission.

- 8.3. I propose to address this appeal initially in relation to matters of policy with specific reference to rural generated housing need both nationally and local which form the basis of the planning authority's decision and subsequently refer to site specific matters with particular reference to traffic.
- 8.4. Policy.
- 8.4.1. I will initially consider the need for the dwelling in a rural area.
- 8.4.2. Objective RCI 4-3 of the current county development sets out the criteria for consideration of a dwelling in the rural area type in which the appeal site is located and these provisions are outlined in section 5.4.3 of this report.
- 8.4.3. In the grounds of appeal the appellants have referred to the site's planning history which includes a permission for a dwelling to the appellants granted by the board under ABP PL88.225069.
- 8.4.4. In support of their case it is also indicated that the appellants are local to Ballinascarthy and live on the other side of Ballinascarthy. The farmland on which they wish to build the dwelling was purchased in 2007 and that the housing need is based on employment in local business and farming. The appellants as a consequence need a house on the farm holding and the need is the same as established in the previous Board decision.
- 8.4.5. The planning authority in the planning report dated the 10<sup>th</sup> of July 2018 in relation to the further information submitted accepts a local connection to the local area however permission was granted for a dwelling in which they reside in 1993 and there is no genuine local need.
- 8.4.6. In relation to the matters raised there is no issue in relation to a local connection to the area. There is no dispute in relation to the purchase of the farmland and I do not propose to engage on issues in relation to the scale and size of the holding. It is also not disputed that the applicants operate a business in the village of Ballinascarthy which further demonstrated a connection to the general area.
- 8.4.7. The issue resolves around whether there is a genuine rural generated housing need to construct a dwelling on the appeal site. The appellants currently have a home in the Ballinascarthy area which they constructed after receiving planning permission in and around 1993.

- 8.4.8. The previous permission by the Board was granted under the provisions of the previous 2009 county development plan which also had provisions for assessment of housing need. The current development plan also sets out criteria under objective RCI 4-3.
- 8.4.9. Having considered the criteria as set out RCI 4-3, which in (a) to (f) refers to building a first home and also in the case of (g) which refers to returning emigrants proposing to build a first home for their permanent occupation, it is, I consider, difficult justify the proposal under the provisions RCI 4-3 which I consider are reasonable in providing for a rural generated housing need and also in the context of national guidance given that the appellants currently have a dwelling in the Ballinascarthy area.
- 8.4.10. I therefore consider, on the basis of the information submitted the appellants have not demonstrated an entitlement for consideration for residing in what is a rural area within the provisions of the current county development plan and the rural housing guidelines. The onus is on the applicant /appellant to demonstrate genuine need and this I consider is not indicated. The primary case appears to be ownership of land used for farming, but it is not a necessity that persons engaged in farming reside on a holding which often is not a unitary parcel of land and often comprises of different parcels of land and in some cases are removed from the main area as an outlier farm.

#### 8.5. Siting and design

- 8.5.1. The proposed development as submitted to the planning authority on the 1<sup>st</sup> of February 2018 was for a two storied dwelling, located in the southern area of the site and which is of modern construction though retaining traditional elements.
- 8.5.2. The site is in the open countryside, which has a good coverage of mature trees and hedgerows along the laneway boundary. The existing level of mature vegetation along the southern and eastern boundaries with further augmentation of planting would screen the development and would not be unduly obtrusive in the open landscape and given its distance from public road the proposed dwelling would not be unduly visible or prominent.

I would, however, have a general concern in relation to impact the development will have on the character of the laneway fronting the site, which is narrow and

unsurfaced and the removal of the boundary of the laneway, which would be necessary to accommodate this development will be significant given the difference in level between the site and the lane and the narrow width of the lane itself.

The laneway is relatively unspoilt at present in its present context with mature planting on both sides is a visually attractive feature in the local setting. In permitting any development significant attention would be required to provide for an appropriate landscaping scheme minimising loss of vegetation and appropriate replacement to integrate into its setting.

#### 8.6. Services

8.6.1. In relation to services it is proposed that the means of water supply would be a bored well. I would have no objections to this.

8.6.2. In relation to foul drainage a site suitability test was submitted in accordance with the EPA guidance indicating the suitability of the site for a septic tank system with associated percolation area. I have no objections to the details as submitted.

#### 8.7. Traffic

8.7.1. The second reason for refusal relates to traffic hazard. The engineering report submitted questions whether the control of sufficient sightline visibility at the junction of the laneway serving the site and the public road is supported in the documentation submitted. It would appear to indicate sightlines can be achieved but how it can be achieved is not demonstrated.

8.7.2. In the grounds of appeal the appellants contend that the access at the laneway to the public road is an existing situation and both roads are in the ownership of Cork County Council. The laneway is used by cars and large agricultural vehicles and the appellants are not aware of any accidents occurring and reference is made to permissions granted for development using the laneway including a Board permission.

8.7.3. The proposed development has frontage onto a narrow laneway, which is off a local which is straight in alignment and has a speed limit of 80kph. Works have been carried out to improve visibility at the junction but I would have concerns in relation to the junction in relation to the ongoing maintenance of satisfactory sightlines on lands not in the ownership of the appellants or the county council but which is in the

ownership of third parties and where there is no documentary evidence submitted to indicate that sightlines can be maintained and the onus is consider on the applicant to provide this.

- 8.7.4. It would not be appropriate to permit intensification of the junction in the absence of information indicating that a risk to road users and to the free flow of traffic movements on the public road is satisfactorily addressed.
- 8.7.5. In relation to the works to improve the laneway to accommodate traffic with minimal intervention to retain the current setting of the laneway I would have no objections to the proposals as submitted.

#### 8.8. Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the 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.

#### 8.9. EIAR Screening Determination

Based on a preliminary examination of the nature, size or location of the development there is no real likelihood of significant effects on the environment and EIAR is not required.

### 9.0 Recommendation

- 9.1. Arising from my assessment above I recommend that the Board uphold the decision of the planning authority and refuse planning permission for the proposed development based on the reasons and consideration set out below.

### 10.0 Reasons and Considerations

- 1 The site is located within a rural housing policy area defined as a “Tourism and Rural Diversification Area” in the current County Development Plan 2014. Having regard to the provisions as stated in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the

Environment, Heritage and Local Government in April 2005 and to the provisions relating to a “Tourism and Rural Diversification Area” as stated in objective RCI 4.3 of the plan in relation to rural generated housing need for this area, 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 Having regard to the location of the proposed development onto a narrow unsurfaced laneway, which is off the local road network it is considered that the proposed development would endanger public safety by reason of being a traffic hazard as it is considered that the sightlines available at the junction of the laneway with the public road are restricted and inadequate and the improvement and ongoing maintenance of sightlines on this junction are on lands not in the ownership or control of the appellants.

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Derek Daly  
Planning Inspector

25<sup>th</sup> January 2019