



An
Bord
Pleanála

inspector's Report ABP-303083-18

Development	Permission to construct a Dwelling at Ballygunnermore, Waterford.
Location	Ballygunnermore, Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	18614
Applicant	Ivan O'Doherty & Louise Fowler
Type of Application	Planning Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal
Appellant	Ivan O'Doherty
Date of Site Inspection	14 th , February 2019
Inspector	Paddy Keogh

1.0 Site Location and Description

- 1.1. The site of the proposed development which has a stated area of .834 ha. is located in a rural area c. 3.5 km south of Grantstown. Waterford City has expanded in recent years such that Grantstown now effectively forms part of the southern fringe of the city. The site is accessed via a substandard and poorly surfaced rural road located off the local road between Grantstown and Dunmore East. The site consists of a grassed field. The western, eastern and northern boundaries of the site are defined by mature hedgerows. There is an existing dwelling on an adjoining site to the south. The boundary between the latter site and the application site is ill-defined. There is a one and a half storey (dormer style) house on the adjoining site to the north.
- 1.2. The access road serving the site runs along the eastern boundary of the site. There is an (ungated) field entrance from the public road located at the north-eastern corner of the site. This opening immediately abuts the pillared vehicular entrance serving the dwelling on the adjoining site to the north.
- 1.3. Levels across the site fall away gently in a westerly direction.
- 1.4. The access road serving the site is narrow, poorly surfaced, substandard and contains bends on either side of an existing field opening serving the site (also the location of the proposed entrance).

2.0 Proposed Development

- 2.1. The proposed development involves the construction of a dormer style dwelling, garage, wastewater treatment system, percolation area, entrance and all ancillary site development works.
- 2.2. It is proposed to create a new vehicular entrance to serve the proposed dwelling in roughly the same position as the existing field entrance located at the north-eastern corner of the site.
- 2.3. It is proposed to remove a bend in the access road by straightening the line of the eastern boundary of the site and reconfiguring this stretch of the carriageway.

3.0 Planning Authority Decision

3.1. Decision

Notification of a decision to refuse planning permission for 2 reasons was issued by the planning authority per Order dated 30th, October 2018. Briefly, the reasons for refusal were as follows:

- (1) Location of site in an *Area Under Urban Pressure* as designated in the Waterford County Development Plan 2011-2017. Planning Authority not satisfied that the proposed development constitutes a genuine housing need in accordance with the requirements of Section 4.10 of the Development Plan.
- (2) The proposed entrance to the site overlaps with the entrance to the dwelling on the immediately adjoining site to the north which was permitted under planning permission Reg. Ref. PD08/922. The proposed development would conflict with the terms of the latter planning permission.

3.2. Planning Authority Reports

3.2.1. Planning Report

3.2.2. A report from the planning authority Area Planner dated 30th, October 2018 refers to the fact that one of the joint applicants (Ivan O'Doherty) obtained planning permission for a dwelling in a rural area under Reg. Ref. 03/500025. It appears that Ivan O'Doherty acquired the lands in 2005 and that the permitted house was subsequently built on the lands. However, ownership of the house was subsequently transferred to the applicant's parents (Michael & Mary O'Doherty) in 2015. The Area Planner considers that as Ivan O'Doherty already benefitted from planning permission for a rural dwelling (the ownership of which only recently transferred) he cannot now qualify for a second house.

3.2.3. The approach now being taken is consistent with the approach taken by the planning authority in their recent decision to refuse planning permission to the current applicants for a rural dwelling on a site at Barristown, Passage West, Co. Waterford (Reg. Ref. 17820). There is no information on the current file that would justify a departure from this approach.

4.0 Planning History

There is no record of recent planning permission on the application site. However, the application site formed part of a larger site in respect of which planning permission was granted for a house in October 2008 (Reg. Ref. 08922 – see below).

Adjoining Site to North

Reg.Ref. 06600 – Outline Planning Permission for a dwelling and associated site works was granted by the planning authority (to Niall O'Donnell and Sinead Fitzpatrick) per Order dated 6th, June 2006.

Reg. Ref. 08575 – Planning permission for a one and a half storey dwelling and associated site works was refused by the planning authority (to Niall O'Donnell and Sinead Fitzpatrick) per Order dated 28th, July 2008. The reasons for refusal related to (1) excessive height, scale and visual obtrusiveness of the proposed dwelling and (2) non-compliance with conditions of the outline permission granted under Reg. Ref. 06600.

Reg. Ref. 08922 - Planning permission for a one and a half storey dwelling on the immediately adjoining site to the north was granted by the planning authority (to Niall O'Donnell and Sinead Fitzpatrick) per Order dated 27th, November 2008. This site had a stated area of 1.787 ha. The permitted (and now constructed and occupied) house was located on the northern portion of the site. The southern (undeveloped) portion of this larger site forms the site of the current application/appeal.

Other Relevant Planning History

Reg. Ref. 17820 - Planning permission was refused to Mr. Ivan O'Doherty for a dwelling, new entrance etc. at Barristown, Passage East, Co. Waterford per Order dated 25th, January 2018. Briefly, the stated reasons for refusal were (i) non-compliance with rural housing policy and (2) haphazard rural development. [This site is c. 11km by road from the current application site].

5.0 Policy and Context

5.1. Development Plan

5.2. Waterford County Development Plan 2011-2017

5.2.1. The Waterford County Development Plan 2011-2017 is the current Development Plan for the area. With the establishment of Waterford City & County Council, in June 2014, this plan had its lifetime extended (pursuant to *S. 11A of the Planning and Development Act 2000, as amended*) and remains in effect until the new Regional Spatial and Economic Strategy comes into effect.

5.2.2. The appeal site is located in an area zoned 'Agriculture'. The stated objective of this zoning is *'To provide for the development of agriculture and to protect and improve rural amenity'*

5.2.3. **Chapter 3** refers to *Core Strategy* and identifies Dunmore East as a District Service Centre within the County settlement hierarchy.

The county is divided into three broad categories;

1. Areas Under Urban Pressure
2. Stronger Rural Areas
3. Structurally Weak Rural Areas

5.2.4. The *Rural Area Types Map* contained within the Development Plan identifies the subject site as being located within an 'Area Under Urban Pressure'.

5.2.5. **Section 4.8** refers to Rural Housing Policy

The Council's aim is to

- *'Minimise the amount of sporadic speculative development which would be more appropriately located on serviceable lands in towns and villages; and*
- *Meet the genuine housing need of rural people and their families who have strong ties to a particular locality and to those who need to reside in rural areas for employment, economic and social reasons subject to the applicant demonstrating a Genuine Local Housing Need.'*

Policy SS3 seeks *'To cater for the housing requirements of members of the local rural community who have a genuine local housing need in areas under urban pressure as set out in the Criteria in Section 4.10.'*

Policy SS4 seeks *'To direct urban generated housing development in Areas Under Urban Pressure into the adjoining zoned settlements.'*

Section 4.10 refers to 'Genuine Local Housing Need'.

Housing Need criteria includes *'A farm owner or an immediate family member (son, daughter, mother, father, sister, brother, heir) wishing to build a permanent home for their own use on family lands.'....*

and

'Persons who were born and reared for substantial parts of their lives (three years or more) in a specific rural area, who then moved away and who now wish to return to their home places to reside near other family members, to work locally, to care for elderly family members or to retire'....

5.3. **National Policy**

5.3.1. **Sustainable Rural Housing Planning Guidelines**

The site of the proposed development is located within an area designated as being under strong urban influence.

The Guidelines distinguish between 'Urban Generated' and 'Rural Generated' housing need. Examples of situations where rural generated housing need might apply as set out in the Guidelines include rural houses for *'persons who are an intrinsic part of the rural community'* and *'persons working full time or part time in rural areas'*

5.3.2. **National Planning Framework**

National Policy Objective No. 19 states

In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting

and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.4. Natural Heritage Designations

Hook Head Special Area of Conservation (SAC) (Site Code 000764) is c. 11.3 km to the south east of the site.

Lower River Suir SAC (Site Code 002137) is c. 4.7 km to the north of the site.

River Barrow and River Nore SAC (Site Code 002162) is c. 4.7 km to the east of the site.

Tramore Backstrand Special Protection Area (SPA) (Site Code 004027) is c.3 km to the south of the site.

Mid-Waterford Coast SPA (Site Code 004193) is c. 9.7 km to the south west of the site.

5.5. EIA Screening

- 5.5.1. It is considered that the nature of the receiving environment is not particularly sensitive and that having regard to the nature and scale of the proposed development it would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. The submitted grounds of appeal can be summarised, as follows:

- The applicant's family home is located 3.8km from the application site (indicated on an attached map).
- The applicant was granted planning permission for a dwelling under Reg. Ref. PD03/500025. However, this dwelling was never intended to meet the

accommodation needs of the applicant. The house was intended to accommodate the applicant's parents who were getting older and had a need for a smaller house in their old age after the applicant's six siblings had left home. It was purely for 'reasons of convenience' and to assist his parents that the application was made in the applicant's name rather than in the name of his parents.

- Had the applicant been aware (in advance) of policy changes in relation to rural housing policy that occurred in 2004 the application would not have been made in his name.
- The dwelling was always intended as a residence for the applicant's parents and not for the applicant.
- The application was made in the applicant's name to facilitate compliance with Condition No. 6 of the planning authority decision in Reg. Reg. PD03/500025 *[This is a standard occupancy condition requiring that the dwelling be occupied by the applicant and/or a member of his immediate family for a period of not less than 5 years].*
- The applicant currently lives at No. 17 Poleberry, Waterford. He has been married for 10 years and wishes to return with his wife to the area where he was born and reared in order to rear a family of his own.
- Section 4.10 of the County Development Plan makes provision to meet the genuine local housing need of *'Persons who were born and lived for substantial parts of their lives (three years or more) in a specific rural area, who then moved away and who now wish to return to their home places to reside near other family members, to work locally, to care for elderly family members or to retire'*. The applicant who was born and raised and has spent a substantial part of his life living and working in the area submits that he complies with these criteria. Furthermore, the applicant's elderly parents and a number of siblings continue to live in the area.
- There are no zoned lands between the site where the applicant was raised and the site of the proposed development.

- The applicant is employed (as a Project Manager) in Waterford Airport Business Park (c. 1.7 km from the application site).
- The proposed development would not conflict with the terms of Reg. Ref. PD08/922. The current proposal would ensure compliance with Condition No. 2 of Reg. Ref. PD08/922 insofar as it would mean that a dangerous bend would be removed from the road and the road would be made safer for all road users.
- The appellant's wife (second applicant) is from the rural area and wishes to return to live in the area to support her elderly parents who continue to live in the area.

7.0 **Assessment**

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Rural Housing Policy
- Site Access
- Appropriate Assessment

7.2. **Rural Housing Policy**

7.2.1. The appeal has been lodged in the name of Ivan O'Doherty only (one of the joint applicants). The grounds of appeal state that the appellant has been living with his wife (the second applicant) at their current address in Waterford City for 10 years. The appellant is employed as a Project Manager working for M O'Doherty Builders with an address at Waterford Airport Business Park. The appellants place of work is c. 1.7 km from the appeal site (as against c. 13.6km from his current residence). No details of the nature or location of the employment, if any, of the second applicant has been submitted.

- 7.2.2. The submitted grounds of appeal argue that the applicants comply with rural housing policy as set out in the current Waterford County Development Plan on the basis that the appellant was born and raised in the rural area in which the appeal site is located, has elderly parents in need of support living nearby together with siblings and other extended family living in the area. It is stated that the appellants wife (the second applicant) also has elderly parents in need of support living nearby.
- 7.2.3. It is submitted that due to the nature of his work the appellant needs to reside close to his place of employment. However, on the basis of the submitted documentation it appears that the appellant is not employed in agriculture or in any other strictly rural based employment activity.
- 7.2.4. The planning authority have highlighted the fact that the appellant was previously granted planning permission for a dwelling in the area (Reg. Ref. 03/5000025) and that this planning permission has fulfilled his need for a rural dwelling. The grounds of appeal state that the benefit of this dwelling was always intended to the applicant's parents. It is stated that the application was made by the applicant (and not made in the parent's names) for 'reasons of convenience'. These reasons are not elaborated upon. However, it is clear that the parents already had a dwelling – the original family home. It is not clear why this home was no longer suitable for the parent's accommodation needs or could not have been converted to meet their accommodation needs. Furthermore, while the submitted grounds of appeal include a map indicating the location of the 'family home', it is not entirely clear if this is also the location of the original family home or is the location of the subsequently permitted dwelling only. In any event, the location shown is on the urban fringe of Waterford City at Grantstown rather than being in an area that is strictly rural in character.
- 7.2.5. I accept that the planning permission for a dwelling obtained in 2003 in the name of Ivan O'Doherty may always have been intended for the benefit of his parent's Michael and Mary O'Doherty. However, on the basis of the documentation on file it remains unclear as to why the application was not made in the names of the persons (Michael and Mary O'Doherty) for whom the house was intended. In such circumstances, that application could have been adequately assessed on its own merits. I consider that the details provided in this regard are, at best, hazy. On balance, and in the absence of any compelling evidence to the contrary I concur with

the conclusions of the planning authority Area Planner in relation to the appellant's non-compliance with the rural housing policy as set out in the Waterford County Development Plan.

- 7.2.6. Furthermore, and for similar reasons to those already referred to, I consider that the appellant has not satisfactorily demonstrated compliance with the strategy set out in Policy Objective 19 of the National Planning Framework which, for areas under urban influence, seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements.

7.3. **Site Access**

- 7.3.1. Reason No. 2 of the planning authority notification of decision to refuse planning permission for the proposed development refers to the fact that the proposed vehicular access would be located within the area of works required to provide the necessary sightlines at the entrance to the permitted (and constructed) house on the adjoining land to the immediate north of the appeal site.

- 7.3.2. Condition No. 2 of Reg. Ref. 08922 stipulated that:

Prior to the commencement of development a revised site layout shall be submitted to the Planning Authority for written agreement indicating the following:

- *Sightlines at the entrance to the site of 55m to the nearside edge of the public road.....etc.*

- 7.3.3. The report from the planning authority Area Planner states that the works required to comply with the requirements of this condition have not been carried out to date.

- 7.3.4. The submitted grounds of appeal point out that the development now being proposed provides for the straightening of an existing bend in the carriageway alongside the front (roadside) boundary of the site. It is submitted that these works will provide for adequate sightlines at the entrance to the proposed dwellings while also providing for improved sightlines to serve the existing dwelling to the north as required by Condition No. 2 of Reg. Ref. 08922. It is further submitted that the

proposed works will provide for improved safety for general road users along this section of carriageway.

- 7.3.5. I note that the site of the proposed development is to be provided essentially by the sub-division of the larger site on which planning permission for the dwelling to the north was permitted under Reg. Ref. 08922. In this context, works required to provide improved sightlines should be implemented irrespective of whether or not a second dwelling is permitted on the original (larger) site. (This is an 'enforcement' matter for the planning authority). Nonetheless, I accept that there is some validity to the applicant's grounds of appeal. In this regard, I note that public road serving the site is lightly trafficked and the poor quality of the existing carriageway serves as a traffic calming device forcing vehicles to proceed with care and at a slow speed. In this context, the proposed improvements to the carriageway will result in the provision of adequate sightlines for both the proposed dwelling and the existing dwelling on the site to the north and will also benefit general road users of this section of carriageway.
- 7.3.6. I consider that from a traffic safety point of view it would be preferable to separate the proposed entrance from the existing entrance serving the site to the north rather than clustering the two entrances together. In the event that planning permission were to be permitted for the proposed development I consider that this modification could be achieved by way of the attachment of an appropriately worded condition to a grant of planning permission (as an alternative to refusing planning permission based on this reason).
- 7.3.7. In these circumstances, I consider that that Reason No. 2 of the planning authority notification of decision to refuse planning permission is unwarranted.

7.4. Appropriate Assessment

- 7.4.1. The application was screened by the planning authority and the need for a stage 2 appropriate assessment was screened out. Having regard to the nature and scale of the proposed development and the separation distance 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 for the proposed development 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 in an area under urban influence, and to National Policy Objective 19 of the National Planning Framework issued by the Department of Housing, Planning and Local Government in February, 2018, which for areas under urban influence, seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements, it is considered that the applicant does not comply with National Policy Objective 19. The Board is not satisfied that the applicant has demonstrated evidence of sufficient locally based need for the proposed house and in the absence of such local need it is considered that the proposed development 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) Taken in conjunction with existing development in the area, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities and served by a poor road network. It is policy of the planning authority, as expressed in Policy SS4 of the Waterford County Development Plan 2011-2017, to direct urban generated housing development in Areas Under Urban Pressure into the adjoining zoned settlements. It is considered that the proposed development would constitute urban generated housing, would contravene Development Plan policy and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Paddy Keogh
Planning Inspector

29th. March 2019