



An  
Bord  
Pleanála

## Inspector's Report ABP-303525-19

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| <b>Development</b>                  | Retention of demolition of a house, retention and completion of a new house and retention of hardcore area around house. Permission to install a wastewater treatment system. |
| <b>Location</b>                     | Ballyarthur, Mitchelstown, Co. Cork   |
| <b>Planning Authority</b>           | Cork County Council   |
| <b>Planning Authority Reg. Ref.</b> | 18/06110  |
| <b>Applicant(s)</b>                 | Denis Myers   |
| <b>Type of Application</b>          | Permission  |
| <b>Planning Authority Decision</b>  | Grant Permission  |
| <b>Type of Appeal</b>               | Third Party v. Grant  |
| <b>Appellant(s)</b>                 | Hannah and Jamie Walsh & Others   |
| <b>Observer(s)</b>                  | None  |
| <b>Date of Site Inspection</b>      | 9 <sup>th</sup> April 2019  |
| <b>Inspector</b>                    | Elaine Power  |

## 1.0 Site Location and Description

- 1.1.1. The subject site is located in Ballyarthur, approx. 3.5km north west of Mitchelstown and 45km north of Cork City. Ballyarthur is a rural area characterised by agricultural lands with associated farm buildings and one-off houses.
- 1.1.2. The site is approx. 0.13 ha and currently accommodates a partly constructed single storey dwelling. The site is bound by mature trees and vegetation. There is an existing gated vehicular entrance to the site. Access to the site is from a 5m wide local road, with no footpath or public lighting.

## 2.0 Proposed Development

It is proposed to retain the demolition of an existing single storey house, with a gross floor area of approx. 67sqm and retain and complete a partially constructed single storey house, with a gross floor area of approx. 104sqm. The proposed house is L-shaped. It is a traditional design with a gable ended roof and a maximum height of 4.9m. The proposed house is located on the eastern section of the site, set back approx. 7.5m from the road, in a similar location to the demolished house.

It is also proposed to provide a waste water treatment unit and percolation area in the western section of the site. The site is served by public water mains.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was granted subject to 16 no. conditions. The relevant conditions are noted below: -

**Condition no. 1:** - Clarified that permission was granted for the development, including reference to further information submitted.

**Condition no. 2:** - Occupancy condition, ensured the house is the applicant's primary place of residence for at least seven years.

**Condition no. 7:** - Required a landscaping scheme to be submitted and agreed with the Planning Authority.

**Condition no 12:** - Required roadside drainage arrangements to be preserved to prevent flooding.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

The initial Area Planners report (3<sup>rd</sup> October 2018) considered that insufficient information had been submitted to fully assess the application and requested that further information be requested regarding the following: -

- A supplementary planning application form.
- A map indicating the location of the applicant's family home.
- Details of compliance with the genuine rural housing need policy.
- Details of social or economic link to the area.
- Drawing showing a splayed vehicular access and 60m sightlines in both directions
- The entrance needs to be piped under.
- A passing bay to be provided outside the property.
- Details of the distance of the percolation area from the house.
- Confirmation from Irish Water that a connection is available.
- A land registry map showing the full extent of the land holding.

The final report (13<sup>th</sup> December 2018) recommended that permission be granted subject to 16 no. conditions.

#### 3.2.2. *Other Technical Reports*

**Area Engineer:** The initial report (20<sup>th</sup> September 2018) recommended that further information be sought. The final report (5<sup>th</sup> December 2018) considered all engineering concerns had been addressed and recommended that permission be granted subject to 9 no. conditions.

### 3.3. Prescribed Bodies

None.

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

A third-party submission was received from local residents – Hannah and Jamie Walsh & others, which comprised 9 no. households. The issues raised are summarised below.

- The applicant is a developer and showed a blatant disregard for planning legislation by demolishing the existing cottage.
- The plans of the original house do not reflect the photographs that were included in the auctioneer's sales brochure.
- Two sheds / outbuildings have also been demolished and these have not been included in the application.
- The proposed sightlines cannot be achieved as the applicant does not own the property / hedgerow to the east of the site.
- The open drains on the public road have not been shown on the drawings submitted.
- There is an insufficient separation distance provided between the open drain on the public road and the proposed percolation area.
- Concerns regarding the validity of the site characteristics.
- The site and adjoining road is subject to flooding. The site is not suitable for a waste water treatment unit.
- Concerns regarding the drainage proposals for the site and the potential impact on adjoining properties.
- The house to be retained and completed is significantly larger and the floor level is higher than the house that was demolished
- The house to be retained and completed is too close to the site boundaries.
- The design of the house is not traditional.
- The applicant is not from the area and already has a permanent house. Therefore, he does not comply with housing need requirements.

## 4.0 **Planning History**

### ***Subject Site***

None

### **Surrounding Sites**

**Reg. Ref. 08/7791:** Permission was granted in 2008 for a one-off house with proprietary treatment unit on a site opposite the subject site.

## **5.0 Policy and Context**

### **5.1. Fermoy Municipal District Local Area Plan, 2017**

The site is located outside of the development boundary for Mitchelstown and is located within an area zoned Greenbelt 2 (GB1-2). The greenbelt exists around Mitchelstown to help to maintain the identity of the town and encourage more development activity within the development boundary.

**Objective GB1-2:** - In some parts of the greenbelts around the towns it will be possible to accommodate limited numbers of individual houses in an appropriate rural setting providing:

- a) The character of the area as a whole will remain predominantly rural and open;
- b) Proposals will not cause linear roadside frontage development (ribbon development); and
- c) The proposal is consistent with the proper planning and sustainable development of the area.

The Plan also notes that exceptions to this will only be allowed in the case of an individual who can demonstrate a genuine rural generated housing need based on their social and / or economic links to a particular local rural area in accordance with County Development Plan objective RCI 4-2, or in the circumstances referred to in objectives RCI 5-6 and RCI 5-7, which also apply to Greenbelts around Settlements.

### **5.2. Cork County Development Plan**

Figure 4.1 of the Plan '*Rural Housing Policy Area Types*' identifies the site as being located in a 'Town Green Belt – GB1-2'. **Policy RCI 4-2** notes that these areas are

under significant pressure for rural housing. Therefore, applicants are required to demonstrate that their proposal complies with a genuine housing need.

**Policy RCI 8-1:** Refurbishment of a Derelict Dwelling encourages proposals for the sensitive renovation and conservation of existing disused or derelict dwellings subject to normal proper planning and sustainable. To comply with this policy the development must satisfy the following criteria: -

- The original walls must be substantially intact.
- The structure must have previously been in use as a dwelling.
- The dwelling must be physically capable of undergoing renovation / conversion without demolition.
- Where the building is derelict, a structural survey by a qualified engineer must be submitted as part of any planning application to include measures to protect the building from collapse prior to, and during, the construction works.
- The design, scale and materials used in any renovation / and or extension should be sympathetic to the character and setting of the existing dwelling.
- Mature landscape features are retained and enhanced, as appropriate.
- No damage shall be caused to sites used by strictly protected wildlife.

In the interests of clarity, the provisions of Objective RCI 2-2 (i.e. the 'Rural Generated Housing Need' requirement) and Objective RCI 6-4 (i.e. Occupancy Clause) will not apply except where the total or substantial demolition of the existing structure and a new dwelling is proposed.

The following policies are also relevant:-

- RCI 5-8: Greenbelts around Settlements
- 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
- RCI 2-1: Urban Generated Housing
- RCI 2-2: Rural Generated Housing

### 5.3. **National Planning Framework**

Policy Objective 19: *‘Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:*

- *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;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on 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**

There are no designated areas in the immediate vicinity of the site.

#### **5.5. EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

### **6.0 The Appeal**

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

A third-party submission was received from local residents – Hannah and Jamie Walsh & others, which comprised 9 no. households. The issues raised are summarised below.

- The plans of the original house do not reflect the photographs that were included in the auctioneer’s sales brochure.

- Two sheds / outbuildings have also been demolished and these have not been included in the application.
- The open drains on the public road have not been shown on the drawings submitted.
- There is an insufficient separation distance provided between the open drain on the public road and the proposed percolation area.
- Concerns regarding the validity of the site characteristics and the suitability of the site for a waste water treatment unit.
- Concerns regarding the drainage proposals for the site and the potential impact on adjoining properties. The area is subject to flooding.
- The house to be retained and completed is significantly larger and the floor level is higher than the house that was demolished
- The house to be retained and completed is too close to the site boundaries.
- The design of the house is not traditional.
- The applicant is not from the area and already has a permanent house therefore he does not comply with housing need requirements.
- The original house was derelict, this is also noted in the auctioneer's brochure and Planning Authority's Area Engineers report. This is not a replacement dwelling.
- The Planning Authority's decision is not consistent with Development Plan Policy which sets out strict criteria for a 'Housing Need Requirements'.

## 6.2. Applicant Response

- 6.2.1. The applicant addressed the concerns raised in the appeal and noted the following: -
- The plans reflect the layout of the original dwelling.
  - Planning permission is not required to demolish the sheds.
  - The drain on site is shallow and is not connected to a water course.
  - There is drain is on the public road, which is outside of the site boundary and therefore not relevant.
  - The site is suitable for a waste water treatment system.
  - The design of the dwelling is similar to the original house on site and will not impact on the rural character of the area.



### 6.3. **Planning Authority Response**

None

## 7.0 **Assessment**

7.1. The main issues in this appeal relate to compliance with Rural Housing Policy, water services and design and layout. Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Compliance with Rural Housing Policy
- Water Services
- Design and Layout
- Appropriate Assessment

### 7.2. ***Compliance with Rural Housing Policy***

7.2.1. Policy RCI 8-1 of the Development Plan relates to the refurbishment of a derelict dwelling and encourages the re-use of derelict dwellings subject to compliance with a number of criteria. Of particular relevance in this instance, the original walls must be substantially intact, and the dwelling must be physically capable of undergoing renovation / conversion without demolition. The policy also notes that Policies RCI 2-2 ('Rural Generated Housing Need' requirement) and Objective RCI 6-4 (Occupancy Clause) apply when the original structure has been demolished and a new dwelling is proposed.

7.2.2. The original house has been fully demolished. The new partially completed house is located on the footprint of the original house with a rear extension. In the response to further information, the applicant stated that it was intended to refurbish and extend the original house. However, when works began, the structure became unstable and fell over. Notwithstanding the fact that the new dwelling is located on the footprint of the original house, it is my view that, as the original house has been completely demolished, the development should be assessed with regard to Policy RCI 2-2 - 'Rural Generated Housing Need', which aims to sustain and renew established rural

communities by facilitating those with a rural generated need to live within their rural community.

7.2.3. Figure 4.1 - '*Rural Housing Policy Area Types*' of the Development Plan identifies the site as being located in a 'Town Green Belt'. The associated Policy Objective RCI 4-2 requires that applicants must demonstrate a genuine rural housing need. In addition, Policy Objective 19 of the National Planning Framework requires that the core consideration for the provision of a one-off rural house should be based on the demonstratable economic or social need to live in the rural area. In the response to further information, the applicant submitted details of his current health circumstances and living arrangements. It is noted that the applicant is from the local parish and it is intended that his son will take over the family house in Glennahulla. The applicant will retire to the subject site. A map showing the location of the applicant's current house and his sons current house (in Gortroe) was submitted as further information.

7.2.4. While it is acknowledged that the applicant is from the local parish, it is considered that he has not demonstrated a sufficient economic or social need to live in the area, as set out in Policy Objective RCI 4-2 of the Development Plan and Policy Objective 19 of the National Planning Framework. In addition, it is my view that the proposal would also contravene Policy RCI 2-1: Urban Generated Housing, which aims to discourage urban generated housing in rural areas.

7.2.5. In the absence of an identified locally based economic or social need to live in the area 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 and would negatively impact on the viability of smaller towns and villages. It is recommended that permission should be refused on this basis.

### 7.3. **Water Services**

7.3.1. It is stated in the appeal that the local area is subject to flooding and concerns have been raised regarding surface water disposal from the site. By reference to the OPW Flood Maps the subject site is not located in an area liable to flooding. With regard to

surface water disposal it is proposed that a new soak pit be provided on site. It is noted that there are open drains along the public road and Condition 12 attached to the grant of permission ensured that the roadside drainage arrangements be preserved. I am satisfied that that the proposed surface water attenuation and disposal arrangements for the site are sufficient.

7.3.2. It is proposed to install a packaged wastewater treatment system and polishing filter with discharge to ground water. The treatment system is located approx. 16m west of the house with a percolation area located approx. 10m west of the treatment system. Table 6.1 of the 'EPA Code of Practice for Waste Water Treatment and Disposal Systems Serving Single Houses' sets out minimum separation distances. The proposed system reaches and exceeds the recommended separation distances from the new house. However, as the percolation area is located approx. 3m from the public road and the existing open drain it does not reach the minimum separation distances required. It is considered that this issue could be dealt with by way of condition.

7.5.3 The submitted Site Suitability Assessment Form states that a trial hole, with a depth of 2.2m recorded the following: 300mm of silt / clay 1900mm of sandy silt / clay. With regard to the percolation characteristics of the soil 3 no. trial holes were examined. They resulted in T values of 25.5 minutes / 25mm, 40.75 minutes / 25mm and 56.42 minutes / 25mm. The average result was 40.89. This indicates that the site is suitable for the installation of an on-site domestic waste water treatment system.

7.3.3. Notwithstanding the suitability of the site for a waste water treatment system, I would have serious reservations regarding the potential for groundwater contamination given the increasing proliferation of individual waste water treatment systems in the immediate area. It is recommended that permission should be refused on this basis.

#### 7.4. ***Design and Layout***

7.4.1. Concerns have been raised in the appeal regarding the design and siting of the house to be retained and completed.

- 7.4.2. The new single storey house has a gross floor area of approx. 104sqm. It is located on the footprint of the original house (which had a gross floor area of 67sqm) with a rear extension. The house is a traditional style with a gable ended roof. The front (north) elevation is similar in style and scale to the house that was demolished. While the rear (south) elevation has a contemporary design with larger windows and a pitched roof feature. The new house has a maximum height of approx. 4.9m while the original house had a height of approx. 5.5m.
- 7.4.3. Concerns have also been raised regarding the proximity of the new house to the site boundaries. The site is bound by agricultural lands and the public road. The new house is located in the same location to the original house on site, which was located approx. 7.5m from the front (northern) boundary with the road, approx. 4.5m from the side (eastern) boundary and approx. 42m from the side (western) boundary. It is noted that the original house was located approx. 4m from the rear (southern) boundary while the new house is a minimum of 2.5m from the rear (southern) boundary.
- 7.4.4. It is also proposed to retain a hardcore area around the new house. I have no objection to the provision of the hardcore area. It is noted that Condition 7 of the grant of permission required a landscaping scheme to be submitted and agreed with the Planning Authority.
- 7.4.5. Having regard to the siting of the original house on the site, the design and scale of the new house and existing pattern of development along the public road, it is my view that the new house, to be completed and retained, would not detract from the rural character of the area.

## 8.0 Recommendation

- 8.1. I recommend that permission be refused for the reasons stated in the attached schedule.

## 9.0 Reasons and Considerations

1. The subject site is located within a 'Greenbelt' which is an area under significant pressure for rural housing as identified in Policy RCI 4-2 of the Cork County Development Plan 2014. Having regard to the documentation submitted, it is considered that the applicant does not have a demonstrable economic or social need to live in this rural area and therefore, does not come within the scope of the housing need criteria as set out in Policy RCI 2-1 and RCI 4-2 of the current Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks in the area. The proposed development, would, therefore, be prejudicial to public health.

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Elaine Power  
Planning Inspector

15<sup>th</sup> May 2019