



An
Bord
Pleanála

Inspector's Report ABP-306079-19

Development	House and waste water treatment system
Location	Derrymihan East, Castletownbere, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/601
Applicant(s)	Claire Power
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Noreen & Mary B. O'Neill
Observer(s)	Pat & Caitriona Sheehan
Date of Site Inspection	3 rd March 2020
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The 0.38 hectare site is located in the townland of Derrymihin East approximately 2 kilometres to the east of the town of Castletownbere on the Beara peninsula in West Cork. The site is in a rural area located off a local road which to the south has a junction with the R572 Castletownbere-Glengarriff Regional route which is the main traffic artery on the southern side of the peninsula. The site itself does not have direct frontage onto the local road but is accessed from a track which meets the local road to the west at a right angled bend. It forms the north-western end of a larger field and is in agricultural use. There are a number of dwellings in the vicinity which front onto the local road network. There is a fall in level from north to south on the site itself, reflecting a general fall in level from north to south in the wider area. Development in the area is characterised by individual dwellings fronting onto the local road network with a reasonably heavy concentration in the local area in what is a rural area.

2.0 Proposed Development

- 2.1. The proposed development would comprise the construction of a house and the installation of a waste water treatment system. The house would consist of a two-storey, four bedroom dwelling and would have a stated gross floor area of 186.5 square metres.
- 2.2. Details submitted with the application included a letter from the applicant referring to her links with the area and need for the proposed development, a letter of consent from the landowner, a landholding site assessment of the applicant's uncle's land and a completed site characterisation form associated with the proposed waste water treatment system.

3.0 Planning Authority Decision

3.1. Decision

On 12th November 2020, Cork County Council decided to grant permission for the proposed development subject to 25 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site's planning history and referenced a number of planning decisions, including decisions made by the Board in the Castletownbere area. The policy context for the proposed development, submitted reports and the third party submission were also noted. It was acknowledged that the proposal was the same development by the same applicant associated with Planning Application 18/246 (i.e. ABP-302568-18). The implications of the Board's decision for the Council's planning policy for rural housing were set out. It was considered that the proposal did not compromise the amenity of the third party. A grant of permission subject to conditions was recommended.

3.2.2. Other Technical Reports

The Area Engineer stated he had no reason to change his decision relating to previous Planning Application 18/246 and recommended that permission be granted subject to a schedule of conditions.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal.

3.4. Third Party Observations

A third party submission was received from Mary B. and Noreen O'Neill. The grounds of the appeal reflect the principal planning concerns raised.

4.0 Planning History

ABP-302568-18 (P.A. Ref. 18/246)

Permission was refused by the Board for a house and wastewater treatment system for one reason relating to the applicant not having a rural housing need.

5.0 Policy Context

5.1. Cork County Development Plan 2014

The proposed site is located within the Greenbelt of Castletownbere and, as a consequence, is recognised as being an 'Area under Strong Urban Influence'.

Rural Housing

Rural housing objectives include:

RCI 4-2: Rural Area under Strong Urban Influence and Town Greenbelts (GB 1-1)

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.

Greenbelts

The site lies within the greenbelt for Castletownbere. The applicable objective is:

RCI 5-8: Greenbelts around Settlements

a) Retain the identity of towns, to prevent sprawl, and to ensure a distinction in character between built up areas and the open countryside by maintaining a Greenbelt around all individual towns.

b) Reserve generally for use as agriculture, open space or recreation uses those lands that lie in the immediate surroundings of towns. Where Natura 2000 sites occur within Greenbelts, these shall be reserved for uses compatible with their nature conservation designation.

c) Prevent linear roadside frontage development on the roads leading out of towns and villages.

d) The local area plans will define the extent of individual Greenbelts around the ring and county towns and any of the larger villages where this approach is considered

appropriate. They will also establish appropriate objectives for the Greenbelts generally reserving land for agriculture, open space or recreation uses.

5.2 **West Cork Municipal District Local Area Plan 2017**

Green Belts around Towns

The Local Area Plan objectives include:

Objective GB 1-1:

Discourage strongly new individual housing from being located within the greenbelts around the main towns in each Municipal District (except within established villages and village nuclei). This restriction is relaxed in principle for individuals 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 Cork County Development Plan (2014) 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 the Main Towns.

5.2. **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.

5.3. **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.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be synopsised as follows:

- The design of the proposed development has not altered since it was initially submitted under application 18/246 and is not in keeping with the Cork Rural Housing Design Guide and houses in the area. Proposed ground and first floor windows reduce the privacy and enjoyment of the appellants' property.
- The appellant refutes the applicant's submission that the proposal is the only affordable way they can get a family home in the area.
- There are traffic concerns relating to the impact on road users arising from limited visibility and accumulation of water at the site entrance.
- The inadequacy of landscaping proposals is referenced.
- The family farm on which the site is located will have six houses constructed on it, including the house recently granted to the applicant's cousin. There is not an entitlement for every family member to have a house on a family farm and a seventh house on a modest farm holding goes against the development plan objectives and National Policy Objective 19.
- Some of the content of the Planner's report is challenged.
- The application is in an area under strong urban influence where it is a planning objective to discourage strongly further development and where the applicant does not satisfy the criteria to be considered.

The appeal submission included the appellants' previous submissions to the planning authority and the Board on the current and previous proposals on this site.

6.2. Applicant Response

The applicant's response refers to the previous decision by the Board and to her association with the area and submits that her proposed development is not urban generated development. It is submitted:

- It was concluded from the Board's previous decision that there were no issues with design or siting of the proposed house.
- The appellants' concerns were not concurred with by Cork County Council and the Board Inspector.
- The road safety issue has been resolved since July 2018 with road works being undertaken.
- The applicant has never built a home for her occupation and the proposal is not contrary to Development Plan Objective RCI 4-2.
- The appeal is vexatious and is an attempt to stop the applicant from building.
- The proposal does not overlook the appellants' property.
- The applicant complies with National Planning Framework provisions and Cork County Development Plan.

The response concludes by outlining the applicant's need to reside at the proposed location that was detailed in the planning application.

6.3. Planning Authority Response

The planning authority asks the Board to re-affirm its decision. In response to the appeal, reference is made to how the proposed development complies with national planning policy, the Sustainable Rural Housing Guidelines, and local rural housing planning policy. It is not accepted that the amenities of the neighbouring dwelling would be compromised and that road safety issues arise. It is considered disingenuous that the objectors seek to rely on the policy ground of objection raised by the Board previously. Reference is made to other decisions in the area and the need for consistent decision-making. It is submitted that the applicant has very strong social necessities to live in the subject area and that the applicant is required to demonstrate either a social or economic need to live in a rural area and, in this case, has demonstrated sufficient social links to the local area. Noting that while the applicant does not work in agriculture or forestry, it is submitted that Objective RCI 4-2 of the Cork County Development Plan does not demand as of right that she must do so in order to justify the proposed development. It is concluded that the proposed development, subject to conditions, an occupancy agreement and a land sterilisation

agreement for the greenbelt area, would be consistent with the proper planning and sustainable development of the area.

6.4. **Observations**

The Observers support the applicant's proposal to build a house on the site and outlined her associations with the area.

7.0 **Assessment**

7.1. I note that no material changes have occurred since the making of the Board's previous decision under ABP-302568-18. I note also that the proposed development is similar to that set out in the previous application. The Board previously raised no serious concerns about the landscape and visual impact of the proposed development, the suitability of the site for the treatment of waste water generated by the proposed development, the adequacy of the local road network to accommodate the proposed development, the impact on neighbouring properties and established amenities, etc. The sole issue in the Board's previous decision related to rural housing need. This assessment will address this issue.

7.2 The site of the proposed development is located in the greenbelt of Castletownbere and, as a consequence, it is an area designated an 'Area under Strong Urban Influence'. Such areas are those which the *Sustainable Rural Housing Guidelines for Planning Authorities* recognise as being areas where there is evidence of considerable pressure for development of housing due to proximity to urban areas. Cork County Development Plan 2014 also acknowledges that such areas are under significant urban pressure for rural housing. A perusal of recent OSI mapping of this area will demonstrate that there has been vast number of houses constructed in this rural area in recent years and the development pressure that it is clearly under. The Development Plan, in addressing this issue, has a specific objective, Objective RCI 4-2, which requires applicants for rural houses in such areas to satisfy the planning authority that their proposal constitutes a general rural housing need based on social and/or economic links to a particular rural area and to demonstrate that they comply with one of a number of specified categories of housing need. The applicant in this

instance seeks to demonstrate that she complies with Category d), i.e. a person who has spent a substantial period of her life (i.e. over seven years), living in the local rural area in which she proposes to build a first home for her permanent occupation.

7.3 Having regard to the applicant's submissions, it is acknowledged that she was originally from the general rural location in which she proposes to build her house and that she resided in that area for a period of more than seven years. It would appear reasonable to conclude that she meets with the provisions of Category d) of Objective RCI 4-2. The issue that arises in determining this application for a house in a rural area designated an 'Area under Strong Urban Influence' is the functioning of the Development Plan provision itself.

7.4 I acknowledge that the third party appeal includes a submission that the family farm on which the site is located will have six houses constructed on it (including permission for a house recently granted to the applicant's cousin) and it is submitted that there is not an entitlement to a seventh house on a modest farm holding. I note for the Board that neither the applicant nor the planning authority, in their responses to the appeal, refute the submission on the number of houses on the holding.

7.5 It is my submission to the Board that what appears to be the accommodation of six houses to date on the landowner's original small landholding does not constitute rational, orderly, sustainable development and there must be significant concerns about the development of a seventh house in such circumstances. I acknowledge that the applicant is a niece of the landowner in this instance. I put it to the Board that Category d) of Objective RCI 4-2 could presumably allow for a landowner to seek to accommodate individual houses for a grandparent(s), mother, father, brothers, sisters, sons, daughters, aunts, uncles, cousins, etc. who could reasonably have resided in the general vicinity for a period of seven years or more at some time in the past, which would allow them to fall within the vast scope of Category d) of Objective RCI 4-2. I seriously question if reliance on this objective aids in the management of the proper planning and sustainable development of a rural area under strong urban influence.

7.6 In an instance such as this, one must move beyond the provisions of a local plan, such as the County Plan, because of the inadequacies to deal with the issue at hand, namely what appears to be a seventh rural house on a small landholding. One

may have social links to an area, having resided there while growing up in a place for example, but one may not necessarily have a social need that is rural generated. It is a serious failure in the control of unnecessary rural housing when one sees development to the scale occurring on this small landholding due to the constraints of having to apply such an open provision that allows such expansive categories of persons to be considered in principle to be open for consideration for a house in a rural area. I put it to the Board that, if development proceeded, and is allowed to proceed, in greenbelts and in rural areas under strong urban influence in the manner in which rural housing appears to have been allowed to develop on this small landholding, there are, and will be, very significant adverse planning and environmental impacts for the rural environment in County Cork.

7.7 The *Sustainable Rural Housing Guidelines for Planning Authorities*, in addressing rural generated housing, refers to the need for development plans to illustrate broad categories of circumstances that would lead the planning authority to conclude that a particular proposal for development is intended to meet a rural generated housing need. An example given is 'persons who are an intrinsic part of the rural community', including sons and daughters of families living in rural areas who have grown up in rural areas and are seeking to build their first home near their family place of residence. The Cork County Development Plan has a provision in Objective RCI 4-2 relating to control of housing in rural areas under strong urban influence that appears somewhat more expansive, clearly beyond accommodating sons and daughters of landowners. I seriously question, in the context of the Guidelines, whether those persons determined to be 'persons who are an intrinsic part of the rural community' could reasonably be expanded to include nieces or other extended family members, particularly in an instance such as this where there is a small landholding with what appears to be up to six houses already developed on it.

7.8 The Guidelines in Section 3.3 submit that planning authorities must ensure that all sections of the development plan that deal with or are of relevance to rural settlement policies are cross referenced and not in conflict. In assessing the current proposal, therefore, and setting aside any observation about the unsustainability of accommodating a proliferation of individual rural houses on a small landholding, the planning authority is required, in accordance with the Guidelines, to have regard to other relevant settlement policies.

- 7.9 I note the Development Plan's provisions as they relate to 'Greenbelts'. I suggest that the site for the proposed development is in an 'Area under Strong Urban Influence' because it is within the Castletownbere Greenbelt. The provisions of the Development Plan as they relate to 'Greenbelts' refer to it being beneficial for smaller towns to have reasonably strict controls in their immediate hinterland. It is also noted that, apart from the obvious servicing inefficiencies, road safety problems and public health issues, development in such areas erode the important clear distinction between the built up area and open countryside. The Plan acknowledges that such development also raises important sustainability issues. It states that in smaller settlements it is recognised that development should be discouraged in the immediate surroundings of the settlements in order to prevent sprawl near towns and to control linear roadside development. Lands are generally to be reserved for agriculture, open space or recreation uses. It is also important to note that the Plan states 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 objective RCI 4-2. Once again, it appears that the applicant's entitlement in principle to seek permission for a house in a rural area is enshrined in the Greenbelt provisions of the County Development Plan.
- 7.10 While I note that there is an express exception in accordance with Objective RCI 4-2, I consider that one could not reasonably determine that, what appears to be the proposed development of a seventh house on a small landholding, sits in any way satisfactorily with Objective RCI 5-8, i.e. the specific stated objective for Greenbelts around settlements. This objective seeks to retain the identity of towns, to prevent sprawl, and to ensure a distinction in character between built up areas and the open countryside by maintaining a Greenbelt around all individual towns. It is evident that the extent of development of this nature in Castletownbere's greenbelt is sprawl that seriously erodes the function of a greenbelt and is development that fails to protect the amenities of the greenbelt and the maintenance of the distinct rural character of the area.
- 7.11 Moving on from local policy and national guidance, I note national planning policy as set out under the *National Planning Framework*. With reference to the development of rural areas, National Policy Objective 15 seeks to support the sustainable

development of rural areas by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities. Further to this, National Policy Objective 19 seeks to 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, it is policy 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 and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

7.12 The emphasis on National Policy Objective 19 on demonstrable economic or social need to live in a rural area is particularly pertinent in considering the current proposal. There clearly is no demonstrable economic or social need for the applicant to reside at the rural location for the proposed development based upon what is submitted in the planning application. I do not deny that the applicant has clear social links to this area. Based on the details in the application, the proposed development would be in conflict with the provisions of the National Planning Framework.

7.13 Moving finally to the Board's previous decision under ABP-302568-18, I note the reason for refusal. This reason had regard to the location of the site within a rural area under strong urban influence and located within the greenbelt of Castletownbere, to Cork County Development Plan 2014, and to National Policy Objective 19 of the National Planning Framework. The Board considered that the applicant did not comply with National Policy Objective 19 and that, in the absence of such compliance, 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. In my opinion, this is an entirely reasonable conclusion to have drawn in light of National Policy Objective 19. I would further submit that, in light of the extent of individual houses which have been, are, and are proposed to be developed on this small landholding, the Board's reference to encroachment of random rural development in the area and militating against the preservation of the rural environment and the efficient provision of public services and infrastructure could not be more relevant. In addition, I do not accept that the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities*, in making reference to 'Persons who are an intrinsic part of the rural

community, had the intention of seeking to accommodate extended family members on small landholdings in rural areas under strong urban influence and within greenbelts in the manner the current Cork County Development Plan appears to accommodate.

7.14 I conclude that the proposed development, in the context of the development of the overall landholding to date and in the context of national guidance and policy, could not reasonably be seen to be sustainable development. It would be contrary to any reasonable understanding of 'proper planning and sustainable development'. I further submit that the application of conditions that seek to employ an occupancy clause and that seek to restrict further housing development on the landholding are somewhat late and wholly inadequate to address the control of rural house development at this location.

8.0 Recommendation

While I have alluded to concerns about how the proposal could not reasonably be seen to sit comfortably with the provisions of the *Sustainable Rural Housing Guidelines for Planning Authorities*, I also acknowledge that the previous decision of the Board under ABP-302568-18 remains valid. For this reason I recommend that consistency is followed and that permission be refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the location of the site within a rural area under strong urban influence and located within the greenbelt of Castletownbere in the Cork County Development Plan 2014, 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 rural 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. In the absence of such compliance, 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.

Kevin Moore
Senior Planning Inspector

5th March 2020