



An
Bord
Pleanála

Inspector's Report

ABP-307063-20

Development	Outline planning permission for the construction of a house, a garage, a waste water treatment system and an entrance.
Location	Ballyduffmore, Dungarvan, Co. Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	19921
Applicant(s)	Elizabeth Walsh
Type of Application	Outline Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Elizabeth Walsh
Observer(s)	None
Date of Site Inspection	13 th of July 2020.
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The site is located in a rural area, 5km west of Dungarvan town, approximately 4km south of the N72 (Dungarvan - Mallow Road). The site is 0.6017Ha, consisting of a small segment of a large open grazing field owned by the applicant's uncle. The general area supports a significant level of one-off housing. The site itself has commanding views of the wider rural area and panoramic views to the south.

2.0 Proposed Development

- 2.1. The proposed development is for OUTLINE permission for a dwelling house with a wastewater treatment system and public water supply.
- 2.2. According to the planning application, the applicant is a niece of the landowner, and the applicant's sister has developed a house to the east of the subject site, and another sister obtained planning permission for a dwelling at the same time as the current appeal was being assessed by the planning authority.

3.0 Planning Authority Decision

3.1. Decision

Waterford City and County Council **REFUSED** Outline Permission for the dwelling for 3No. reasons:

1. The site is located within a designate Area Under Urban Pressure, and the applicant has failed to demonstrate a genuine need for a house at this location. The applicant has not complied with Policies SS3 and Section 4.10 of the Waterford County Development Plan.
2. The site is visually open and sensitive. It may extend further ribbon development, 6th dwelling within 250metres of roadway, and be contrary to Section 11.1 of Variation No. 1 of the Waterford County Development Plan. The development would lead to a concentration of wastewater treatment plants.

3. The proposed development would adversely affect the visual amenities of the area. There is an excessive removal of roadside boundary.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Report of the 4th of February 2020 indicated there was a Pre-planning meeting held with the applicant. It states:

- The site is located within an 'Area Under Urban Pressure'.
- It would appear from the evidence submitted that the application is urban generated housing notwithstanding the family connections to the area. Although there are family linkages to the area, the applicant has failed to demonstrate local housing need in accordance with Section 4.10 of the Plan.
- The proposed siting is highly obtrusive on the landscape.
- The proposal represents the 6th dwelling within 250metre taking in both sides of the road, which conflicts with the development plan policies relating to ribbon development.
- The site is not located in the designated Scenic Landscape Area.
- The required sightlines of 55metres can be achieved at the proposed entrance resulting in the removal of the roadside boundary hedgerow and resulting in the dwelling being open and obtrusive.
- A T-value of 48.75 was recorded on site, and no P test was carried out. This was deemed to be acceptable. Public water supply is proposed.
- A recommendation to refuse was overruled by asking for further information to enable the applicant to submit information to comply with the local needs policy of the development plan.
- The applicant responded to the Further Information on 4th of March 2020.

A second Planning Report of 20th of March 2020 addressed the further information submission.

- It was confirmed the Uncles farm will be transferred to the applicant's brother who will live in Ballyduff Farm. The applicant has close ties to the landholding and grew up on the farm intermittently. The applicant has family obligations to provide care for her uncle and a sibling that attends Carriglea Cairde Services. The assessment states she only lived in the area from 6 to 10, and she is now 36 years old and lives in Dungarvan. Her sister who has a dwelling east of the site, was assessed under previously County development Plan and was not subject to the favoured niece policy.
- The applicant has not established she was born and lived substantial part of her life in the area. She cannot be considered as the favoured niece

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

None

3.4. Third Party Observations

None

4.0 Planning History

There is no relevant planning history associated with the subject site. However, there are relevant planning histories associated with the family landholding and I have included a screenshot of the GIS mapping with the relevant planning applications in the photo PowerPoint slides accompanying this report.

19/924

The applicant's sister made a planning application concurrent to this outline permission application on the same landholding further east along the local road. Outline Permission was granted to Mary Clare Walsh (sister) on 25th of March 2020 subject to 9No. conditions.

08/232

Another sister of the applicant was granted planning permission for a dwelling house on the landholding in 2008. The site is further east along the local road. The landholding was the subject of a sterilisation agreement with the landowner (applicant's uncle), which was later nullified.

5.0 Policy Context

5.1 Waterford County Development Plan 2011-2017

5.1.1 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.

5.1.2. 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*'

5.1.3 The County Rural areas are divided into three broad categories:

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

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

5.1.4 **Section 4.8** outlines the Rural Housing Policy , whereby the 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.'

5.1.5 **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....'

A favoured niece, nephew or heir (maximum of 2 persons per farm owner) of a farm owner with no children wishing to build a permanent home for their own use on family lands;

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; and

Persons who because of exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation may require to live in a particular rural area or close to family support (or vice versa).

5.2 National Policy

- **National Planning Framework – Project Ireland 2040:**

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.

- Sustainable Rural Housing Guidelines for Planning Authorities, (2005):
- Code of Practice Wastewater Treatment Disposal Systems serving Single Houses; (2009).
- Implementation of new EPA Code of Practice on Wastewater Treatment and Disposal Systems Serving Single Houses - Circular PSSP1/10.

5.3 Natural Heritage Designations

The Blackwater River Special Area of Conservation (SAC) (Site Code 002170) is located c. 4.6 km north-west of the appeal site.

The Comeragh Mountains SAC (Site Code 001952) is located c. 10 km. north-east of the appeal site.

The Helvic Head SAC (Site Code 000665) is located c. 10.7 km south-east of the appeal site.

The Glendine Wood SAC (Site Code 002324) is located c. 7.1 km east of the appeal site.

The Dungarvan Harbour Special Protection Area (SPA) (Site Code 004032) is located c. 3.2 km east of the appeal site.

The Helvic to Ballyquin SPA (Site Code 004192) is located c. 10.6 km south-east of the appeal site.

The Mid Waterford Coast SPA (Site Code 004193) is located c. 12.3 km to the east of the appeal site.

5.4 EIA Screening

Having regard to the nature and limited scale of the proposed development, to the character of the area and to the nature of the receiving environment it is considered

that 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. Grounds of Appeal

A summary of the grounds of appeal:

- Section 4.10 of the Waterford County Development 2011-2017, states an applicant's connection extends from the source of the specified need, and this can imply workplace. The applicant has a strong connection to the Ballyduffmore area.
- The applicant's uncle Patrick was father figure to her. She attended Glenbog N.S. around the corner from her uncles farm and helped on the farm after school and at weekends. There is a clear and reasonable connection that the applicant's connection extends from her family to the home place of 'Ballyduff House'.
- The applicant lived as a child in Kilgobinet. The original home place is located less than 4km in a direct line to the proposed site and does not pass through any higher order zoned settlement, thus satisfies the applicant's Housing Needs. Any applicant for a rural dwelling must comply with one of seven criteria, the applicant, Elizabeth Walsh, complies with five of the criteria.
 - i) The subject site is family land, the farmer/ owner has no spouse or children, and the applicant is his niece and as close as any daughter to him.
 - ii) The applicant is a favoured niece of the landowner. The applicant's sister (Mary Clare Walsh) was granted planning permission to build a house on the lands under planning reference 19/924. The applicant's other sister, Trudi Walsh was granted planning permission for a house under planning reference 08/232, but there was no favoured niece policy at that time.

- iii) The applicant intends working on the farm in the evening. Her brother Nicolas will eventually inherit the farm, and the applicant will help him with certain aspects of the farm due to his poor eyesight.
- iv) Her Uncle Patrick has an underlying health condition and she needs to take care of him, as he needs constant care.
- v) The applicant's younger sister Helen has Down Syndrome, and she attends the Carriglea Cairde Services around the corner from the site. The sister currently requires her own space for her special needs but as she gets older the applicant must live beside her sister to help her.
- The applicant was advised to avoid ribbon development at a pre-planning meeting, and that ribbon development would be measured from the centre of the entrance to the site. On this basis the applicant was happy to pursue the subject site. There is a precedence for ribbon development 2km east of the site where 9No. dwellings have been granted planning permission. Ribbon development is much more developed at other locations than the subject site.
- The site is suitable for wastewater treatment. There is not an excessive number of septic tanks in the area.
- At present there is a field entrance into the surrounding farmland, and the entrance can be removed by condition in order to avoid extensive roadside hedgerow removal. The proposed development would reduce the level of traffic on the road as the applicant will not have to travel to see her family and uncle.
- The subject location gives the applicant the best views of the farm and allows her to keep an eye on livestock. It also allows for a greater distance between her and her siblings as each family member is spaced out. The boundaries of the site would be landscaped with native hedgerows. The new roadside boundary would be an earthen berm identical to the existing boundary. The new setback will benefit road users.

6.2. Planning Authority Response

A submission on appeal from the planning authority states the requirement for the landowner, Patrick Walsh to sterilise lands through a previous planning permission (Planning Reference 08/232) was revoked by the planning authority.

7.0 Assessment

7.1. The planning application is for Outline Permission only. The key issues to be assessed in this appeal are:

- Compliance with national and local planning policies
- Traffic / Access
- Potential Visual Impact
- Other Matters
- Appropriate Assessment

7.2 Compliance with National and Local Planning Policies

The *National Planning Framework – Project Ireland 2040* recognises there is a continuing need for housing for people who live and work in the countryside. In addition, it recognises certain rural areas, most accessible to cities and towns, are under pressure for urban generated housing. **National Policy Objective 19** aims to ensure that in rural areas under urban pressure influence, the provision of a single dwelling, is based on a demonstratable economic and social need to live in the area, with siting and design criteria being in accordance with statutory guidelines and plans.

In this instance, Ballyduffmore is 5km west of Dungarvan town, is readily accessible to Dungarvan, and from my inspection I noted the area is under considerable development pressure for one off housing. There is a scattering of one off houses along the roads serving the immediate area, and a concentration of ribbon development in certain pockets, including in the vicinity of the subject site. In this context, National Policy Objective 19 is relevant to the current proposal.

As part of the planning application, the applicant completed a Supplementary Form applicable to rural housing planning applications in Co. Waterford. Documentation on the appeal file states the applicant currently lives in Dungarvan town with her husband and young son. The Documentation would indicate the applicant works for the Health Board. The subject site is located within a large landholding which is owned by the applicant's uncle, Mr. Patrick Walsh. On the same landholding, east of the subject site, the applicant's sister Trudi Walsh has constructed a dwelling house granted under planning reference (08/232), and outline permission was granted to another sister Mary Clare Walsh under planning reference 19/924 in March 2020. It is also stated her brother Nicolas Walsh will inherit the farm from their uncle. According to the appeal file, the applicant lived in Kilgobnet for four years from 1990-1994, then moved into Dungarvan with her mother and siblings after her father died when the children were young. Her uncle, the landowner, has a close bond with the applicant, and he is in need of constant medical care. The uncle/ landowner did not marry and has no children of his own. The applicant states she will look after her uncle, and will actively work on the farm. The subject site was chosen to be close to her uncle's farm and home. It was also chosen to enable sufficient distance from existing dwellings in the area to avoid ribbon development, and to allow surveillance over the landholding/ livestock.

Having considered the documentation, I do not consider the applicant presented a social or economic need to move 5km from Dungarvan town to a rural area. The issue of two other sisters obtaining planning permission within 500metres of the site, and that her brother will reside in the uncles dwelling, would indicate there is sufficient support to help with the landowner's medical conditions and his farm. It is not clear from the documentation how the applicant can assist with her uncles' medical condition, over and above the three other siblings. It is not clear from the documentation why the planning authority granted planning permission to one sister in March 2020 for a dwelling on the landholding and refused the other sister outline planning permission. Given the family planning histories, the case presented does not demonstrate an exclusive need for the applicant to live in the area. It appears to me that the landowner, the uncle, is attempting to treat each sibling equally after one sibling was granted planning permission for a dwelling on the landholding in 2008. Under the earlier grant of permission in 2008, it was conditional that a sterilisation

agreement be signed by the landowner sterilising the remainder of landholding from further one off housing developments. The sterilisation agreement condition was revoked by the planning authority in a letter to the applicant's sister dated 13th of November 2008, with no justification for revoking the condition included. It is not clear from the documentation on file precisely why the applicant wishes to live in the area, the justification presented is vague, i.e. she lived in the area between the ages of 6 to 10 years, spent a lot of time on the farm, and now wishes to return to help out on the farm and has positioned the proposed dwelling prominently on the farm to overlook the livestock. There are no details of her farming experience, the type of farming on the landholding, or her future role on the farm, given her brother is to inherit the farm. There is no clear social or economic justification for the applicant to live in the area, and the applicant, in my opinion, does not comply with Objective 19 of the National Planning framework.

The rural housing policy set out in the Development Plan states under Section 4.10 that persons are considered to have a local need if they are '*A favoured niece, nephew or heir (maximum of 2 persons per farm owner) of a farm owner with no children wishing to build a permanent home for their own use on family lands, or*

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's uncle has provided two nieces with rural dwelling sites from the landholding, and their brother will inherit the main dwelling on the farm. Therefore, that policy is not applicable. The applicant has demonstrated that she did live in the area at one stage during her lifetime for over three years, and that she still has close family linkages to the area. On balance I consider the applicant does comply with the second criteria quoted from Section 4.10 of the development plan, apart from the issue that she has not demonstrated fully a 'need' to relocate only 5km from the town into the countryside that has not or will not be already been fulfilled by her

siblings in terms of work or caring for elderly family members. I concur with the planning authority's reason for refusal on this policy issue.

7.3 Traffic / Access

The proposed access to the site is located at the eastern extremity of the road frontage. In order to provide the required 55metres sight distance in both directions, the existing roadside mature hedgerow will have to be removed and set back, including a 30metre section to the east of the site. In traffic safety terms, the proposal is acceptable.

7.4 Potential Visual Impact

The subject site is located within a large field midway along the road frontage of the open field. The location is prominent although not elevated. It commands panoramic views to the south. Having regard to the extensive road frontage proposed to be removed, the prominence of the site within the landholding and on the landscape, which the applicant claims was chosen to survey the landholding and livestock and reduce ribbon development, I consider the visual impact of the dwelling will be significant. I accept there are no designated landscapes or scenic views in the locality, however, the siting of the dwelling is highly insensitive to its rural setting, and it will militate against the preservation of the rural environment. The location, siting and layout has no regard to rural housing design standards or guidelines, and a dwelling at this location in such an open unspoilt landscape would represent a discordant and obtrusive feature on the landscape.

7.5 Other Matters

A standard septic tank and percolation area is proposed. A T value of 48.72 was the achieved from on site tests which was higher than expected given that the soil type is well drained mineral soils and previous results of T- tests in the area. In view of this result the proposed percolation area will require 1.2m unsaturated soil below the trenches as there is a Regional Important Underlying Aquifer which has High Vulnerability.

7.6 **Appropriate Assessment**

The application was screened by the planning authority, and the need to a Stage 2 appropriate Assessment was screened out. The appeal site is not within or adjoining any Natura 2000 site. There would appear to be no pathway between the appeal site and Dungarvan Harbour SPA located c. 3.2Km east of the site. Having regard to the nature and scale of the proposed development, to the nature of the receiving environment and to the separation distances 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 any European site, in light of the sites conservation objectives.

8.0 **Recommendation**

- 8.1. I recommend that Outline Planning Permission for the proposed development be refused for the reasons and considerations set out below.

9.0 **Reasons and Considerations**

1. Having regard to the location of the site within an area under urban influence as identified 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 National Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as in the current case, which states that 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...having regard to the viability of smaller towns and rural settlements”, it is considered that the applicant has not demonstrated an economic or social need to live in this rural area in accordance with national policy. The proposed development, in the absence of any definable or demonstrable 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, contravene the Ministerial Guidelines and be contrary to national policy. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development is located within 'An Area Under Urban Pressure' as set out in the current Development Plan for the area. Having regard to the topography of the site, the prominent positioning of the proposed development on the open rural landscape with panoramic views south, the extensive removal of the front boundary wall and hedging, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment and would set an undesirable precedent for other such prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

11/08/2020