



An
Bord
Pleanála

Inspector's Report

ABP-307453-20

Development	Construction of dwelling, comprising 2 habitable floors over a semi-basement garage.
Location	Kilmeaden, Co. Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	19715
Applicant(s)	Seamus Dunphy
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Seamus Dunphy
Observer(s)	None
Date of Site Inspection	30 th of September 2020
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site (0.26Ha) is located in Old Kilmeaden is the site of the former Kilmeaden Inn (a protected structure), which has been demolished and cleared away. It is stated in 2014 there was a public house with accommodation on the site. The pub was closed in 2006 and was not maintained, and the structure was declared unsafe in 2014, and demolished by Waterford Co. Co.
- 1.2. The site has two road frontages (Western and northern), with a dwelling house immediately east of the site.

2.0 Proposed Development

- 2.1. The proposed development (253sq.m.) is for a two storey, four bedroom detached family dwelling, comprising 2 habitable floors over a semi-basement garage with a waste treatment plant.

3.0 Planning Authority Decision

3.1. Decision

Waterford City and County Council refused the proposed development for one reason:

The site is situated in an Area Under Urban Pressure as designated in the Waterford County Development Plan 2011-2017 (as carried and extended). Within these areas, it is policy of the planning authority to provide for persons with a genuine housing need as defined in the development plan and subject to the site meeting all technical requirements. Based on the submitted information the planning authority is not the proposal constitutes a genuine housing need as defined by the Waterford County Development Plan 2011-2017 (as carried and extended). It is considered in the absence of a substantial local housing need for a house at this location, the proposed development would be in conflict with the policy of the Waterford County Development Plan 2011-2017 and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The applicant needs to demonstrate compliance with the criteria set out in Section 4.10 of the Development Plan. The planning authority were not convinced he complied with the locals needs policy. There is a lack of documentary evidence to show he has lived in the area for 45years.
- The proposed dwelling is split level, when viewed from the L4036 the dwelling will have a ridge height of 7.11metres, and the design is acceptable for the site. The design will not adversely affect the amenities of the adjoining dwelling.
- The required sightlines are achievable.
- The lies overall Regionally Important Aquifer which is at High Vulnerability.
- Water Service pipe
- Fifth house in a row along 140metres but the ribbon development policy may be relaxed subject to compliance with local housing needs
- Zone of Archaeological Influence.

3.2.2. Other Technical Reports

Water Services There is water service passing through the site as per attached map. This must be preserved.

3.3. Prescribed Bodies

Department of Culture, Heritage and the Gaeltacht –
Archaeological conditions will apply.

3.4. Third Party Observations

The adjoining neighbour stated he was pleased the site was been developed but expressed concerns over the proposed design.

- His sitting room window will be blocked
- His view will be blocked
- The groundworks may cause movement to his house
- All dwellings in the area are single storey
- The loss of Kilmeaden Inn was a great loss to the community and the historic fabric of the village.

4.0 Planning History

There are no relevant planning histories associated with the subject site.

5.0 Policy Context

5.1. Development Plan

Waterford County Development Plan 2011-2017

The subject site is zoned Agriculture: - *To provide for the development of agriculture and protect and improve rural amenity.*

RPS – No. WA750127 Kilmeaden Inn (demolished in 2014)

Located within an Area designated as Area Under Urban Pressure

4.10 Genuine Local Housing Need

As stated above, applicants for housing in Areas Under Urban Pressure and in the Stronger Rural Areas will be required to demonstrate a Genuine Local Housing Need. The applicant must demonstrate, to the satisfaction of the Planning Authority that he/she can comply with one of the following criteria:

A landowner³ who owned the property prior to 4th March 2004 wishing to build a permanent home for his/her own use;

- 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;

- 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 working fulltime or part-time on a permanent basis, in a specific rural area who by the nature of the work need to be close to the workplace;
- A son or daughter of an established householder (who has lived in the area for three years or more) wishing to build a permanent home for their own use to live immediately adjacent to their elderly parents to provide care;
- 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.

5.2. Natural Heritage Designations

SITECODE 002137

SITE_NAME Lower River Suir SAC

is located 5km to the west of the site

5.3. 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

Much of the content of the appeal submission has been stated in this report thus far. I will summarise the grounds of appeal.

- **Design, access and servicing** – There are no objections to the proposed development by the planning authority on the grounds of house
- **Archaeological** – The protected structure on the site was demolished by the planning authority and there are no other recorded monuments or other heritage sites or designations affecting the site.
- **Ribbon Development** – the assessment of the planning authority on this issue was correct, as the site was previously a house and a public house. The site is not a greenfield site forming part of an agricultural holding. The site is a small brownfield site with no realistic prospect of been used for agricultural purposes.
- **Housing Need** – The architect and the appellant were of the view there was no need to establish local need on the site, as there had been a residential use on the site previously with the demolished pub residence.

Variation 1 of the County Development Plan, section 7.5 states

Replacement Dwellings – It is a policy of the Council to retain vernacular architecture and to preserve where possible cottages and traditional outbuildings. The Council may allow in limited circumstances, a replacement dwelling where it is deemed that the existing habitable dwelling is of little or no architectural or historical merit. This assessment shall be made during the development Management Stage of any prospective application and may require specialist reports if deemed necessary by the Council.

The applicant confirmed he was born and reared in the local area, went to school and church locally, lived and worked locally on and off for 45 years, it is considered no further information was needed for the applicant to be granted planning permission for an acceptable development. Significant weight should have been given to the fact he was going to reuse an unsightly brownfield site in an existing historic settlement.

The applicant did not own the site at the time the public house and dwelling were demolished on the site. Development Plan objective DO1 of the Kilmeaden Settlement Plan is applicable to Old Kilmeaden too, to strengthen the village core.

Genuine Housing Need – It is a requirement of the development plan for an applicant to comply with one of the criteria listed in paragraph 4.10

- (i) Persons working fulltime or part time in a specific rural area who by the nature of the work need to be close to their workplace.
- (ii) Persons who were born and lived substantial parts of their lives (3 years or more) in a specific rural area, who then moved away and who now wish to return to their home places or reside near other family members, to work locally, to care for elderly family members or retire.

The planning authority was incorrect to dismiss the appellant on the grounds of his involvement in two pubs in Kilmeaden. Weight should have been placed on the applicant's local employment. The applicant has owned the Sweep Pub/ Restaurant and O'Donnacha's Bar/ Restaurant in the village, and sold them to another family member. He has a management role in the operation of both premises. He also owns and runs a licenced premises in Waterford.

The applicant provided all the information in the Supplementary Form for Rural Housing to confirm he was born, brought up, worked locally. The family farm is in Lissahane, Kill which is 7km from the site, the farm is still in family ownership.

The applicant objected to the planning authority asking him to provide details of where he had lived and for how long in each location for the last 45 years, and to put this private information on a public file. The planning authority refused the application on this basis and this was unwarranted. Other family members did not have to provide such detailed information when they were applying for rural housing.

- **Other Matters** The Sustainable Rural Guidelines for Planning Authorities (2005) provide that people who are part of a rural community should be facilitated. Consideration should be given to the declining population levels in the area since the development plan came into force. According to 2016 Census Kilmeaden had a resident population of 754 down 33 on the 2011 census. Development Plan policy does not require Genuine Housing Need to be demonstrated in structurally weak area.

6.2. Planning Authority Response

The planning authority had nothing further to add on appeal.

7.0 Assessment

- 7.1. The main issue of this appeal is the applicant's compliance with the Rural Housing Policy in the County Development Plan. It was the single reason for refusal on the planning application for a split-level dwelling in Old Kilmeaden, stating the site was situated in an Area Under Urban Pressure, and persons with genuine housing need will only be considered favourably for a dwelling, and according to the planning authority, the applicant has not satisfied this requirement.
- 7.2. The applicant considers the completion of the Supplementary Form for all Rural Housing, is sufficient information to demonstrate his compliance with the Rural Housing Policy. The planning authority on the 19th of November 2019 requested the

applicant, Mr. Seamus Dunphy, to submit evidence that he complies with Section 4.10 of the Waterford County Development Plan 2011-2017 (as extended) and if he had or ever owned a house and to indicate it on a map. The applicant replied on 23rd of January 2020 stating there was a previous dwelling on the site which was demolished in 2014 because it was in dangerous condition. The current proposal is a replacement dwelling without the commercial attachment of the public house. The applicant stated:

- The applicant has commercial interests in two public houses in Kilmeaden, The Sweep Pub and Donnachas Bar.
- He states he was born in the area and went to school there and is a member of the local GAA club, and he attends the local church where both of his children were christened.

7.3 He has not submitted any documentary evidence to support his claims, and this is considered normal practice in the assessment of a case regarding local need for a rural house. The planning authority requested clarification of further information on 20th of February 2020, requesting a location map of existing residence, a map location of family home, addresses of all houses the applicant has lived in for the past 45years, and other documentary evidence to demonstrate Genuine Local Housing Need. The applicant submitted a map of the family land holding and stated he has not owned a dwelling in the area since he left the family home. There was no additional evidence submitted.

7.4 On appeal, the applicant has not submitted any documentary evidence to support his local needs case that would be consistent with other appeals/ planning application documentation nationally and in the Waterford area. He is relying on unsubstantiated statements and the Supplementary Form to present his local needs case.

Quoting the ***Waterford County Development Plan 2011-2017*** (as extended),

4.10 Genuine Local Housing Need

As stated above, applicants for housing in Areas Under Urban Pressure and in the Stronger Rural Areas will be required to demonstrate a Genuine Local Housing Need. The applicant must demonstrate, to the satisfaction of the Planning Authority that he/she can comply with one of the following criteria:

A landowner who owned the property prior to 4th March 2004 wishing to build a permanent home for his/her own use;

- *Persons working fulltime or part-time on a permanent basis, in a specific rural area who by the nature of the work need to be close to the workplace;*
- *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*

The applicant states he is working within the local area in the managing of two public houses in Kilmeaden that he previously owned. According to the appeal file, he also owns a public house in Waterford City. He has stated he resides in close proximity to the subject site, however the location is not specified and it is stated to be rented accommodation. The main argument on appeal is that the proposed development represents a replacement dwelling on a brownfield site. The site previously hosted a protected structure and public house which was demolished in 2014 by Waterford Co. Co. because it became a dangerous building. The applicant purchased the site after the demolition. I accept the proposed development would enhance the visual amenities of the area as the site is unkempt, and unsuitable in quantum for an agriculture use. The site is within an Area Under Urban Pressure and the applicant should comply with the development plan policy 4.10, but has failed to do so by not submitting supporting documentation. I agree with the planning authority's assessment and decision in this case. The Board should uphold the decision to refuse permission in this instance.

7.7 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 (my emphasis) 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, Old Kilmeaden, is to the south of Waterford City, and the area has pockets of linear development. There is a scattering of one-off houses along the roads serving the immediate area. In this context, National Policy Objective 19 is relevant to the current proposal.

As previously stated, the applicant completed a Supplementary Form applicable to rural housing planning applications in Co. Waterford. Supporting documentation on the appeal file is vague and unsubstantiated. The subject site is owned by the applicant, who according to the appeal file owns a public house in Waterford City. It is also stated he use to own two public houses in Kilmeaden but sold them in 2007 and 2018, and he retains a management role in both premises.

Having considered the documentation, I do not consider the applicant presented a social or economic need to live at the location. There is no clear social or economic justification for the applicant to live in the area, therefore the applicant, in my opinion, does not comply with Objective 19 of the National Planning framework.

7.8 Other Issues

- **House Design** – The proposal is a split-level dwelling with cut and filling on the contours across the site. The front building line and ridge height is consistent with the existing dwellings to the east. There is no loss to existing residential amenities associated with the proposed development.
- **Access** – The proposed access is off the primary road L4036, and the sightlines are acceptable in both directions.
- **Archaeology** - Conditions are applicable.
- **Water Pipe** *traversing site to be preserved*

7.9 **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. 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 the Board Refuse the proposed development for the following reason.

9.0 **Reasons and Considerations**

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.

Caryn Coogan

Inspector

13th of October 2020