



An
Bord
Pleanála

Inspector's Report ABP-307989-20

Development	Construction of a new single storey dwelling and detached garage with store area, new bio filtration treatment system, new potable well, new vehicular entrance, and all associated site works.
Location	Clonleigh, Kinsale, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	20/4167
Applicant(s)	Jenny Wright
Type of Application	Permission
Planning Authority Decision	Grant, subject to 16 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Joseph & Mary Heffernan
Observer(s)	None
Date of Site Inspection	29 th October 2020
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located 1.1 km to the south-east of Summercove and 2.7 km to the south-east of Kinsale town centre. This site lies on a headland which forms the eastern side of Kinsale Harbour. It is surrounded by farmland, which is interspersed with dwelling houses. Charles Fort is also within the locality.
- 1.2. The main body of the site is roughly square in shape. An adjoining rectangular strip attaches this main body to a local road. The combination of these two elements wraps around the site of an adjacent Dutch barn with lean-to and an area of open storage, which presently comprises a mound of earth and cylindrical bales of fodder. The site is subject to a gentle downward gradient from east to west and it extends over an area of 0.2377 hectares. Its main body presently forms part of a field, while the strip forms part of a hardcore surfaced yard in front of the Dutch barn.
- 1.3. The main body of the site is bound to the south-west by the site of the Dutch barn and the combined north-western boundary of the entire site is bound by the appellants' residential property and denoted by means of a fence and hedgerow. The remaining north-eastern and south-eastern boundaries are not defined "on the ground", although the former boundary would line through with the rear boundary to the appellants' residential property. Access to the site is via agricultural gates to the yard beside the local road.

2.0 Proposed Development

- 2.1. The proposal would entail the construction of a three-bed single storey dwelling house (179.79 sqm) and a double garage (42.71 sqm). This bungalow would comprise two rectangular forms under double pitched roofs, which would be offset in relation to one another and which would be linked by a flat roof element. It would be sited in the southern quadrant of the main body of the site. An adjacent double garage would be sited towards the centre of the site and in its western quadrant.
- 2.2. The proposed single storey dwelling house would be designed to capitalise upon the southerly aspect of the site. Under further information, it was resited slightly to achieve a greater separation distance from the Dutch barn to the south-west, i.e. this distance was increased from 11.914m to 12.978m. This bungalow would be served

by a bored well, which would be sited in the northern corner of the site, and by a waste water treatment system, which would be sited in the eastern corner.

- 2.3. A new access from the local road would be formed on the north-western side of the existing agricultural access. This access would comprise a gate and accompanying splayed walls and it would connect to a driveway that would lap around to the north-east of the proposed bungalow and double garage.

3.0 Planning Authority Decision

3.1. Decision

Following clarification of further information, permission was granted, subject to 16 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The following further information was requested:

- Land Registry map and deeds of landowner,
- Map of recent planning applications in the vicinity of the site,
- Confirmation of landowner's willingness to accept land sterilisation under a Section 47 agreement,
- Revised site layout plan showing proposed dwelling house set back by 1m from the south-eastern site boundary,
- Surface water drainage scheme for the site,
- Design of raised percolation area, and
- Plan of locality showing domestic wells, percolation areas serving waste water treatment systems and their theoretical zones of influence, and the direction of groundwater flow.

Clarification was subsequently sought on the first 3 items.

3.2.2. Other Technical Reports

- Archaeology: No objection.
- Area Engineer: Following receipt of further information, no objection, subject to conditions.

4.0 Planning History

Under clarification of further information (CFI), the applicant submitted a site map (drawing no. P.00) showing planning applications within the landholding, which includes this site. Two of these applications pertained to the subject site and the adjoining land to the south-west (17/5049 and 18/5724). The first was for a dwelling house and physio room and the second was for a dwelling house only. They were both refused, the latter at appeal ABP-302679-18, on the grounds that the applicant did not meet the local needs criteria.

5.0 Policy and Context

5.1. National Planning Framework

Objective NPO 19 states the following:

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.

5.2. National Planning Guidelines

Sustainable Rural Housing Guidelines

5.3. Development Plan

Under the Cork County Development Plan 2014 – 2020 (CDP), the site is shown as lying within a rural area under strong urban influence. Policy Objective RCI 4-2 is thus of relevance. Objectives RCI 2-1 and 2-2 distinguish between urban and rural generated housing need, while Objectives RCI 6-1, 6-2, and 6-3, variously, relate to the design and landscaping of one-off dwelling houses, their servicing, and ribbon development.

Under the CDP, the site is also shown as lying within the Landscape Character Type “Indented Estuarine Coast”, wherein the landscape value and sensitivity are very high and the landscape is of national importance. Policy Objective GI 6-1 addresses landscape and Policy Objective HE 6-1 addresses the design of new buildings in the landscape.

5.4. Natural Heritage Designations

- James Fort pNHA (001060)
- Sovereign Islands SPA (004124)
- Sovereign Islands NHA (000105)

6.0 The Appeal

6.1. Grounds of Appeal

The appellants begin by drawing attention to ABP-302679-18, the site of which included the current subject site, and enforcement enquiry EF 19/210, which pertains to the use of the barn which is adjacent to the site. Insofar as the proposed means of access would overlap with lands immediately adjoining this barn, the current subject site is affected by this enquiry.

The appellants set out the following grounds of appeal:

- Conditions are requested with respect to the demarcation of the proposed means of access and the retained lands adjoining the barn. These conditions should require that the former remains within domestic use as part of the

curtilage to the proposed dwelling house and the latter remains in agricultural use.

- Condition No. 3 refers to a map submitted to the Planning Authority (PA) under clarification of further information (CFI). This map inaccurately shows the appellants' residential property as remaining within the ownership of the applicant's uncle. For the purposes of this Condition, an up to date map should be sought, which excludes this residential property.

The depiction of the appellants' waste water treatment system and polishing filter on drawing no. 20036-5005 revision A submitted under further information (FI) is inaccurate with respect to its siting and the form, i.e. the polishing filter is not raised.

6.2. Applicant Response

The applicant responds to the above grounds of appeal as follows:

- The barn and its yard are outside the subject site and the applicant has no control over either this barn or its yard.
- A revised site map has been submitted which excludes the appellants' residential property from the depiction of lands in the ownership of the applicant's uncle.
- The depiction of the appellants' waste water treatment system and polishing filter was based on the permitted application 05/6999 for their dwelling house. For the purposes of the current proposal, the siting of the appellants' well is what is important and that has been accurately depicted.

The applicant proceeds to summarise the planning history of the site, her own eligibility for a dwelling house on the site, and key design and engineering considerations of the proposal.

6.3. Planning Authority Response

None

6.4. Observations

None

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the National Planning Framework (NPF), the Sustainable Rural Housing Guidelines, the Cork County Development Plan 2014 – 2020 (CDP), relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Miscellaneous matters,
- (ii) Rural housing policy,
- (iii) Development standards, access, and amenity,
- (iv) Water, and
- (v) Appropriate Assessment.

(i) Miscellaneous matters

7.2. The appellants have raised several miscellaneous matters.

7.3. Firstly, they draw attention to a current enforcement enquiry in relation to the use of the Dutch barn, which is adjacent to the site. They also draw attention to the proposed means of access to the main body of the site, which would overlap with the yard in front of this barn. Accordingly, they contend that this means of access, which is comprised in the site, is affected by the enforcement enquiry. They also request that a condition should be attached to any permission demarcating the use of the entire site as residential and the adjoining yard as agricultural.

7.4. The applicant has responded by stating that the Dutch barn and its yard lie outside the site and thus beyond her prospective control.

- 7.5. I understand that the enforcement enquiry relates to the use of the Dutch barn. I do not consider that the existence of this enquiry serves to prevent the applicant from making the current application over land that maybe indirectly affected by it. Insofar as the proposal would encroach on this land, its use would change to residential. A condition stating as much would be superfluous and, given that the applicant would not control the retained portion of the yard, a condition requiring that it be used for agriculture would be *ultra vires*.
- 7.6. Additionally, during my site visit, I observed that the hardcore area in front of the Dutch barn extends up to the boundary with the appellants' residential property. This area is continuous "on the ground" and so the corollary of the proposal would be that it would be reduced in size. The width of the retained yard would be between c. 7 and 8m. The doors in this barn and its lean-to on its north-eastern side would thus be served by a yard of less than half of its present width. The functionality of this yard in relation to access/egress to/from these doors has not been commented upon. *Prima facie* it would be significantly curtailed.
- 7.7. Secondly, the appellants draw attention to the PA's Condition No. 3, which refers to a plan that inaccurately shows their residential property remaining within the ownership of the applicant's uncle. The applicant has responded, at the appeal stage, by submitting a revised version of this plan, which corrects this mistake.
- 7.8. Thirdly, the appellants draw attention to the depiction of their waste water treatment system (WWTS) and polishing filter, which is inaccurate with respect to their siting and form. The applicant has responded by stating that this depiction was based on the information available on the permitted application file for the appellants' residential property. She also states that the more important depiction was of the appellants' well and they have not questioned that.
- 7.9. I note the plan in question, i.e. drawing no, 20036-5005, submitted to the PA on 28th May 2020. I note, too, that the applicant's proposed well is shown and that it would be sited between the theoretical zones of influence of both the appellants' polishing filter and her own proposed one. The siting of this well would be affected by where the appellants' polishing filter is. I will return to this matter under the (iv) heading of my assessment.

7.10. I conclude that the miscellaneous matters raised by the appellants do not prevent the Board from proceeding to assess and determine the proposal in the normal manner.

(ii) Rural housing policy

7.11. Under the CDP, the site is shown as lying within a rural area under strong urban influence. Objective RCI 4-2 refers to this area. Under it, there are five categories for establishing that an applicant has a rural generated housing need. The applicant has not identified which of these categories her application is based upon. Having read her submissions, I consider that the potentially relevant category is (d) “Persons who have spent a substantial period of their lives (i.e. over seven years), living in the local area in which they proposed to build a first home for their permanent occupation.”

7.12. The applicant sets out the following information, along with accompanying documentation, in support of her application:

- Her parents’ home is 80m from the site in Clonleigh. She resided there with them from 1980 – 2004, during which period she attended the Summercove National School and Kinsale Community School and she also worked briefly in this latter School.
- She presently lives and works in Dublin as a secondary school teacher, where she has resided at her present place of residence for the last 3 years. She owns this place of residence. She now wishes to move back to Clonleigh to be closer to her elderly parents. She also hopes to be able to teach again locally.
- The site is owned by her uncle and it presently forms part of 32-hectare holding, which he farms, and which was purchased in 1948. Other family members live in the area.

7.13. While the applicant has confirmed that she has not previously built a home in a rural area or received planning permission to do so, insofar as she owns her place of residence in Dublin, her housing need is now being met in an urban area.

7.14. While the applicant has described her wish to be closer to her elderly parents as “exceptional circumstances”, this objective could *prima facie* be met by housing in nearby settlements. From the information before me, I do not consider that these circumstances are so exceptional as to justify the proposed dwelling house.

7.15. I conclude that the applicant's housing need is presently been met by her place of residence in an urban area, which she owns. Consequently, she is no longer in a position to build her first home in a rural area. I conclude, too, that in the presence of nearby settlements, the exceptional circumstances which she has cited are not so exceptional as to justify the proposed dwelling house.

(iii) Development standards, access, and amenity

7.16. The proposal would entail the construction of a single storey dwelling house, which would provide three-bed/six-person accommodation over a floorspace of c. 180 sqm. This single storey dwelling house would be composed of a daytime accommodation block and a night-time accommodation block. It would be designed to avail of a southerly aspect by means of expansive glazed openings and corner and diagonal bay windows. Quantitatively and qualitatively, it would exceed relevant development standards.

7.17. I note that the submitted ground floor plan shows a staircase between the proposed utility room and the kitchen and the roof plan and elevations show 2 rooflights. I note, too, that the accompanying section of the kitchen shows this space rising to the underside of the pitched roof above. Elucidation of what is proposed for the roofspace in the daytime accommodation block is therefore needed. In the event that the Board is minded to grant permission, this matter could be conditioned.

7.18. As revised, the proposed single storey dwelling house would be sited c. 13m to the north-east of the lean-to element to the adjacent Dutch barn. The use of this barn is the subject of an enforcement enquiry. During my site visit, it appeared to be in use for the storage of agricultural machinery, and cylindrical bales of fodder were being stored in the open to its rear. The appellants' dwelling house lies, to the north-west, beyond the accompanying yard and front elevation to this barn, at a minimum distance of 23m, and a new dwelling house is presently under construction to the south-west, on the opposite side of the local road, at a distance of c. 33m. A new hedgerow along the common boundary is beginning to provide screening for the existing dwelling house and established hedgerows on either side of the local road would provide screening for the one under construction.

7.19. While the proposed dwelling house has been designed to minimise overlooking of the lean-to element, its proximity would nevertheless impinge on the amenity that

this dwelling house would afford. Landscaping would, in time, ease its visual impact. If its usage on the day of my site visit is typical, then other amenity impacts may be compatible with the achievement of a satisfactory standard of residential amenity. Nevertheless, I remain concerned over the relationship that may emerge between the Dutch barn and the proposed dwelling house, especially in view of my observations above, under the first heading of my assessment, over the functionality of the yard and possible pressure in the future to reorganise how this barn is accessed/egressed.

- 7.20. The aforementioned concern arises from the siting of the proposed dwelling house in effectively a backland position, due to the presence of the Dutch barn. The opportunity to align with the appellants' dwelling house and another dwelling house further to the south-east is thus not available and so the proposed dwelling house would "read" as an undesirable second line of development.
- 7.21. The proposed dwelling house and double garage would be sited and designed to avoid lines of sight with the appellants' dwelling house. The separation distances between them would, likewise, ensure that lighting and outlooks would not be affected.
- 7.22. The proposed dwelling house would be served by a new access point from the local road, which would be sited immediately to the north-west of the existing agricultural access to the yard, which serves the Dutch barn. This access point would be accompanied by the requisite sightlines, i.e. x and y dimensions of 2.4m and 90m. The accompanying driveway would afford the opportunity for vehicles to park and turn satisfactorily.
- 7.23. The Area Engineer draws attention to the garage door, which would be sited in the north-eastern rather than the north-western elevation of the double garage. As the former elevation rather than the latter elevation would not be served by the proposed turning area, this siting would be anomalous. The double pitched roof to this garage would likewise be anomalous, as rather than lining through with the adjacent blocks it would be set at right angles to the same. If the Board is minded to grant permission, then both these matters could be addressed by means of conditions.
- 7.24. I conclude that, while the proposed dwelling house would exceed relevant development standards and its access would be satisfactory, its siting in a backland

position would be visually anomalous, and its siting close to the lean-to of a Dutch barn could risk amenity issues depending on the future use and layout of this barn.

(iv) Water

7.25. The proposed dwelling house would be served by a bored well for the purpose of supplying potable water. The submitted drawing no. 20036-5005 entitled “Plan of new and existing wells and WWTS” shows the siting of this well in a position adjacent to the northern corner of the site. While water test results have not been submitted, this drawing illustrates that such wells serve the existing dwelling houses in the surrounding area.

7.26. The proposed dwelling house would be served by a packaged WWTS and raised polishing filter. To this end, a Site Characterisation Form (SCF) was completed, details of which are set out below, along with some commentary:

- The aquifer is locally important and of extreme vulnerability. The Response Matrix is thus R2¹.
- As originally submitted, ground water flow was said to be uncertain, but probably in a north westerly or a south-westerly direction (cf. drawing no. 102 entitled “wastewater treatment system layout”). The Area Engineer advises that this direction is “indeterminate but it is likely that it’s not to the north or the north-east”. Under FI, the ground water flow was depicted as being in a south-westerly direction only. No explanation for the omission of the north-west was submitted.
- As originally submitted, the proposed bored well was shown as being sited towards the most westerly corner of the main body of the site. Under FI, it was resited to the most northerly corner,
- The trial hole was dug to a depth of 1.6m, where bedrock was encountered. No groundwater was detected within this depth. Initially the sub-soil was composed of gravelly silt/clay with a high percentage of cobbles. Thereafter, at a depth of 0.5m and beyond, broken weathered sandstone was detected, prompting concern over fast percolation.
- The T-test holes yielded an average result of 7.08 min per 25mm and the P-test holes yielded an average result of 11.25 min per 25mm. Under Table 6.3

of the EPA's relevant Code of Practice (CoP), the former result indicates that the "site is suitable for a secondary treatment system with polishing filter at ground surface or over ground."

- The applicant proposes to install a packaged WWTS for a PE of 6 with a raised tertiary polishing filter. Under FI, a detailed design of this system and filter was submitted to the PA (cf. drawing nos. 20036-5002, 3 & 4). The invert level of the pipework in this polishing filter would be 62.95m OD. The sloping ground level would fall from a level of 62.10m OD and the broken weathered sandstone and bedrock would be, variously, at depths of 61.60m OD and 60.50m OD. Thus, minimum depths of 1.35m and 2.45m would occur between the invert level and, variously, the broken weathered sandstone and the bedrock.

7.27. The submitted drawing no. 20036-5002 shows the proposed bored well and the proposed polishing filter separated by a distance of 32.380m. The relationship between these two utilities is stated as being "alongside" and so, under Table 6.1 of the EPA's relevant CoP, this would be an appropriate distance as it would exceed the minimum of 25m.

7.28. The submitted drawing no. 20036-5002 also shows that there is a slight westerly fall in levels of c. 1.3m between where the polishing filter would be sited and where the well would be bored. The well would thus be down gradient of the polishing filter and so a greater separation distance may be necessary. Note 5 to Table 6.1 of the EPA's relevant CoP states that "If effluent and bacteria enter bedrock rapidly (within 1-2 days), the (minimum) distances (from receptor to polishing filter) given may not be adequate where the percolation area is in the zone of contribution of a well. Further site-specific evaluation is necessary." In this respect, I note that the applicant has not explained why under FI the ground water flow has been shown as solely to the south-west. I note, too, that the zone of contribution for the proposed bored well has not been shown, as distinct from the theoretical zones of influence of the polishing filters.

7.29. Under the first heading of my assessment, I reported that the appellants have questioned the depiction of their polishing filter in submitted drawing no. 20036-5005

and so a degree of uncertainty attendants its precise location in relation to the applicant's proposed bored well.

- 7.30. I am, therefore, concerned that the site of the proposed bored well has not been demonstrated to be compatible with either the proposed polishing filter or the appellants existing one under the EPA's relevant CoP. I am therefore concerned that it would be premature to permit this siting. I also consider that it would be inappropriate to condition this siting in the absence of certainty that a satisfactory siting exists.
- 7.31. The proposal would involve the provision of on-site surface water drainage arrangements, which would utilise two soakaways that would be sited to the north-east and south-west of the proposed double garage. Under FI, the applicant submitted a report on the design of these soakaways, which would accord with BRE 365.
- 7.32. Under the OPW's flood maps, the site is not identified as being at risk of flooding.
- 7.33. I conclude that the applicant has not demonstrated that the site of the proposed bore well would be compatible with the existing siting of the appellants' polishing filter and the proposed siting of her own one. I am thus not in a position to conclude that the siting of this well would accord with the advice of the EPA's relevant CoP.

(v) Appropriate Assessment

- 7.34. The proposed dwelling house would not be sited in or near to any Natura 2000 site. Furthermore, there are no source/pathway/receptor routes between the site and any Natura 2000 site in the wider area. Accordingly, the proposal would not be likely to have any significant effects on the Conservation Objectives of such Natura 2000 sites during either its construction or operational phases.
- 7.35. Having regard to the nature, scale, and location of the proposed development, the nature of the receiving environment, and proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

That permission be refused.

9.0 Reasons and Considerations

1. Having regard to:

- National Policy Objective 19 of the National Planning Framework (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,
- The “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, wherein it is indicated that it is the policy to distinguish between rural-generated housing need and urban-generated housing need, and
- The location of the site within an Area Under Strong Urban Influence as identified in the Cork County Development Plan 2014 – 2020 where housing is restricted to persons demonstrating local need in accordance with the Objective RCI 4-2 of this County Development Plan.

On the basis of the documentation submitted in support of the application and appeal, it is considered the applicant, who resides in her own home in an urban area, is no longer in a position to build her first home in a rural area and so, under Objective RCI 4-2 of the County Development Plan, she would not come within the criteria for a rural house in an Area under Strong Urban Influence. The proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure, and would contravene the provisions of national and local planning policies. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the Environmental Protection Agency's "Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses", the Board considers that the applicant has not demonstrated that the siting of the proposed bored well within the site would be compatible with the siting of the proposed soil polishing filter within this site and the siting of an existing soil polishing filter in the neighbouring residential property to the north-west. In these circumstances, it would be premature to grant permission for this well, as to do so would risk an outcome that would be prejudicial to public health and, as such, contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

9th December 2020