



An
Bord
Pleanála

Inspector's Report

ABP-308606-20

Development	Renovation and change of use of 2 no. outbuildings to residential accommodation and upgrade wastewater treatment system
Location	Knockroe, Colligan, Dungarvan, Co. Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	20/575
Applicant(s)	Niall Burns, Liam Burns & Teresa Hamer
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal of Permission
Appellant(s)	Niall Burns, Liam Burns & Teresa Hamer
Observer(s)	None
Date of Site Inspection	03.02.2021

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located approx. 7km north of Dungarvan in Co. Waterford.
- 1.2. The site is located off a local road, L5100. There is a one and a half story cottage on site which has a building line very close to and perpendicular with the local road. There are three other outbuildings also on site. Much of the site is grassed. Ground levels fall from the road in an easterly direction. There are some trees on site. The wider area is generally agricultural with some wooded areas.
- 1.3. The site has an area of 0.4774 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for:
 - Renovation, alterations and change of use of two outbuildings to residential accommodation,
 - Raising the walls and change roof type to part of Outbuilding No. 1,
 - Construction of a garage,
 - Upgrading entrance,
 - Decommissioning existing system and installation of wastewater treatment system.
- 2.2. Outbuilding No. 1 has a floor area of 125.39sqm and a maximum height of approx. 6 metres. Outbuilding No. 2 has a floor area of 55.36sqm and a maximum height of approx. 4.7 metres. The proposed garage has a floor area of 82.62sqm and a height of 4.969 metres.

3.0 Planning Authority Decision

3.1. Decision

Waterford City & County Council refused permission for four reasons:

1. Having regard to the location of the site of the proposed development, which is designated a Stronger Rural Area it is considered the applicants have failed to demonstrate a genuine need for housing at this location. The applicants have failed to demonstrate compliance with Policy SS5 and Section 4.10 of the Waterford County Development Plan 2011, as varied and extended. The proposed development would therefore, be in accordance with the proper planning and sustainable development of the area and would set an undesirable precedent. (sic)
2. The submitted site suitability assessment proposes a waste water treatment system to cater for the Population Equivalent of the combine 3 no. residential units (1 no. existing and 2 no. proposed). This proposal is considered contrary to best practice and could present a risk to ground waters and thus be prejudicial to public health, and would be contrary to the proper planning and sustainable development of the area and would set an undesirable precedent.
3. The proposed development by reason of the absence of dedicated and designated private open space and siting of the proposed garage would result in substandard residential amenities for the proposed dwellings and would negatively impact on and seriously detract from the residential amenities of the existing dwelling on site. The resultant substandard residential amenities for existing and future occupants would set an undesirable precedent and would be contrary to the proper planning and sustainable development of the area.
4. It is considered the proposal to access the 3 no. dwellings from an existing entrance to be upgraded and also a substandard access would result in conflicting traffic movements both entering and exiting the site and potential for traffic hazard on the public road and other road users. The proposed development, therefore, would not be in accordance with the proper planning and sustainable development of the area and would set an undesirable precedent.

3.2. Planning Authority Reports

- 3.2.1. The Planning Report forms the basis of the Council' s decision. The Planning Officer recommended, having examined the application and its supporting drawings and

documentation, and having considered the impacts of the development and the relevant policies of the Waterford County Development Plan 2011, as varied, that permission be refused for four reasons. The reasons were subject to some editing prior to the decision but are based on the same issues.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

None.

5.0 Policy Context

5.1. Waterford County Development Plan 2011-2017 (as extended)

5.1.1. Following the amalgamation of Waterford County Council and Waterford City Council in 2014, the lifetimes of the existing development plans within the amalgamated council area were extended. The 2011-2017 County Development Plan remains in effect until a new City and County Development Plan is prepared following the making of the Regional Spatial & Economic Strategy.

5.1.2. Section 10.57 of the Plan states that all land outside of the designated settlements and land zoning maps is regarded as 'Agriculture A'. The land use zoning objective is 'To provide for the development of agriculture and to protect and improve rural amenity'. In the Land Use Matrix (Table 10.11), a 'dwelling' is open for consideration.

5.1.3. Chapter 4 (County Settlement Strategy) and Chapter 10 (Development Standards) are relevant to the application.

5.2. **Sustainable Rural Housing Guidelines for Planning Authorities, 2005**

5.2.1. These guidelines are relevant to the planning application. Circular Letter SP 5/08 was issued after the publication of the guidelines.

5.3. **Natural Heritage Designations**

5.3.1. The closest heritage area is the Natura 2000 site Comeragh Mountains SAC, and the Comeragh Mountains pNHA, approx. 4.2km to the north east.

5.4. **EIA Screening**

5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the upgrading of the wastewater treatment system. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The main points made can be summarised as follows:

- In relation to the first reason for refusal, Policy SS5 of the County Development Plan 2011-2017 states it is policy to cater for the housing requirements of members of the local rural community who have a genuine local housing need in Stronger Rural Areas. Niall Burns has owned the property for three years and would be considered a member of the local rural community. The other two applicants have strong connections to Ireland and feel they should be allowed renovate existing structures. There is precedent for this in P.A. Reg. Ref. 14/122 and a Planning Report is attached to the grounds of appeal. Another

precedent is P.A. Reg. Ref. 01/1306. Section 7.6 of the Plan's Development Management Standards states that where the planning authority considered out houses to be of architectural merit, consideration may be given to the restoration of same for appropriate and sympathetic residential type development and a genuine rural housing need will not be required. The restoration is sympathetic. The planners report does not give any consideration to the buildings being of architectural merit. All aspects of Section 7.6 e.g. access and waste water, are complied with.

- In relation to the second reason for refusal, the three existing and proposed houses would have five double bedrooms in total, giving a population equivalent of 10, no more than any modest house in the countryside. The proposed system will ensure wastewater is treated to the highest level. It would be more robust and environmentally efficient than the existing septic tank system. Proposing three separate units would undermine the proposal as it would lead to the possibility of splitting the property into three separate dwellings. One system for the three units ensures that the property will always only be treated as one overall property. The system complies with the EPA Code of Practice and requirements of the County Development Plan 2011 with regard to separation distances etc. It does not set an undesirable precedence as there are very few farm complexes like this where substantial outbuildings are big enough to accommodate living accommodation. The one system to accommodate separate loadings has precedent as per P.A. Reg. Refs. 14/122 and 01/1306.
- In relation to the third reason for refusal, the Council have misinterpreted the reason for the development. It is for the use of the applicants to be together with the overall site as one property. The property has 4473sqm private open space which can be divided to give each unit 1,491sqm, ten times the 150sqm required by the Council. To define 150sqm to each building would give rise to the possibility of splitting the property into three separate properties which is not and never will be the motive of the applicants. It does not detract from the residential amenities of the existing farmhouse as these buildings already exist. The garage footprint is not in an area where there is any tended planting or lawn. Again, it does not set an undesirable precedence as there are very few

farmhouse and outbuilding layouts capable of accommodating this type of development.

- In relation to the fourth reason for refusal, the existing entrance is to be upgraded to current sightline requirements. There is no increase in traffic movements as there will be no increase in persons using the development. An application could be made to extend the existing farmhouse by three additional bedrooms and in that proposal there would be no requirement to upgrade the entrance. The applicants are more than accounting for the proposed development by providing an upgraded entrance. The secondary entrance is not going to be used at all, only during the construction phase. The farmhouse is in a very rural area where the local road is very lightly trafficked.
- The planners report mentions a conflict in the garage floor plans and elevations. Not including an internal doorway from the workshop into the tool shed was a mistake and an earlier draft of the site layout plan which included a gym and office use was not updated.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with the Rural Housing Policy
- Wastewater Treatment

- Residential Amenity Standards
- Sightlines and Traffic Safety
- Appropriate Assessment

7.1. Compliance with the Rural Housing Policy

- 7.1.1. The first reason for refusal in the planning authority decision stated that the applicants have failed to demonstrate a genuine need for housing at this location in accordance with Policy SS5 and Section 4.10 of the Waterford County Development Plan 2011-2017.
- 7.1.2. The documentation submitted with the planning application states that Niall Burns bought the property in 2017. Liam Burns, who lives in the United States, and Teresa Hamer, who lives in England, are his siblings. Niall Burns acquired Irish citizenship in 2008. Liam Burns and Teresa Hamer have applied for Irish citizenship and it is stated that they hope to retire to this site. The applicants appear to have no link to this area apart from the fact that Niall Burns bought the property in 2017.
- 7.1.3. The Council's Settlement Strategy is to encourage the growth of towns and villages while catering for genuine housing needs in the rural countryside. One of the aims of the Rural Housing Policy is to "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". The site is within a 'Stronger Rural Area' as per Appendix 3 of the Plan. This area is referred to in Section 4.9.2 (Stronger Rural Areas) of the Plan. Policy SS5 states that it is policy "To cater for the housing requirements of members of the local rural community who have a genuine local housing need in Stronger Rural Areas as set out in the Criteria in Section 4.10". Section 4.10 (Genuine Local Housing Need) sets out seven criteria, one of which an applicant must comply with. Neither Liam Burns nor Teresa Hamer comply with any of the criteria outlined.
- 7.1.4. The grounds of appeal note the content of Section 7.6 (Conversion of Outhouses) of Variation No. 1 (Development Management Standards) of the Plan. This states that "Where the Planning Authority considered out houses to be of architectural merit,

consideration may be given to the restoration of same for appropriate and sympathetic residential/cottage industry type development. Full planning permission is required for the conversion of outbuildings. Where a sensitive renovation proposal is presented, a genuine rural housing need will not be required by the Council, however, normal development management standards should be adhered to (e.g. safe access, acceptable wastewater provision, etc.)". The grounds of appeal state that the planners report does not give any consideration to the buildings being of architectural merit "although they are genuine original untouched examples of traditional outbuildings". However, I consider that the planners report has had regard to this. Section 7.6 is clearly referenced in the report and states that outhouses must be considered to be of architectural merit and, "while the current outhouses are good examples of vernacular structures same are not subject to any protections or designations. This criteria was intended to allow for residential use in sites where it previously existed, for example the original house was gone but the outbuildings remained, or in the case of a Protected Structure where conversion of outbuildings would allow for a residential use which would not impact negatively on the character and setting of same". This section of the planning authority planning report then states that other normal development management standards must also be complied with. The planning authority refused permission for reasons including non-compliance with these standards.

7.1.5. Section 7.6 of Variation No. 1 only states that, where outhouses are considered to be of architectural merit, consideration "may" be given to the restoration of same for appropriate residential development. Therefore, the planning authority is not obliged to automatically accept a residential development for the conversion of outbuildings. The two outbuildings that are subject to the application are in reasonable condition and reflective of a former use as farm outbuildings such as stables. Waterford City & County Council considers that, though they are good examples of vernacular structures, as they are not protected or designated, they are not of sufficient architectural merit. I do not consider it reasonable that there must be a protected structure or a structure identified in the National Inventory of Architectural Heritage, for example, on site, before the outbuildings can be considered as having architectural merit.

7.1.6. The site is currently occupied by a house and a number of outbuildings. It is proposed to convert two of these outbuildings to residential use, resulting in three separate

houses on a 0.4774 hectare rural site in a Stronger Rural Area. This is a high density of housing development, concentrated in a small area of the overall site, in an unserviced, rural area. Neither proposed occupant has any connection to the area bar the fact their brother purchased the site in 2017. Section 4.3 (County Settlement Strategy) of the Plan states that the strategy “has always been to encourage the growth of the County’s towns and villages, whilst catering for genuine housing needs in the rural countryside”. As noted, a genuine local housing need (as set out in Section 4.10), does not exist in this application.

7.1.7. Having regard to the foregoing and noting that converting outbuildings of architectural merit does not automatically have to be accepted by the planning authority, I consider that to permit the conversion of the outhouses to residential use would undermine the rural housing policy of Waterford City & County Council, would contribute to the encroachment of random rural residential development (notwithstanding the structures are in situ) in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure.

7.2. Wastewater Treatment

7.2.1. The second reason for refusal states that the wastewater treatment system proposed is contrary to best practice, could present a risk to groundwater and be prejudicial to public health. It appears that the Council considers that three separate houses connecting to the one system is the area of concern rather than the proposed wastewater treatment system itself.

7.2.2. The existing house is served by an old septic tank system and cesspit according to the grounds of appeal, though the Site Layout identifies an existing wastewater treatment plant. The existing system is to be decommissioned with all three existing and proposed houses to connect to a new wastewater treatment system and percolation area in the south east corner of the site.

7.2.3. The site is in an area with a locally important aquifer of high vulnerability. No groundwater or bedrock was encountered in the trial hole. Soil conditions in the trial hole was gravelly silt. Table B.2 (Response Matrix for On-Site Treatment Systems) of the Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) published by the EPA indicates that the site falls within the R1

response category where an on-site system is acceptable subject to normal good practice.

- 7.2.4. A T-test result of 12.64 was achieved. I consider the results are consistent with the soil profile in the trial hole and ground conditions observed on the site inspection. The T-test results indicate, as set out in Table 6.3 (Interpretation of Percolation Test Results) of the Code of Practice, that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater.
- 7.2.5. Given the size of the site, it would appear likely that the minimum separation distances set out in Table 6.1 (Minimum Separation Distances in Metres) can be achieved. It also appears that the recommended minimum distance to the existing well on site (15 metres as the applicants indicate that it is an up-gradient domestic well) can be achieved. The applicants have proposed to install a packaged wastewater treatment system and polishing filter which complies with the requirements of Table 6.3.
- 7.2.6. The system proposed is a Biocell P8 Sewage Treatment Plant. Section 5.0 (Recommendation) of the Site Characterisation Form states that an August 2013 amendment to the Code of Practice means 1PE can be taken for each bedroom after the first 2 no. double bedrooms, therefore a system with a PE of 8 is acceptable. I note the relevant amendment which cites a PE of 7 for a five-bedroom house. However, this application is not for a five bedroom house. It is for three separate houses: two no. two bed houses and a one bed unit. I do not consider that the normal drop-off in population equivalent for a single house as set out in the amendment to the Code of Practice applies to a three-house development. The overall population equivalent should be calculated as three separate houses.
- 7.2.7. It is unclear in the application as to who would be ultimately responsible for the upkeep of the system. Notwithstanding the familial link between the applicants there is no indication as to who would own or control the wastewater treatment system. I consider that an agreement would be required between all applicants clearly setting out the responsibilities and obligations with regard to the upkeep and maintenance of the proposed wastewater treatment system. The EPA state that it is a matter for each local authority whether it is permissible to have more than one house sharing a septic tank. Section 4.3.2 (Waste Water Treatment Infrastructure – Local Service Centres/Settlement Nodes) of Variation No. 1 of the Waterford County Development

Plan 2011-2017 states that “It is preferred that individual on-site effluent treatment systems for each dwelling are used or that connection to the municipal wastewater treatment facility is made (where residual capacity exists)”. Section 4.4 (Unserviced Areas) and Section 11.2 (Wastewater Treatment – Unserviced Areas) of the Variation are also relevant. However, neither section explicitly permits nor prohibits multiple houses using the same system. Notwithstanding, the planning authority decision states that the Council considers it contrary to best practice and, in the absence of any appropriate agreement between the parties, I would agree.

- 7.2.8. Having regard to the foregoing, I consider that proposed wastewater treatment system proposed is deficient in capacity as I do not agree that the population equivalent as per the August 2013 amendment to the Code of Practice can be applied to three separate houses. I also consider that a comprehensive agreement between all parties as to how the proposed system would maintained, repaired, how all costs would be divided etc. is critical. In the absence of a robust agreement in this regard it is possible that the proposed system would not be adequately maintained leading to a public health issue. I consider this should be included as a reason for refusal.

7.3. Residential Amenity Standards

- 7.3.1. The third reason for refusal considers that the absence of designated private open space and the siting of the garage would result in substandard amenities for the proposed houses and negatively affect the amenities of the existing house.
- 7.3.2. I acknowledge that the proposed development is for three family members and therefore the allocation of separate private open space areas is not as critical as normal given the circumstances outlined in the application. The site area is relatively substantial, and I consider adequate space is available to serve three units. The floor areas of both proposed units exceed the floor areas set out in Table 5.1 (Space provision and room sizes for typical dwellings) of the Quality Housing for Sustainable Communities Guidelines (2007). It appears that car parking would be accommodated in the tarmacked area between the existing house and outbuildings.
- 7.3.3. The proposed garage is located approximately two metres from the rear/south elevation of Outbuilding No. 2 and would likely affect internal light into the converted outbuilding. It appears that there is potential for a slight relocation of the footprint of

this structure to remove it further from Outbuilding No. 2 in a southerly direction which would improve internal light to the outbuilding. There are conflicting uses cited for the proposed structure between the Site Layout and floor plan drawings. Despite acknowledging this in the grounds of appeal, no revised drawings have been submitted. The external design of the structure appears to reflect its original purpose, i.e. family room, office, gym, rather than the purposes set out in the floor plan and confirmed in the grounds of appeal, i.e. store, workshop, timber shed. I consider that a revised floor plan and elevation drawing reflecting the proposed use would be necessary as a compliance condition and the structure should be repositioned several metres further south.

- 7.3.4. I consider that the allocation of specific areas of private open space to each unit is not a critical issue in this application having regard to the nature of the application and the relationship between the applicants. I consider the issue with the siting of the garage can be addressed by the repositioning of the garage further south, which appears to be possible. Therefore, I consider the planning authority's third reason for refusal is addressed.

7.4. Sightlines and Traffic Safety

- 7.4.1. The fourth reason for refusal in the planning authority's decision relates to traffic hazard.
- 7.4.2. There are two separate vehicular access points on the roadside boundary. The main vehicular access point serves the existing house and outbuildings. This access point is to be upgraded as it is currently substandard. The grounds of appeal state that the secondary entrance, further south on the roadside boundary, is only going to be used during the construction period. I consider a condition would be warranted which would require this entrance to be appropriately closed up once construction has been completed. The grounds of appeal state that there is no increase in traffic movements as a result of the development as there would be no increase in persons using the development. It also states that if a planning application was sought for three additional bedrooms to the existing house, no upgrade of the access would be required. I consider that the upgrade of this vehicular access is necessary. The number of houses being served increases from one to three, therefore there would be a substantial

intensification of use of the entrance. The statement that there would be no increase in traffic movements from the site because the two proposed occupants of the outbuildings visit from time to time is not accepted. The proposed occupants currently visit intermittently, living permanently at the site would greatly increase traffic movements.

7.4.3. Section 10.4 (Sightline Requirements) of Variation No. 1 of the County Development Plan 2011-2017 sets out minimum sightlines of 55 metres on 80kph local roads. The Site Layout identifies 55 metres sightlines to each side of the existing vehicular entrance to the nearside road edge. To achieve these sightlines to the south the existing boundary wall immediately adjacent to the vehicular entrance has to be set back. Notwithstanding the scale of the Site Layout, I consider that the required sightlines can be achieved. I consider that a condition requiring the block wall to be set back/rebuilt behind the required sightline to the south, prior to occupation of either of the outbuildings, should be included in any grant of permission.

7.4.4. The planning authority decision considers that accessing the site from the two access points would result in conflicting traffic movements both entering and exiting the site and the potential for traffic hazard on the public road. Subject to the upgrade of the main entrance and closure of the secondary access post-development, I do not consider there would be any undue risk of traffic conflict arising from access to or egress from a vehicular entrance in a lightly trafficked rural area where minimum sightlines are achieved. I consider the planning authority's fourth reason for refusal is not applicable.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, remote from and with no hydrological pathway to any 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.

8.0 Recommendation

- 8.1. I recommend that the planning application be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the location of the site within a Stronger Rural Area 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 in an area where housing is restricted to persons demonstrating local need in accordance with the current Waterford County Development Plan 2011-2017, as varied, it is considered that the applicants do not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The provisions of Section 7.6 (Conversion of Outhouses) of Variation No. 1 of the Plan do not automatically apply. The proposed development, in the absence of any robust identified locally based need for the conversion of the outbuildings to residential accommodation, would contribute to the encroachment of random rural residential 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.
2. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the proposed wastewater treatment system has sufficient capacity to cater for the three existing and proposed houses. In addition, in the absence of a comprehensive agreement setting out the applicants' obligations and responsibilities in relation to the installation, maintenance and upkeep of a shared wastewater treatment system, the Board is not satisfied that the system would be adequately maintained on an ongoing basis. Therefore, the proposed development would

be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

23.03.2021