



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309066-20

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<b>Development</b>	Construction of house, garage, wastewater treatment system and vehicular entrance
<b>Location</b>	Barristown, Passage East, Co. Waterford
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	20/754
<b>Applicant(s)</b>	Aideen Larkin & Patrick Coffey
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party v Grant of Permission
<b>Appellant(s)</b>	Brendan Walsh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13.04.2021
<b>Inspector</b>	Anthony Kelly

## **1.0 Site Location and Description**

- 1.1. The site is located approx. 3kms to the south east of the outskirts of Waterford city and approx. 2.5km south west of Passage East in east Co. Waterford.
- 1.2. The site is located on a local road. Agriculture is the main activity in the vicinity and there are a number of one-off houses in the area. The site is almost entirely covered by dense coniferous woodland. Ground levels reduce on site in a north east direction.
- 1.3. The site has an area of 0.9 hectares.

## **2.0 Proposed Development**

- 2.1. Permission is sought for a house, garage, vehicular entrance, a foul water treatment system and percolation area.
- 2.2. The proposed house has a floor area of 185sqm and a maximum height of approx. 5.5 metres. The house is to be externally finished in render and timber cladding with a slate roof. The proposed garage has a floor area of 26sqm and a height of approx. 5.4 metres. It is to be externally finished in render with a slate roof.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was granted subject to eight conditions relating to, inter alia, an occupancy condition, surface water disposal, the vehicular entrance and sightlines, wastewater treatment, use of the garage and development contributions.

### **3.2. Planning Authority Reports**

- 3.2.1. The Planning Report forms the basis of the Council's decision. The report states that, having regard to the nature of the development proposed, the zoning provisions and the type of development in the vicinity, subject to conditions, the proposed

development would be in accordance with the proper planning and sustainable development of the area.

### **3.2.2. Other Technical Reports**

None.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

A submission was made by Brendan Walsh who lives adjacent to the north west of the site. The issues raised are covered by the grounds of appeal.

## **4.0 Planning History**

### **4.1.1. There have been three previous recent relevant planning applications on site:**

P.A. Reg. Ref. 17/820 – Permission was refused in 2018 for a 1 ½ storey house, entrance, and wastewater treatment system because (i) no genuine housing need was established, and (ii) haphazard development as the house would infringe the existing building line.

P.A. Reg. Ref. 18/218 – An application for permission for a dormer house, entrance, and wastewater system was deemed withdrawn in 2019.

P.A. Reg. Ref. 20/212 – Outline permission was refused in 2020, to the same applicants as the current application, because no genuine housing need had been established.

## **5.0 Policy Context**

### **5.1. Waterford County Development Plan 2011 – 2017**

- 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. Rural housing is addressed in Chapter 4 (Settlement).

### **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 natural heritage site is Lower River Suir SAC approx. 2.1km to the north west.

### **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 proposed development. 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 grounds of appeal are submitted by Brendan Walsh who lives in the adjoining property to the north west of the site. The main points made can be summarised as follows:

- The appellant acknowledges the medical circumstances outlined in the application and does not dispute them. However, there will be significant and irreversible impact on flora and fauna, both on site and in the surrounding area. The trees on site are very important, positively contributing to biodiversity and supporting species such as red squirrel, bats, hedgehog, birds, insects, fungi etc. Loss of the trees will incur a significant environmental impact.
- As of 30.12.2020 there are 19 no. houses/sites for sale in the applicants' desired area on daft.ie, copies included in the grounds of appeal. There is a continuous supply of sites/houses which meet the wishes of the applicants, close to University Hospital Waterford (UHW) and closer to where family support can be maximised.
- The development will provide unrestricted views of the appellant's house and gardens along his south east boundary. The positioning of the house entrance and car park maximises intrusion, imposition and adverse impacts.
- There are previously refused planning applications on site, including to the applicants. The Planner's Report does not indicate how this application differs fundamentally from 20/212 and changes the critical factors previously provided.
- The supplementary form, supporting letter from the applicants' planning consultant and additional documentation submitted with the planning application was not available to view online and this limited the extent of the observation that could be made. Criteria in relation to compliance with the rural housing policy cannot be compared with the previous application. Two 'Application – Cover Letter' documents were added online after the grant of permission.

- Section 8 of the Planning Application Form was not completed, and a white site notice was displayed on site instead of a yellow notice.
- The development would be the fifth house in less than 250 metres of roadside if the backland house is considered.
- An historic artesian well is located at the proposed vehicular entrance. The soil in the area is 'heavy' and there are numerous artesian springs. Consequently the field was forested to achieve a productive use. The Site Suitability Report photographs show grey soil with minimal shallow root penetration. Water was 1m below the surface. This would rise by at least 0.6 metres in winter. Test holes for previous proposals overflowed in winter. Test holes are backfilled, and the water table cannot be observed. The ground inclines to the west/south west. The system is upslope and close to the stream and will impact it by the preferential flow paths and those formed by the rooting systems of the woodland.
- Boreholes in this site area produce water which is highly acidic and contains above EU levels of iron and manganese. The proposed borehole is adjacent to grasslands where slurry is regularly applied.
- The Planner's Report states pre-planning took place. The applicants state it did not.
- The Planner's Report decision is based on one element of the development plan, the 'zoning provisions', and the vague 'type of development in the vicinity'.
- The application form requires the name of the adult for whom rural housing need is being established.

## 6.2. Applicants' Response

The main points made can be summarised as follows:

- The background to the appeal is detailed in the planning application. The housing need is based on exceptional health grounds in respect of the applicants' daughter who has very specific needs in terms of living environment and proximity to UHW. Health grounds are a stand-alone criterion toward housing need compliance in the County Development Plan. In the previous

case the Planner erred in considering an applicant had to be both local to the area and make a case on exceptional health grounds. It is also understood personal information in support of the application did not find its way to the planner responsible for the final recommendation.

- Impact on flora and fauna has been referenced by the appellant. An 'Ecological Survey' dated 24.01.2021 and prepared by Dr. Jane Russell-O'Connor has been submitted which confirms that flora and fauna habitats on site are of very limited value. It states the site has very limited wildlife presence due to the nature and condition of the tree plantation. It also states the contribution of the trees to the ecology of the area is very limited.
- The trees were planted in 1995 with a 25-year lifespan. They were planned to be felled last year but were not. The development should enhance the appellant's amenity arising from the felling of the trees which will increase natural daylight and sunlight. The ground level above the common boundary is 2.5 metres higher than the finished floor level of the proposed house. Shrub and tree planting next to this boundary will ensure complete privacy as shown on an indicative layout plan and section submitted with this response.
- The cover letter submitted by the applicant, Aileen Larkin, as part of the planning application is attached, outlining how the proposed site is optimum to meet the very specific needs of the applicants and their family. Letters from various consultants and a doctor with regard to the applicants' daughter also accompanies the applicants' response, as submitted with the planning application. A response is also submitted from the applicants relating to other sites and houses referenced in the grounds of appeal. No site is as suitable as the current site and the applicants stopped looking after going sale agreed more than a year ago. None on the list provided is more suitable and reasons are set out. Time is also a factor. A new build is infinitely better than buying an older house.
- The applicants are not aware that all of the information was not online. The application was available for viewing in the Council office. As the Board will be considering the application de novo, the appellant's entitlement to a full and fair hearing has not been compromised.

- The planning authority insisted on a white site notice and the appellant's entitlement to make an observation was not compromised.
- The Planner's Report stated the development does not represent ribbon development. This consistent with 20/212 and 17/820. The fifth house is 220 metres from the public road and cannot be seen in the context of the existing houses and the proposed house.
- A report has been prepared by Byrne & McCabe Design Ltd. Architecture and Engineering Services in relation to the artesian well and ground conditions. The design of the system is suitable for the site and complies to the current code of practice. The artesian well should be piped under the entrance and left exposed where possible. It is sufficiently far from the percolation area not to be a receptor at risk. There was no evidence in the Site Characterisation Form that the water table fluctuates. To rectify this the required 900mm of unsaturated soil below the percolation trench should be taken from the 0.6 metre level. In relation to preferential flow paths formed by tree roots, the proposal is to remove the trees. Replanted trees should not be within 5 metres of the percolation area.
- Farmers cannot spread slurry within 10 metres of the watercourse along the south eastern boundary or within 20 metres of a domestic well. The proposed well is 10 metres from the stream. The well can be relocated slightly.
- The pre-planning meeting referred to related to 20/212.
- It is the applicants' daughter who has exceptional health circumstances, not either of the applicants. The applicants are only required to demonstrate that the house is justified on the criteria of the policy.
- Felling of the woodland will require a felling licence and the applicants are aware of this. A previous application for a licence was incomplete. Whether or not a house is permitted the trees are at the end of their lifespan and will be felled. They were originally planted as a 'Christmas tree farm' but were not thinned or maintained as required. The rear of the site will be replanted with oak and birch trees which would create greater biodiversity than currently exists.



### 6.3. Planning Authority Response

None.

### 6.4. Observations

None.

### 6.5. Further Responses

A further response was received from Brendan Walsh. The main issues can be summarised as follows:

- The ecological survey was carried out on 22.01.2021. A more comprehensive survey in other seasons should be carried out. Foxes can be seen in winter. The trees were planted as it is bogland. Felling the trees would release water and reinstate the bog. There is a wide range of flora and fauna and habitats develop over time. Red squirrels have been seen. The reference in the Ecological Survey to 'no protected or rare species of plants identified in any of the habitats on site' is a general comment from a non-peer reviewed unpublished article and applied to the site. The appellant considers, in relation to the comment that more natural light would enter his home, that the welfare of the animals and trees is more important and any plan to destroy the trees would be objected to.
- The consultant's report in relation to ground conditions is based on notes as no new test holes were dug. The test/trial holes that were dug were open for one day only, an insufficient length of time.
- There is a consistent supply of houses/sites for sale in the applicants' desired area which do not require the destruction of an established habitat, 20 no. as of 02.03.2021 with a print-out attached. The applicants state that the road from UHW to Barristown is 'quiet but a good quality road'. It is an agricultural area, and the road is regularly blocked by tractors and machinery. UWH can never be reached in six minutes as stated in the doctor's letter. The applicants state 'the site is crucially located in the townland of Passage East'. It is not part of this townland, it is merely part of the postal address.

## 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
- Site Layout / Natural Heritage
- House Design / Impact on Adjacent Residential Amenity
- Wastewater Treatment
- Appropriate Assessment

### 7.1. Compliance with the Rural Housing Policy

- 7.1.1. The application is for a one-off rural house in the rural area. Compliance with the Rural Housing Policy is a core consideration in any application for a house in the rural area. The appellant considers there are other more suitable locations which could satisfy the applicants' requirements.
- 7.1.2. The County's Settlement Strategy encourages the growth of towns and villages whilst catering for genuine housing needs in the rural countryside. The site is in an area designated as an Area Under Urban Pressure under the County Development Plan 2011-2017. Policy SS3 of the Plan states it is policy to cater for the housing requirements of members of the local rural community who have a genuine local housing need and Policy SS4 states it is policy to direct urban generated housing development into adjoining zoned settlements. There are seven categories set out in Section 4.10 (Genuine Local Housing Need) of the Plan. An applicant must demonstrate compliance with one of the criteria. In this application the applicants acknowledge that the only category that applies is '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)'.

- 7.1.3. A cover letter was submitted with the planning application outlining the applicants' circumstances as well as a personal note from Aideen Larkin and letters from a doctor and consultants. The applicants' two-year old daughter has various health issues including being seriously immunosuppressed. The applicants currently rent a house in Dunmore East. The applicants have a 'yellow pass' for UHW which means they will be brought straight to isolation and a paediatric room, bypassing normal procedures.
- 7.1.4. The applicants consider that building a house, where ventilation and infiltration systems could be incorporated in the design, would be a significant advantage. A more rural area would help in controlling visitors to the house in terms of the possibility of germs and infection. Time in getting to UHW, when necessary, is of paramount importance and the site is 5km from UHW. The applicants also state nearby family support is critical as they also have a four year old son. Aideen Larkin's sister and cousin live 4-5km from the site to the north. I acknowledge the applicants' circumstances as set out in the submitted planning application and in their response to the grounds of appeal. The advantages of the site, as set out, are proximity to UHW in the case of emergency, proximity to family support, the opportunity to construct a house with the family's needs catered for and a better ability to control visitors.
- 7.1.5. The rural housing policy relates to persons who may require to live in a particular rural area or close to family support because of exceptional health circumstances. While I accept that there are exceptional health circumstances involved, I do not consider that these necessarily require to be catered for in a rural area and I do not consider that the advantages of the site as set out by the applicants cannot be catered for in a zoned area. While I understand the applicants desire for this location, a zoned area in the eastern or south eastern area of Waterford City would be closer to the hospital. The appellant has submitted a number of alternative houses and sites that could be considered but the applicants have set out their reasons for not considering these.
- 7.1.6. I have considered the documentation submitted and while I acknowledge the applicants' circumstances, I do not consider the health circumstances are such that a one-off rural house in such close proximity to the zoned area of Waterford city is required. I recommend permission be refused on this basis.

## 7.2. Site Layout / Natural Heritage

- 7.2.1. The site is quite distinctive in the local area given it is almost entirely covered by dense coniferous trees. The appellant considers that the development of the site would have an irreversible impact on the flora and fauna of the area and there would be a significant environmental impact. The applicants have submitted an Ecological Survey which considers flora and fauna habitats on site are of very limited value.
- 7.2.2. P.A. Reg. Ref. 17/820 was refused permission because, inter alia, the house was located towards the rear of the site. In this application the house is closer to the road and better reflects the building line created by the two houses to the north west. I consider the house location on site to be acceptable.
- 7.2.3. It appears that all trees on site are to be removed. The applicants state this would require a felling licence and, whether or not permission is granted, the trees will be felled. The applicant's response to the grounds of appeal refers to an attached extract from an incomplete tree felling licence, but this has not been submitted. The rear of the site will be replanted with oak and birch trees, which the applicants consider will create much greater biodiversity. The submitted Site Layout Plan is quite vague. The majority of the site is labelled as an 'overgrown area'. I consider an appropriate landscape plan should be submitted should permission be granted.
- 7.2.4. The site is 0.9 hectares in area and comprises a small, dense woodland area. Section 8.17.2 (Biodiversity) of the County Development Plan 2011-2017 notes that ecosystems such as woodlands are under threat and maintenance and enhancement of biodiversity is a key requirement for policy makers and the wider community. Policy NH 11 states it is policy 'To encourage the retention and creation of sites of local biodiversity value, ecological corridors and networks that connect areas of high conservation value such as woodlands, hedgerows, earth banks and wetlands'. While the woodland on site was created in 1995, according to documentation on file, I consider that it is a feature of local biodiversity value and contributes to the rural environment. I also note that the zoning objective of the site provides for the protection and improvement of rural amenity.
- 7.2.5. To support the removal of these trees, an Ecological Survey was submitted. This survey was carried out on 22.01.2021. While I acknowledge the time constraints involved in preparing a response to the grounds of appeal, the time of year which the

survey was undertaken is not optimal for a comprehensive survey. The Survey refers to the biodiversity in the conifer plantation as 'very poor', the dense bracken and grassy verges to the back of the site is 'degraded and nutrient rich version of these habitats' and the unmanaged grassland 'is not of particular value for nature conservation'. The Survey considers that few birds were occupying the trees, there are no suitable roosting areas for bats and no evidence of badgers, hedgehogs or foxes. There appeared to be a rabbit burrow at the road edge. The Survey concludes that the proposed building works do not pose any significant threats to the ecology of the site and will impact minimally on local habitats of any conservation value.

- 7.2.6. Notwithstanding the conclusion of the Ecological Survey, I consider that it would be contrary to the proper planning and sustainable development of this rural area to permit the removal of this woodland area to accommodate a one-off house. A habitat has evolved at this location since 1995 and, regardless of its specific value, I do not consider it would be appropriate to remove this as part of the planning process. In addition, removal of hedging on land outside the site boundary would be required to achieve sightlines as set out in the Sightlines Drawing submitted with the planning application.
- 7.2.7. I consider that the removal of this woodland area would not be appropriate. While it may be removed by way of a felling licence, I do not consider it appropriate to permit it by way of planning permission in this instance. To remove the woodland would be contrary to Development Plan provisions to retain these areas, would adversely affect the visual and rural amenity of the local environment, would be contrary to the zoning objective and would be contrary to the proper planning and sustainable development of the area.

### **7.3. House Design / Impact on Adjacent Residential Amenity**

- 7.3.1. The appellant considers that the proposed development would have an undue adverse impact on the residential amenity of his property.
- 7.3.2. The proposed house is a single-storey detached house. There is a bedroom area and a living area either side of a flat-roof central entrance hall. External finishes are a mixture of timber cladding and render. The bedroom area is slightly higher than the living area. The applicants consider the house is designed having regard to best

practice in rural house design practice involving the principle in designing with narrow plan form and I agree that the proposed house design is acceptable in principle.

- 7.3.3. The house is orientated with a relatively narrow elevation to the public road and the front/entrance area to the north west facing the appellant's property. Given the separation distance to the party site boundary, approx. 25 metres, and the difference between the ground level at the boundary and the finished floor level of the proposed house, 2.5 metres, I do not consider undue overlooking would occur from the proposed house. An appropriate site boundary could be provided as part of landscaping proposals.
- 7.3.4. Given the relatively limited size of the house and garage, and the separation distances, no overbearing or shadowing impact would result.
- 7.3.5. I consider the proposed house design would be acceptable and there would be no undue adverse impact on the residential amenity of the adjacent property.

#### **7.4. Wastewater Treatment**

- 7.4.1. The wastewater treatment system has been referenced in the grounds of appeal and is a consideration in applications for one-off houses. This issue was not included as a reason for refusal in previous applications on site.
- 7.4.2. The site is in an area with a locally important aquifer of high vulnerability. Bedrock was encountered in the 1.5 metres deep trial hole at a depth of 1.5 metres and the water table was encountered at a depth of 1 metre. Soil conditions in the trial hole was brown/grey clay. Table B.2 (Response Matrix for On-Site Treatment Systems) of the Code of Practice: Wastewater Treatment Systems for Single Houses (p.e.  $\leq 10$ ) published by the EPA in 2009 indicates that the site falls within the R1 response category where an on-site system is acceptable subject to normal good practice.
- 7.4.3. A T-test result of 46.69 was achieved. A P-test was also carried out with a result of 37.14. There was no trial hole or percolation test holes available for examination at the time of my site inspection. These results generally reflect the soil profile set out in the Site Characterisation Form and the current land use. The ground was not wet at the time of my 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. The P-Test results indicate the soil is suitable for a secondary treatment system with polishing filter.

- 7.4.4. The site is relatively large in area. The minimum distances set out in Table 6.1 (Minimum Separation Distances in Metres) such as surface water soakways, the adjacent watercourse, the house, site boundaries and road can be achieved. Table 6.1 states any trees should be 3 metres away. The applicant's response to the grounds of appeal notes that it is proposed to remove existing trees from the site and no trees are to be planted within 5 metres of the percolation area. Table B.3 (Recommended Minimum Distances Between a Receptor and a Percolation Area or Polishing Filter) states that an up-gradient domestic well should be a minimum 15 metres away from a percolation area. The well is approx. two metres above the treatment system and percolation area. The proposed well location shown on the Site Layout Plan is approx. 75 metres away from the percolation area. It is a similar distance from the artesian well and spring referenced in the grounds of appeal. This is down gradient of the treatment system and percolation area and a 40 metres separation distance is required. I consider adequate separation distances can be comfortably achieved on this site.
- 7.4.5. A 72sqm raised percolation area is proposed which is consistent with the provisions of Table 10.1 (Minimum Soil Polishing Filter Areas and Percolation Trench Lengths Required for a Five-Person House).
- 7.4.6. Having regard to the foregoing I consider that a treatment system and raised percolation area are acceptable at this location.

## 7.5. **Appropriate Assessment**

### Preliminary Screening

- 7.5.1. There is a watercourse along the southern and eastern site boundary which flows in a north easterly direction and is culverted across the public road. Though its path cannot definitively be traced, it appears that it may feed into a watercourse approx. 350 metres to the north east of the site. This watercourse discharges to the River Suir approx. 3.5km, hydraulically, to the north, where the Lower River Suir SAC (Site Code 002137) is present. Given the wastewater treatment system and percolation area comply with the EPA Code of Practice, the approximate 15-20 metres separation distance between

the percolation area and the boundary watercourse and the overall hydraulic distance between the site and the SAC, I consider that any possible pollutant would have dissipated to negligible quantity by the time it reached the European site.

#### Preliminary Screening Conclusion

- 7.5.2. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, remote from any European site and with no ecological connection 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**

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 an 'Area Under Urban Pressure' where housing is restricted to persons demonstrating local need in accordance with the current Waterford County Development Plan 2011-2017, it is considered that the applicants do not come within the scope of the housing need criteria as set out in the Development Plan for a house at this location. The proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site contains a coniferous woodland. Policy NH 11 of the Waterford County Development Plan 2011-2017 states, inter alia, it is policy to encourage the retention of sites of local biodiversity value, which this is considered to be. To



permit the development would entail the removal of the woodland environment, would be contrary to the provisions of Policy NH 11 and the zoning objective of the area as set out in the Development Plan to protect and improve rural amenity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Anthony Kelly

Planning Inspector

06.05.2021