



An
Bord
Pleanála

Inspector's Report

ABP-309919-21

Development	Construction of a dormer-type dwelling and associated site works.
Location	Shanbally (ED Ringville), Ring, Dungarvan, Co. Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	20812
Applicant(s)	Bob and Carmel O'Brien.
Type of Application	Outline permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Observer(s)	None.
Date of Site Inspection	23 rd June 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 7.82ha and is located in the townland of Shanbally, approx. 4.5km west of the village of Ring, in south County Waterford. The site is also approx. 4km south of Dungarvan.
- 1.2. The site is located on the L2036, which links Ring and Ballinalira, via the R674. It consists of improved grassland and contains an incline, with land levels falling from south to north, toward the bay. It contains a small, detached structure that is adjacent to the road.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises outline permission for a storey-and-a-half dwelling and associated site works, including new entrance and septic tank system.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused permission on 25th March 2021, for 1 reason as follows: -
 1. Having regard to the location of the site of the proposed development, which is designated as an Area Under Urban Pressure, in the Waterford County Development Plan 2011-2017, as amended and extended, it is considered the applicant, has failed to demonstrate a genuine need for housing at this location. The applicant has failed to demonstrate compliance with Policies SS3 and Section 4.10 of the Waterford County Development Plan 2011-2017, as amended and extended. The proposed development, in the absence of any definable or demonstrable need for the house in compliance with the development plan, 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 policies of the Waterford County

Development Plan 2011-2017, as amended and extended and the proper planning and sustainable development of the area and if granted would set an undesirable precedent.

3.2. Planning Authority Reports

3.2.1. Planning Reports dated 15th December 2020 and 23rd March 2021 have been provided. The first report states that the site is a rural area that is designated by the development plan as an Area Under Urban Pressure, which compliance with Section 4.10 of the development should be demonstrated. Such demonstration is stated as having not been provided and the report recommends that additional information be sought in relation to the applicant's submission that they farm the wider landholding. The report indicates that the proposed location of the house is acceptable and that the site is capable of accommodating a well-designed house, subject to appropriate landscaping. A request for additional information is recommended, whereby the applicant was requested to provide details regarding the historic and current farm operations on the landholding, including submission of herd numbers, stock transfers, farm accounts, etc.

3.2.2. The second report followed receipt of the additional information response and it expresses ongoing concerns regarding compliance with rural housing policy. The report recommends that permission be refused for 1 reason, which is consistent with the Planning Authority's decision to refuse permission.

3.2.3. Other Technical Reports

The Planning Report indicates that no internal departments were consulted on the application.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. No submissions received.

4.0 Planning History

05/1706 – Outline permission refused to the applicants for the construction of a one-and-a-half-storey house, garage and associated site works. Permission was refused for 2 reasons, relating to (1) visual impact and (2) the absence of a substantiated housing need to live in the area.

04/896 – Permission refused to Joseph O’Connell on 22nd July 2005 for the construction of a two-storey house, stables, groom’s apartment and associated site works.

5.0 Policy Context

5.1. Waterford City and County Development Plan 2022-2028

5.1.1. The new City and County Development Plan was adopted on 7th June 2022 and took effect on 19th July 2022.

5.1.2. Section 2.10 'Rural Areas' states that the entire county is now identified as being under urban influence and that the provision of rural housing shall be based on considerations of economic, social or local housing need to live in a rural area, together with siting and design criteria. Policy H28 is of relevance to the appeal.

H28: We will facilitate the provision of single housing in the countryside, in rural areas under urban influence, based on the core consideration of demonstrable economic, social or local need to live in a rural area, as well as general siting and design criteria as set out in this plan and in relevant statutory planning guidelines, having regard to the viability of smaller towns and rural settlements.

5.2. National Planning Policy Framework

5.2.1. National Policy Objective 19 is of relevance to the proposed development. It requires 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;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements’.*

5.3. Sustainable Rural Housing Guidelines for Planning Authorities

- 5.3.1. The Guidelines identify a number of rural area typologies and accompanying Map 1 provides an indicative outline of these area typologies. According to this indicative map, the subject site is in a ‘stronger rural area’. It is noted from the Guidelines that this map is an indicative guide to the rural area types only and that the development plan process should be used to identify different types of rural area.
- 5.3.2. For stronger rural areas, the Guidelines outline that the development plan should strike an appropriate balance between development activity in smaller towns and villages and wider rural areas. The development plan should aim to strike a reasonable balance between: (1) Accommodating proposals for individual houses in rural areas subject to good practice in relation to matters such as siting and design as outlined elsewhere in these guidelines, (2) Actively stimulating and facilitating new housing development in smaller towns and villages to provide for balanced urban and rural choices in the new housing market and (3) Carefully monitoring development trends to avoid areas becoming overdeveloped in terms of leading, for example, to extensive ribbon development.
- 5.3.3. The Guidelines require a distinction to be made between urban and rural generated housing needs, in the different rural area types. In relation to the identification of people with rural generated housing needs, the Guidelines refer to ‘Persons who are an intrinsic part of the rural community’ and ‘Persons working full-time or part-time in rural areas. Of relevance to this appeal, ‘Persons who are an intrinsic part of the rural community’ are identified as having “*spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include*

farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes.”

5.4. Natural Heritage Designations

- 5.4.1. The site is not located within or adjacent to any European site, the closest such site being Dungarvan Harbour SPA (Site Code 004032), which is approx. 950m north. Dungarvan Harbour is also designated as a proposed Natural Heritage Area (Site Code 000663)

5.5. EIA Screening

- 5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
 - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.
- 5.5.3. The subject development comprises a proposed house and associated site works, including new entrance and septic tank system, on a site of 7.8ha (the proposed house is indicated as occupying an area of c.250sqm). It falls well below both of the applicable thresholds for mandatory EIA, as set out above.
- 5.5.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, it is considered that there is no 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

- The Planning Authority has no objection to the development in terms of house design, siting, site access or servicing. The refusal relates solely to housing need.
- Rural housing need
 - The application is for a replacement house, where the original house and farm buildings were located. The decision on the application should be made on this basis, notwithstanding any agricultural activity on the land or the necessity to demonstrate a genuine housing need.
 - The previous occupier of the old farmhouse, Michael Curran, was accommodated by the Planning Authority in a demountable structure adjacent to the proposed entrance. A copy of the ESB networks connection agreement for the site is provided as part of the appeal
 - The farmhouse was last occupied 50 years ago and Mr. Curran died in 2009.
 - The Planning Authority requested submission of herd number, stock transfers, farm accounts and, whilst the applicant addressed this request, it is their prerogative to decide how they farm the land. There is no requirement to hold a herd number.
 - It is illogical that a farmer should be prevented from constructing a house on the land, where there is no other house at present and where there was previously.
 - The applicant, Carmel O'Brien will be retiring next year and it is the applicants' intention to move to the location at that time and farm the land. The applicant, Brendan O'Brien, has farmed the land since 2005.
 - Permission has been granted to other, less direct family relations on the landholding. The applicant, Brendan O'Brien, is the only direct nephew of the

previous landowner and is therefore the only favoured nephew, in accordance with the development plan requirement.

- The applicants have owned the land for 16 years and the Board has discretion to use its powers to determine that the application falls within the spirit of what was intended by the development plan, in respect of site ownership.

6.2. Planning Authority Response

6.2.1. None received.

6.3. Observations

6.3.1. None received.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:

- Compliance with the rural housing strategy,
- Design, layout and residential amenity,
- Access,
- Drainage,
- Appropriate assessment.

7.2. Compliance with Rural Housing Strategy

7.2.1. The subject site is located approx. 4km south of Dungarvan and 4.5km west of the village of Ring, in an area identified by the development plan as being an Area Under Urban Influence.

7.2.2. The applicant states that they have owned the land for 16 years and are applying for a replacement house, where the original house and farm buildings were located, and that their intention is to move to the site and farm the land, following the retirement of the applicant, Carmel O'Brien. The land is currently leased to a third-party. The applicants further state that there was an original farmhouse on the landholding,

which was last occupied 50 years ago and that the previous landowner, Mr. Michael Curran, was accommodated by the local authority in a demountable structure adjacent to the proposed site access.

- 7.2.3. The applicants submit that the decision on the application should be made on the basis of a replacement house, notwithstanding any agricultural activity on the land or the necessity to demonstrate a genuine housing need.
- 7.2.4. Historic mapping pertaining to the landholding identifies the presence of buildings in the area immediately west of the proposed house, but these buildings are no longer present on the site. I do not accept the appellants' submission that the presence of a farmhouse on the landholding many years ago justifies the construction of a new house, as proposed. Such logic, in my view, runs contrary to the thrust of local and national planning policies that require applicants for rural housing to have a demonstrable and functional need to live in the rural area.
- 7.2.5. Section 2.10 'Rural Areas' of the new development plan states that the entire county is now identified as being under urban influence and Policy H28 is the applicable rural housing policy, stating that in these areas housing proposals will be facilitated based on the core consideration of demonstrable economic, social or local need to live in a rural area, as well as general siting and design criteria.
- 7.2.6. National Policy Objective (NPO) 19 of the National Planning Framework is also pertinent to the appeal and it states that in areas under strong urban influence the provision of single housing in the countryside should be facilitated based on the core consideration of demonstrable economic or social need to live in the 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.
- 7.2.7. From the information provided with the application and appeal, I do not consider the applicant has demonstrated compliance with policy H28 and NPO19 and in particular has failed to provide adequate information to substantiate an economic or social need to live in this area. A refusal of permission is recommended on this basis.

7.3. **Design, Layout and Residential Amenity**

- 7.3.1. Limited details of the proposed house have been provided, given the outline nature of the application. The site layout drawing identifies that it would be located 33m

north of the public road, on a part of the landholding that is approx. 8m below the level of the road. The application form indicates that it would have a gross floor area of c.250sqm.

- 7.3.2. I am satisfied that the subject site is capable of accommodating a suitably designed and scaled house and no third-party amenity impacts are likely to arise. Should the Board decide to grant permission, I recommend a condition be attached stipulating that the approved house shall have a maximum gross floor area of 250sqm. The detailed design and internal layout of the house will be agreed as part of a subsequent application for permission consequent.

7.4. **Access**

- 7.4.1. Access is proposed to be taken from the area where the demountable structure is currently located. Sightlines of 2.4m x 55m are identified as achievable in both directions from the site access.
- 7.4.2. The speed limit on the public road is unclear as there were no speed limit signs in place at the time of my site visit. The Roads Department were not consulted on the application.
- 7.4.3. The identified 55m sightline distance is marginally below the minimum 59m sightline recommended for a road with a design speed of 60km/h. I note that the application site red line boundary extends over 100m eastward from the point of the site access and that achievable sightlines can be improved with removal/realignment of some of the roadside hedge in the immediate area of the entrance. Should the Board decide to grant permission I recommend a condition be attached requiring the applicant to submit and agree proposals for visibility sightlines with the Planning Authority, prior to the commencement of development.

7.5. **Drainage**

Foul drainage

- 7.5.1. The development includes the provision of a septic tank system and percolation area. The Site Suitability Assessment Report submitted with the application identifies the category of aquifer as 'locally important', with a vulnerability classification of 'high'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice

Domestic Wastewater Treatment Systems identifies an 'R1' response category i.e., acceptable subject to normal good practice.

- 7.5.2. The report states that there is a functioning borewell at the entrance to the site. The location of the borewell is not identified on the site layout drawing but it is likely to be in excess of 50m from the septic tank system, in accordance with the requirements of the Code of Practice.
- 7.5.3. The Report indicates that a trial hole with a depth of 2.1m recorded 400mm of topsoil, 1200mm of subsoil with stones/cobbles and 500mm of layered scattered stone, cobbles and subsoil. The report states that the water table and bedrock were not encountered. In relation to the percolation characteristics of the soil, a T-test result of 5.33 min/25mm was returned. The report concludes that the site is suitable for the installation of a septic tank system or packaged wastewater treatment system and polishing filter and proposes that a septic tank system be installed.
- 7.5.4. Having regard to the site percolation test results, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. Should the Bord decide to grant permission, I recommend a condition be attached requiring the detailed layout of the proposed system to be agreed with the Planning Authority, to ensure adequate separation from the nearby borewell is maintained.

Surface water drainage

- 7.5.5. Surface water drainage is indicated on the application form as draining to a soakpit but further proposals are not outlined within the application. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree proposals for the drainage of surface water from the site, with the Planning Authority.

7.6. Appropriate Assessment

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.6.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

7.6.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

Screening for Appropriate Assessment- Test of likely significant effects

7.6.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

7.6.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

7.6.5. The development is described at Section 2 of this Report. In summary, outline permission is sought for the construction of a storey-and-a-half dwelling and associated site works, including new entrance and septic tank system. The site forms part of a larger landholding with a stated area of 7.82ha and is located in the townland of Shanbally, approx. 4.5km west of Ring. Foul drainage is proposed to drain to an on-site septic tank system and surface water is proposed to drain to a soakpit within the site.

European Sites

7.6.6. The site is not located within or adjacent to any European site. There are a number of European sites within a 15km search zone, as follows: -

- Dungarvan Harbour SPA (Site Code 004032), c.950m north,
- Blackwater River (Cork/Waterford) SAC (Site Code 002170), c.2km south-west,
- Helvick Head to Ballyquin SPA (Site Code 004192), c.4.9km east,
- Helvick Head SAC (Site Code 000665), c. 5km east, and
- Mid-Waterford Coast SPA (Site Code 004193), c. 11.3km north-east.

7.6.7. There are no open watercourses or drains within the site or adjacent to its boundaries and the Site Suitability Assessment Report submitted with the application identifies that the closest drainage ditch is c.175m west.

7.6.8. The construction phase of the development may give rise to the presence of surface waters with suspended solid content, but in view of the distance to the nearest drainage channel, it is unlikely that any suspended solids would be transferred to this drain. Taken together with the smallscale nature of the development, I am satisfied that there is no possibility of significant effects on any European site, arising from the proposed development can be excluded at this stage.

Screening Determination

7.6.9. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects for any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.6.10. This determination is based on the following:

- The separation distance between the subject site and European sites within the zone of potential influence.
- The smallscale nature of the development, which does not require specialist construction methods.

8.0 Recommendation

8.1. I recommend that outline permission be refused for the following reasons and considerations set out hereunder.

9.0 Reasons and Considerations

Having regard to:

- The location of the site within an area under urban influence, as identified by the Waterford City and County Development Plan 2022-2028,
- The provisions of the Waterford City and County Development Plan 2022-2028, which facilitates rural housing proposals in areas under urban influence based on

the core consideration of demonstrable economic, social or local need to live in a rural area, as well as general siting and design criteria,

- National Policy Objective 19 of the National Planning Framework which, for rural areas under urban influence seeks to facilitate rural housing proposals based on the core consideration of demonstrable economic or social need to live in the 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, and
- The documentation on file provided as part of the application and appeal

The Board considers that, in the absence of a demonstrated housing need at this location, the proposed development would result in a haphazard and unsustainable form of 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.

Barry O'Donnell
Planning Inspector

27th July 2022.