



An  
Bord  
Pleanála

## Inspector's Report ABP-310126-21.

---

<b>Development</b>	Construct dwellinghouse.
<b>Location</b>	Knuttery, Burnfoot, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	21/4324.
<b>Applicant</b>	Michael Junior O' Donoghue.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Michael Junior O' Donoghue.
<b>Observer</b>	None.
<b>Date of Site Inspection</b>	12 June 2021.
<b>Inspector</b>	Mairead Kenny.

## **1.0 Site Location and Description**

- 1.1. The site is located in a rural area in the townland of Knuttery, which is north-east of the village of Burnfort in north Co Cork. This is an upland area and I would describe the character of the landscape as being transitional between more low land agricultural areas and more elevated and mountainous lands.
- 1.2. The subject site is located at the eastern side of the 17.9 ha holding which the applicant owns. The site adjoins a single carriageway local road and the applicant's landholding straddles the road. The lands to the south may be described as good agricultural land and are under pasture. The applicant's family home and current place of residence are identified and are outside the 17.9 ha holding but in the immediate vicinity.
- 1.3. The lands to the north of the public road comprise ground which is more marginal in terms of suitability for agriculture. However, at the time of inspection there were cattle on land in the immediate vicinity of the subject site.
- 1.4. The stated site area is 0.3 ha and the site topography slope to the north.

## **2.0 Proposed Development**

- 2.1. Permission is sought for the construction of a single-storey dwelling house with a stated floor area of 141 m<sup>2</sup>.
- 2.2. The proposed development would be served by a private well.
- 2.3. Wastewater treatment and disposal is to be by way of a Tricel Novo Package Plant and Puraflo Tertiary Treatment.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to refuse permission for the following reason:

- prejudicial to public health due to impermeable nature of terrain and high water table which renders the site unsuitable for development and creates danger of effluent polluting private wells and water courses.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The main points of the planner's report are:

- The site is in a rural area under Strong Urban influence and policy RCI 4–2 and GB 1-1 apply.
- Applicants must satisfy the planning authority that the development constitutes a rural generated housing need based on social and/or economic links as set out in the development plan.
- The applicant owns the site and has resided in the family home all his life. The applicant is a farmer and does not own a residential property and has not obtained planning permission previously. The proposal is acceptable under objective RCI 4-2(d).
- Improvements to the proportions and design of the dwelling house would be required and a landscape plan would be required. There would be no adverse impact on residential amenity.
- The site is outside the flood risk zones.
- The report of the Area Engineer notes that the site fails the standard septic tank treatment tests with a high and elevated t-value, is an unsuitable site for development and there are concerns relating to the provision of a safe water supply.
- The Area Engineer also raises concerns relating to an application for 22 wind turbines under consideration under ABP-308885 and the proximity of the site.
- The site is outside the study area of the M20 Cork to Limerick improvement scheme.
- The site is 135m from a watercourse and 3km from the Blackwater River SAC. There are adjoining drains. In the context of the Area Engineer's report I am not satisfied that significant impacts on Natura sites can be screened out.

- A refusal of permission is recommended. The applicant should be advised that the planning authority would be willing to consider a suitable alternative site on the holding.

### 3.2.2. Other Technical Reports

#### Senior Executive Planner

This notes that the site fails the standard septic tank treatment tests with a high and elevated t-value and that the site is a bog and is un serviced. The site is unsuitable for development as a residential dwelling.

Area Engineer - recommends refusal.

The report notes that the site is adjacent to 'The Black Bog' and is very wet. There is no public water supply available and concerns about provision of a safe drinking water supply. Notwithstanding the test results submitted by an approved assessor the site is unsuitable for development. The standard septic tank treatment tests failed, and the site is a bog and is unserviced.

The site could be viewed as premature in view of the consideration of the application for Coom Wind Farm - the proposed dwelling is to be within 600 m of the nearest turbine.

### 3.3. Prescribed Bodies

No reports.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

Under ABP-308885-20 an appeal was lodged in relation to an application for permission for a wind energy development known as Coom Green Energy Park and comprising 22 turbines. The site of the current appeal is about 250m from the nearest point of the windfarm proposal site. No decision has been made to date.

Reg. ref. 0613244 and reg. ref. 0710808 – these relate to applications on a larger holding relating to the infilling of low-lying lands with topsoil, subsoil and C&D material to raise levels for agricultural use. The planning authority refused permission for reason related to the unsuitable nature of the road network, which was unsuitable to cater for HGV traffic.

## **5.0 Policy Context**

### **5.1. National Planning Framework, 2018**

- 5.1.1. Under National Policy Objective 19 it is policy to facilitate the provision of single housing in the countryside based on the core consideration of a demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements.

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

- 5.2.1. Section 4.5 refers to protection of water quality. The key to protecting water quality in the context of providing new dwellings in un-sewered rural areas is to ensure that new development is guided toward sites where acceptable wastewater treatment and disposal facilities can be provided, avoiding sites where it is inherently difficult to provide and maintain such facilities, for example sites prone to extremely high water tables and flooding over groundwater is particularly vulnerable to contamination.
- 5.2.2. The document in certain areas sets limits for urban generated housing. It sets out guidance to ensure that where rural housing is permitted there will be a minimum impacts on the environment.
- 5.2.3. The document aims to ensure that planning authorities will provide information and assistance to applicants in identifying suitable sites where they will be able to obtain planning permission.

### **5.3. Development Plan**

Under the provisions of the Cork County Development Plan 2014 the following applies:

- The site is in a Rural Area Under Strong Urban Influence.
- Policy RCI 4-2 applies. There is a requirement that the applicant satisfy the planning authority that their proposal constitutes a genuine rural generated housing need based on their social and/or economic links to a particular local rural area and must demonstrate that they comply with one of a list of criteria. This includes farmers, their sons and daughters who wish to build a first home for permanent occupation on the family farm and persons taking over the ownership and running of a farm on a full-time basis who wish to build a first home on the farm where no existing dwelling is available for their own use.
- Section 4.6.5 states that it is essential in terms of public health and protecting groundwater and overall environmental quality that the original site selection process verifies that the site is suitable in the first instance and that wastewater treatment systems are correctly designed, installed and maintained over its lifetime.
- Section 4.6.6 states that the planning authority will ensure the proposals comply with relevant approved standards. The EPA Code of Practice establishes an overall framework in terms of best practice.
- RCI 6-2 is to ensure the proposals for development incorporating septic tanks or proprietary treatment systems comply with the EPA Code of Practice or any requirements as may be amended by future legislation, guidance or Code of Practice.
- RCI 6-4 states that in order to take a positive approach to facilitating the housing needs of the rural community and occupancy condition shall normally be imposed under section 47.

#### 5.4. **Natural Heritage Designations**

Blackwater River SAC is 3.6km to the north, 5km to the west and 3.3km to the east.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The main points of the appeal are as follows:

- The percolation test carried out as part of this application is referenced. Following this it was proposed to install a secondary treatment system and puraflo filter tertiary treatment filter in accordance with EPA guidelines.
- The above proposal is acceptable and should have been accepted by the planning authority and the Board is requested to review the application and overturn the decision.

### 6.2. **Planning Authority Response**

No response received.

### 6.3. **Observations**

None.

### 6.4. **Further Responses**

None.

## 7.0 **Assessment**

7.1. I consider that the assessment of the issues in this case can be undertaken under the following headings:

- wastewater treatment and water supply
- development plan policy for rural houses
- other issues.

## 7.2. Wastewater Treatment and water supply

- 7.2.1. The site is notable for the presence of a series of drains at the boundaries and in the general area. The water table recorded in the site suitability assessment showed that it is over 2.1 m below ground. The selected site is deemed not to be suitable for a conventional septic tank system, which it is stated would be likely to cause ponding at the surface of the percolation area. The recommended form of effluent disposal comprises a secondary treatment system and a puraflo filter tertiary treatment.
- 7.2.2. I consider that best practice lies in the first instance in site selection. I agree with the general conclusion set out in the decision of the planning authority and in the technical reports and I note in particular that the site assessment results indicate that the subsoil characteristics are poorly suited to the treatment and percolation of wastewater. As such, the selected site requires installation of a system which will require more expert installation and maintenance than a conventional system. The basis for the reason for refusal stated by the planning authority is underlain by concerns relating to the nature of the site, noting the availability of other lands which would be more suitable for on-site wastewater treatment and disposal. I consider that there is a very strong basis for a refusal of permission for this reason. I have referenced above the provisions of the SRHG which includes the provision that planning authorities seek to direct applicants to suitable sites and that new development is guided toward sites where acceptable wastewater treatment and disposal facilities can be provided, avoiding sites where it is inherently difficult to provide and maintain such facilities. I consider that the subject site would be described as one which is inherently of poor suitability for the proposed on-site treatment to serve the dwelling house. As such in the context of other potentially more suitable lands being available to the applicant, I consider that the decision of the planning authority is in line with adopted local policy and with national guidance. I therefore conclude that it would be appropriate that the Board uphold the decision of the planning authority.
- 7.2.3. I note that the issue of the availability of suitable water supply was raised in the technical reports prepared by the planning authority. The appellant has not provided any more information on this matter, but I note that the well is up gradient of and suitably distanced from the proposed treatment system and tertiary filter.



### **7.3. Development plan policy for rural houses.**

- 7.3.1. In terms of compliance with the development plan policy RCI 4-2, the planning authority considered that the applicant complied with the requirements. The applicant has resided all of his life in the local rural area in which the site is situated and the location of the family home is nearby. The applicant indicates that his full-time occupation is as a farmer and that he is the owner of the 17.9 ha holding, which he acquired this year. He has not previously built a home in a rural area or received planning permission for such development. The purpose of the application is to provide a dwelling house for his own use to enable him to reside close to his parents. Based on this information it would appear to me that the applicant has made a reasonable case under the development plan policy relevant to the granting of permission for a rural house in this area which is close to large urban centres and designated as being under strong urban influence.
- 7.3.2. Following on from the above and noting the provisions of the NPF and based on the available information it may be concluded that there appears to be a demonstrable economic or social need on the applicant's part to live in a rural area. However, I have some reservations about the detail of the information presented with the application. In this regard I consider that the application submissions should be supplemented by more information relating to the connection between the applicant's holding and the family holding including for example with respect to the dairying activity, use of shared facilities and also with respect to any relevant education and agricultural practice.
- 7.3.3. In the event that the Board determined that the proposed development is acceptable in terms of wastewater treatment and water supply, I would recommend that consideration be given to seeking further information from the applicant in relation to his agricultural activities.

### **7.4. Other Issues**

- 7.4.1. The planning authority has raised the issue of prematurity pending a decision on the proposed Coom Windfarm which is currently under consideration by the Board. Having regard to the proximity of the site to the proposed turbines, I consider that there is substance in this matter notwithstanding that it was not identified as a reason

for refusal by the planning authority. The Board may wish to defer consideration of the case pending a decision on the concurrent application. That approach would be appropriate only if the Board was minded to grant permission. In the alternative, the Board may wish to reference this matter in its Direction. A reason for refusal on this basis would constitute a new issue in this case and it would be appropriate to revert to the applicant for further comment prior to a decision on that basis.

- 7.4.2. I note the comments made in the planner's report in relation to the need for minor modifications to the proposed dwelling house. The proposed dwelling house is in my opinion of reasonable scale and is a single-storey structure, which I consider appropriate at this site. I consider that the development is acceptable in terms of landscape and visual amenity. This is not an area subject of high amenity designation or scenic views.
- 7.4.3. I consider that the adjacent local road serving the site is adequate and that suitable sightlines can be provided.

## 7.5. **Appropriate Assessment**

7.5.1. Blackwater River SAC is 3.6km to the north, 5km to the west and 3.3km to the east.

7.5.2. The Conservation objectives relate to the maintenance or restoration of the favourable conservation condition of the qualifying interests of the site. The qualifying interests are:

- 1029 Freshwater Pearl Mussel *Margaritifera margaritifera*
- 1092 White-clawed Crayfish *Austropotamobius pallipes*
- 1095 Sea Lamprey *Petromyzon marinus*
- 1096 Brook Lamprey *Lampetra planeri*
- 1099 River Lamprey *Lampetra fluviatilis*
- 1103 Twaite Shad *Alosa fallax*
- 1106 Atlantic Salmon *Salmo salar* (only in fresh water)
- 1130 Estuaries
- 1140 Mudflats and sandflats not covered by seawater at low tide

1220 Perennial vegetation of stony banks

1310 Salicornia and other annuals colonizing mud and sand

1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)

1355 Otter *Lutra lutra*

1410 Mediterranean salt meadows (*Juncetalia maritimi*)

1421 Killarney Fern *Trichomanes speciosum*

3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation

91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles

91E0 \*Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)

91J0 \**Taxus baccata* woods of the British Isles.

- 7.5.3. No information has been provided by the applicant in relation to the potential for significant effects on the River Blackwater SAC and no screening statement for appropriate assessment has been submitted.
- 7.5.4. I note the proximity of the proposed development to a series of drains which appear to provide hydrological connection to the River Blackwater SAC. Some of the species which are particularly sensitive to water quality effects such as freshwater pearl mussel are present in the stretches of the river near the site. In this regard I refer to the detailed Conservation Objectives documentation and associated maps. The development is small in scale. However, the environment is particularly sensitive and the proposed development during construction and / or when occupied may give rise to significant effects either on its own or in combination with other developments.
- 7.5.5. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development, individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the River Blackwater SAC in view of the site's Conservation Objectives.
- 7.5.6. I consider that a reason for refusal based on this consideration would constitute a new issue in this case which should be circulated to the applicant in the event that a

decision is made on this basis. I therefore recommend that if the Board agrees with the reasoning above that the matter be addressed in the Direction on the case.

## 8.0 Recommendation

I recommend that the Board uphold the decision of the planning authority to refuse permission for the reasons and considerations below.

## 9.0 Reasons and Considerations

1. As set out under section 4.5 of the Sustainable Rural Housing Guidelines, the key to protecting water quality in the context of providing new dwellings in unsewered rural areas is to ensure that new development is guided toward sites where acceptable wastewater treatment and disposal facilities can be provided, avoiding sites where it is inherently difficult to provide and maintain. The provisions of section 4.6.5 of the Cork County Development Plan 2014 state that it is essential that in making an application for rural dwellinghouses the original site selection process verifies in the first instance that the site is suitable for an on-site wastewater treatment system.

The proposed development would be prejudicial to public health because it is considered that the subsoil, as indicated by tests, is unsuitable for the treatment of septic tank effluent, notwithstanding the use of a proprietary wastewater treatment system.

It is considered that the proposed development would be contrary to the site selection guidance set out in the Sustainable Rural Housing Guidelines and the Cork County Development Plan and would not be in accordance with the proper planning and sustainable development of the area.

2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development, individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the River Blackwater SAC in view of the site's Conservation Objectives.

---

Mairead Kenny

Senior Planning Inspector

20 June 2021