



An  
Bord  
Pleanála

## Inspector's Report ABP-311188-21

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<b>Development</b>	House and wastewater treatment system, and domestic garage
<b>Location</b>	Gortmore Td, Banteer, County Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	2064/4
<b>Applicant(s)</b>	Paul Ryan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission s.t. conditions
<b>Type of Appeal</b>	Third party against grant
<b>Appellant(s)</b>	Michael Archdeacon
<b>Date of Site Inspection</b>	10 <sup>th</sup> March, 2022
<b>Inspector</b>	Mary Kennelly

## 1.0 Site Location and Description

- 1.1. The site of the proposed development is located in Gortmore Townland, which is a rural area approximately 6.5km to the north-east of Banteer, County Cork. It is located on a rural road L1121, which branches off the N72 approx. halfway between Mallow and Kanturk, which are located c.11-13km to the north-east and to the north-west, respectively. The River Blackwater flows approx. 335m to the north-east where the Roskeen Bridge on the N72 crosses the river.
- 1.2. The site area is given as approx. 0.3ha. It forms part of a larger existing field in agricultural use, which is triangular in shape. The adjoining site to the immediate south has previously been subdivided from the same field and has a two-storey house which is owned/occupied by the applicant's sister. It is a relatively level field with dense hedgerows forming its boundaries. The site fronts onto a minor local road (L1121). Development in the vicinity comprises farm buildings and sporadic one-off houses.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a single dwelling house, a detached garage and the installation of a wastewater treatment system. The stated floor area of the proposed dwelling is 274sq.m. and of the detached garage is 77.2sq.m (as originally submitted 3/11/20). It is a 2-storey dwelling with three bedrooms. The house would be served by a private wastewater treatment plant and a private well. It is stated that an 'EPA report with percolation test results' was also submitted, in respect of the proposed wastewater treatment plant, but this has not been provided by the planning authority. However, the submitted plans indicate that it would be a secondary treatment system with a polishing filter.
- 2.2. The submitted details include a letter from the applicant, a supplementary application form and a letter from the applicant's sister in support of the application. The applicant currently resides in France with his wife and children, where he has lived for 18 years. It is stated that he lived in the adjoining townland from 1976 to 1994 and that the former family home (now sold) is located 1.6km to the west. It is further stated that the site forms part of a landholding owned by the applicant's mother and that the site was transferred to him by his father several years ago.

## 3.0 Planning Authority Decision

### 3.1. Decision

On 26<sup>th</sup> July 2021, Cork County Council decided to grant permission for the proposed development subject to 14 conditions. These were mainly of a standard type. The following conditions were of note:

Cond. 2 Occupancy – 7 years permanent place of residence

Cond. 3 Retention and protection of trees and hedgerows on the boundaries except those specified trees whose removal is authorised by P.A. to facilitate the development.

Cond. 8 Sight distance of 80m in both directions from 3m back from road edge.

Cond. 10 SW drainage channel to be constructed under the access driveway at entrance and to discharge to a specially constructed percolation area.

Cond 12 Existing open drain inside fence to be piped with 300mm pipes under entrance.

Cond. 13 Foul drainage to be by means of a proprietary wastewater treatment system in accordance with EPA guidance.

Con. 14 Financial contribution under GDCS of €4,398.24.

### 3.2. Planning Authority Reports

#### Planning Reports

- 3.2.1. The Planner's initial report (05/01/21) noted the site is located within a Stronger Rural Area and made reference to the policy context for the proposal and the Area Engineer's report. It was submitted that the applicant had not adequately demonstrated that he complied with the rural generated housing need provided for in the County Development Plan. Further clarification was required. Improvements to the design and landscaping proposals to enable it to be integrated into the landscape were also required. It was noted that the site is located c.145m from the Blackwater River SAC and c.335m from the watercourse itself, which is to the north and east. A further watercourse was identified c.125m to the north-east. However, based on the

distance from the SAC, the fact that the site was not located within a flood zone and the limited scale and nature of the development, the need for Appropriate Assessment was ruled out.

Deferral was recommended. FI was sought in respect of documentary evidence in support of the applicant's local housing need, particularly in respect of the ownership or occupation of the original family home, attendance at primary and secondary schools in the area, when the applicant intends to return to Ireland to live permanently and whether the applicant owns the site. A Revised design and a revised landscaping plan were also requested.

3.2.2. Further information was submitted on 28<sup>th</sup> June 2021. The following points are of note:

- The applicant has demonstrated that he has 'historical and emotional family links to the area'. He attended primary and secondary school in Mallow and his father worked in Mallow.
- The applicant currently lives in France with his family, where he has resided for 18 -20 years. It is stated that the family intend to move back to Ireland in the Summer of 2022 but has no evidence has been included to support this.
- The original 'family home' (owned by grandparents and subsequently an aunt) has been sold but the field was gifted to his father. The site remains in the name of his mother but will be gifted to him subject to the grant of planning permission. His sister has already inherited a portion of the field from their father. She has built a house there, where she lives with her family.
- A revised design and landscaping plan were submitted with a slightly reduced floor area of 271sq.m and size of the garage reduced from 74m<sup>2</sup> to 52m<sup>2</sup>.

3.2.3. The Area Planner had no objection subject to conditions.

#### **Other Technical Reports**

3.2.4. The Area Engineer had no objections subject to conditions.

## **4.0 Planning History**

4.1.1. I have no record of any planning application or appeal relating to this site.

## 5.0 Policy Context

### 5.1. National Planning Framework

**National Policy Objective 15** Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

**National Policy Objective 19** makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

### 5.2. Sustainable Rural Housing Guidelines for Planning Authorities

These guidelines differentiate between Urban Generated Housing and Rural Generated Housing and directs urban generated housing to towns and cities and lands zoned for such development. Urban generated housing has been identified as development which is haphazard and piecemeal and gives rise to much greater public infrastructure costs. Rural generated housing includes sons and daughters of families living in rural areas and having grown up in the area and perhaps seeking to build their first home near the family place of residence.

### 5.3. Cork County Development Plan 2014

- 5.3.1. The proposed site is located within a designated 'Stronger Rural Area'. Rural housing objectives include RCI 4-4.

#### **RCI 4-4: Stronger Rural Area**

- 5.3.2. These areas are described (4.3.8) as having a traditionally strong agricultural base and stable population levels within a well-developed town and village structure.

Therefore, applicants must 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 in this regard, must demonstrate that they comply with one of the following categories of housing need:

- a) Farmers, their sons and daughters who wish to build a first home for their permanent occupation on the family farm.
- b) Persons taking over the ownership and running of a farm on a fulltime basis, who wish to build a first home on the farm for their permanent occupation, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.
- c) Persons who have spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation.
- d) Persons working fulltime in farming, forestry, inland waterway or marine related occupations, for a period of over three years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- e) Persons whose predominant occupation is farming/natural resource related, for a period of over three years, in the local rural area where they work and in which they propose to build a first home for their permanent occupation.
- f) Persons whose permanent employment is essential to the delivery of social and community services and intrinsically linked to a particular rural area for a period of over three consecutive years and who can demonstrate an economic and social need to live in the local rural area where they work, within which it is proposed to build a first home for their permanent occupation.
- g) Returning emigrants who spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation, who now wish to return to reside near other immediate family members (mother, father, brother, sister, son, daughter

or guardian), to care for elderly immediate family members, to work locally, or to retire.

#### **5.4. Kanturk-Mallow Municipal District Local Area Plan 2017**

- 5.4.1. The Kanturk-Mallow Municipal District straddles two Strategic Planning Areas, with differing objectives. Mallow and a wide hinterland area is within the Greater Cork Ring Strategic Planning Area which has experienced population growth significantly ahead of target. The focus here is on the development of Mallow (hub town) as a major centre of employment and population. Kanturk, Millstreet, Newmarket and Buttevant and the wider hinterland of these towns are located within the North Cork Strategic Planning Area. The focus here is to establish a balance between the future population growth of the area and the achievement of sufficient critical mass in the main towns to enable them to attract new investment/services etc.
- 5.4.2. The growth strategy seeks to increase the population of the district by 10,134 persons with a net requirement of 7,556 new houses. The majority of the growth is planned for the main towns, especially Mallow (4,552 new housing units), and in the 46 no. villages (1,361 units). Table 2.3 provides the targets for new housing units in each of the main towns outside of Mallow, i.e. Buttevant (298), Kanturk (141), Millstreet (177) and Newmarket (155). The targets for the Key villages of Banteer and Boherbue are also given as 200 and 150 units respectively.
- 5.4.3. The vision for Banteer Village (4.3) is to encourage the sustainable growth of the village and to build on its notable social and recreational infrastructure and attractive location and setting. The village is situated on the R579, just to the north of the mainline railway station and approx. 5km from Kanturk. It has a well-defined traditional streetscape and the LAP states that it has experienced reasonably strong residential growth in recent years, which is most likely due to its proximity to Kanturk, Mallow and the railway line. It is stated that the village has excellent potential for additional growth having regard to its location, accessibility and good community infrastructure. Further growth is identified as being needed to create the critical mass necessary to encourage commercial development. Provision is therefore made for lower density housing and serviced sites. Ample land is available within the development boundary to cater for future residential growth. Outside the

development boundary, the objective is to prevent sprawl and ensure a clear distinction between built-up areas and open countryside.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of the appeal may be summarised as follows:

- Local Rural Housing Need - The applicant has not demonstrated that he has a genuine rural generated housing need and has failed to show how he complies with any of the categories of housing need set out in RCI 4-4 of the Cork County Development Plan. The Supplementary Application Form confirms this point. The appellant can confirm that the land in question was rented by another family, and he does not recall the applicant residing in this locality for any period. Furthermore, he attended schools in Mallow and not in Banteer.
- Requirement to have resided in locality – It is asserted that the applicant has never resided in the local area as he and his family resided in Drumsligo, Mallow. He has not shown that he has, or ever had, ownership or occupation of what is referred to as the ‘family home’, which was owned by a man (Paddy Lehane) who married the applicant’s godmother. This dwelling is not the same one that was in his family ownership from the 1800s and occupied by his grandmother (or godmother). In any case, it was no longer in the ownership of the family when the applicant was born in 1976. Thus, there was no family home or landholding in this local area that was in his family’s ownership between 1976 and 1994, when the applicant claims to have resided in the locality. For clarity, there is no connection between the ‘gifted field’ (gifted by Nellie Lehane) and the claimed ‘family home’. Furthermore, the ‘family home’ was sold a few years following Paddy Lehane’s death (in 1991), but prior to that was occupied by another family.
- Non-compliance with RCI 4-4 – it is clear that the applicant does not comply with any of the categories under this policy objective, as he has not resided in the local area. The submissions have not been witnessed by a Clergy person,



a Lawyer, a Garda, a Peace Commissioner or a School Principal. It is submitted that the field in question (2ha) in the ownership of the applicant's mother is to be subdivided between the applicant and his 2 siblings, one of which has already built a house on her portion.

- Inconsistency in application of policy - The appellant is aware of several local people who have been refused planning permission to build a house on family lands due to failure to demonstrate compliance with RCI 4-4. These applicants have been advised to look at options within the village of Banteer. If the applicant wants to relocate to this area, there are several options available to him including sourcing a site within the village.
- Removal of hedgerow – the proposed development will result in the removal of a significant amount of established mature hedgerows with mature trees in order to achieve the sightlines required by condition 8. It should be noted that one entrance has already been provided to the applicant's sister's house which also involved the removal of such vegetation. How does this meet any sustainable planning objective?

## 6.2. Planning Authority Response

- 6.2.1. The planning authority responded to the grounds of appeal on the 27<sup>th</sup> August 2021. It was stated that the decision to grant subject to conditions was recommended having regard to the particulars of the proposed development and the policy context, the location, the nature and scale of the development, as well as the site context, the potential impacts and the internal/external submissions, including the Area Engineer's Report.

## 6.3. First party response

- 6.3.1. The response dated 20/09/21 stated that there were no further comments to make.

## 7.0 Planning Assessment

### 7.1. Introduction

- 7.1.1. I consider that the principal planning issues arising from the appeal are compliance with the rural settlement policy for the area and impact on the rural environment and adequacy of wastewater treatment. It is noted that the latter issue was not raised in the grounds of appeal and was not a matter for which the planning authority had any concerns. As such, the Board may consider it to be a new issue.

### 7.2. Rural Settlement Policy

- 7.2.1. The proposed development would be located in an unserved rural area. This is an area designated an 'Stronger Rural Area' in the Cork County Development Plan, an area that is characterised by a strong agricultural base, a stable population and a robust village network. In order to protect the quality of this rural environment, there is a basic requirement to demonstrate a genuine rural housing need to develop a house in such a location. Objective RCI 4-4 of the Cork County Development Plan sets out the eligibility criteria needing to be met by a prospective applicant within a Stronger Rural Area, which are set out at 5.3 above.
- 7.2.2. The applicant submits that he meets with eligibility criterion g) of Objective RCI 4-4, namely "a person who is currently living abroad but has spent a substantial period of their lives (i.e. over seven years), living in the local rural area in which he proposes to return home and to build a first home for his permanent occupation, in order to reside near other immediate family members (mother, father, brother, sister, son, daughter or guardian), to care for elderly immediate family members, to work locally, or to retire."
- 7.2.3. The information provided by the applicant indicates a historical connection with the area. It would appear that his ancestors had owned land in the vicinity of the site dating from the 1800s, and that an aunt (godmother) had married a local farmer and lived nearby until her death. The evidence indicates that the husband of this aunt, upon his death (1991) had gifted a 2ha holding to the applicant's mother (or father), and the appeal site forms part of this landholding, which is currently in the name of the applicant's mother. However, there is no evidence that the applicant has ever

resided in the locality. The primary and secondary schools attended by him are in Mallow and the address of the current owner (his mother) is also given as Drumsligo, Mallow, which is approx. 13km from the site.

- 7.2.4. It is considered that the applicant has not adequately demonstrated that he complies with any of the eligibility criteria set out in the policy RCI 4-4, as there is no evidence that he has lived in the local area. Furthermore, it is apparent that the applicant is not a farmer, is not taking over the running of a farm at this location, and does not work fulltime in farming, forestry, inland waterways or marine-related occupations. It is further noted that the applicant and his wife are employed in occupations which have no rural-generated basis, or any requirement to be located in this rural area, as it is stated that he is a Chef, and she is a 'Sales Executive'. Neither has any evidence been provided that they have relocated or will relocate to Ireland to live at the site permanently. Thus, there is no evidence in the information submitted that the applicant complies with any of the categories listed under RCI 4-4 and as such, he has not demonstrated a rural-generated housing need to be accommodated at this location.
- 7.2.5. The focus of the Kanturk-Mallow MDLAP is to strengthen and enhance the village and town structure by increasing the resident population within the development boundaries of these towns/villages, and thereby create the critical mass to attract new investment/employment opportunities. Banteer is designated as a Key Village with a new housing target of 200 units. The village has a strong central core with an attractive and historic streetscape and is accessible by a variety of modes of transport being on the R579 and has a station on the mainline railway route from Cork/Dublin (via Mallow) to Killarney/Tralee. The appeal site is located approx. 6.5km from Banteer and is within easy commuting distance of Mallow (13km) and Kanturk (11km). It is clear, therefore, that there are plenty of alternative locations in the general area.
- 7.2.6. It is further considered that the proposed development would be contrary to the Sustainable Rural Housing Guidelines for Planning Authorities, as the applicant does not have a genuine rural housing need to live in an area of the county where it is necessary to demonstrate such a need. Furthermore, it is noted that national planning policy as set out under the *National Planning Framework* published in February, 2018 includes the following:

- **NPO 15** – support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- **NPO 19** makes 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, it is policy to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area 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. In light of the assessment of the proposed development in terms of compliance with local settlement policy, it is clear that the appellant does not have any justification that would merit permitting the development of a house on this site. The area is not one which is suffering from population decline and is sited in close proximity to a wide range of urban settlements. As the applicant has not demonstrated any genuine housing need to live in the countryside at this location, it is considered that the proposal, if permitted would result in urban-generated housing in the countryside. The National Planning Framework objective of managing the growth of such areas to avoid over-development would essentially be contravened, when there are clearly viable alternatives in the smaller towns and settlements in the overall area. The proposal would, thus, be in conflict with the National Planning Framework.

### 7.3. **Impact on the rural environment**

7.3.1. The site is situated in an attractive rural landscape and the field within which the site is located is bounded by mature treelines on the roadside and along the northern boundary which enhance and contribute to the attractiveness of the area. The proposed development will introduce a new entrance which will necessitate the removal of part of the roadside boundary. However, the revised Site Layout Plan (28/06/21) which includes the landscaping plan, indicates that the existing boundary

is to be retained along the roadside except for the site of the proposed entrance. This plan does not, however, state clearly that the trees would be retained, merely that the ditch is to be lowered to 1 metre within the sight triangle. It is considered that should the Board be minded to grant permission, a condition should be attached requiring the retention and protection of the trees along the roadside boundary, (save for those that need to be removed to facilitate the entrance), during construction as a condition of any such permission.

#### **7.4. Adequacy of wastewater treatment**

- 7.4.1. The proposed development is to be serviced by means of a proprietary wastewater treatment plant with a polishing filter, which would be located to the rear (east) of the proposed house. As stated previously, the documentation forwarded by the planning authority did not include either the Area Engineer's reports or the Site Characterisation Form. I have been able to view the form on the P.A. website but not the technical reports.
- 7.4.2. It is noted that the planning reports indicate that the site is outside of the flood zone. This can be verified by viewing the OPW maps on floodmaps.ie. However, the site is quite close to the area around the Blackwater River, which is indicated as being at risk of flooding, being within 100 metres of this zone. At the time of my inspection (March 2022), the lands between the site and the River/SAC were flooded with substantial areas of surface water on either side of the local road. There was also evidence of ponding within the field that the site forms part of and to a lesser extent within the site itself. The topography of the area is such that ground levels fall away to the north and to the east towards the river. As noted previously, there is a small watercourse to the north of the site which appears to cross under the road near the northernmost extent of the agricultural field and flow along the boundary of the next field to the north-east towards the Blackwater to the east.
- 7.4.3. In light of the foregoing, and in the absence of a flood risk assessment for the site, particularly in respect of the location of the treatment plant and percolation/polishing filter area, I would be concerned about the viability of the proposed treatment system at this location as it would potentially pose a pollution risk. It is considered, therefore, that based on the information submitted to the Board, I am not satisfied that the site can be drained satisfactorily and would therefore be prejudicial to public health.

## 8.0 Appropriate Assessment

8.1.1. The site of the proposed development is located approx. 145m from the Blackwater River SAC but is approx. 335m from the watercourse itself, to the north and to the east. This SAC lies to the south of the N72 National Secondary Road and is located between the appeal site and the regional road. There is a further watercourse located at the northern end of the field within which the site is located, which is c.125m to the north of the appeal site. However, the planning authority considered that given the distance from the SAC itself and the fact that the site is not located within a flood zone, together with the limited scale and nature of the development, the need for Appropriate Assessment can be ruled out.

8.1.2. The appeal site is located outside of any designated European site and as such, no direct impacts will arise. However is located approx. 335m from the Blackwater River SAC which is the closest European site. The Blackwater River SAC (002170) is designated for the following

### Qualifying interests

Estuaries, Mudflats and sandflats, Perennial vegetation of stony banks,

Salicornia and other annuals colonising mud and sand, Atlantic salt meadows, Mediterranean salt meadows,

Old Sessile oak woods

Watercourses of plain to montane levels with Ranunculion fluitantis and Callitriche-Batrachion vegetation,

Alluvial forests,

Margaritifera margaritifera (Freshwater pearl mussel),

Austroptamobius pallipes (White Crayfish)

Petromyzon marinus (Sea Lamprey)

Lampetra planeri (Brook Lamprey)

Lampetra fluviatilis (River Lamprey)

Alosa fallax fallax (Twaiite Shad)

Salmo salar (Salmon)

Lutra lutra (Otter)

Trichomanes speciosum (Killarney Fern)

### Conservation objectives

To maintain or restore the favourable conservation status of habitats and species of community interest – specific attributes and targets are listed on the NPWS website in relation to each qualifying interest.

There is no known hydrological link to the SAC. There are no surface water drains or watercourses within the site and the closest watercourse is c.125 metres to the north. Given the small scale and nature of the development, the distances involved and the absence of any known hydrological link with this European site, it is considered that there is no likelihood of indirect impacts on the European site Blackwater River, having regard to its Conservation Objectives. It is considered, therefore, that Appropriate Assessment can be ruled out in respect of this European site having regard to its Conservation Objectives.

## **9.0 Environmental Impact Assessment**

- 9.1.1. The proposed development is for the construction of a single dwelling house, a garage and a private wastewater treatment system on a greenfield site in a rural area. Having regard to the nature, size and location of the proposed development, and to 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 and a screening determination is not required.

## **10.0 Recommendation**

- 10.1. I recommend that permission is refused in accordance with the following reasons and considerations.

## 11.0 Reasons and Considerations

1. Having regard to the location of the site within a Stronger Rural Area as designated in the Cork County Development Plan 2014 and the provisions of the Kanturk Mallow Municipal District Local Area Plan, and to National Policy Objective 19 of the National Planning Framework and the *Sustainable Rural Housing Guidelines for Planning Authorities* where it is the policy to facilitate genuine rural housing needs in accordance with the core principle of demonstrable economic or social need to live in a rural area, to avoid over-development of rural areas and to have regard to the viability of smaller towns and villages in facilitating the provision of single houses in the countryside, it is considered that the applicant has not demonstrated a genuine housing need to live in this local area as set out in the County Development Plan and the Board is not satisfied that his housing need could not be met within an established settlement. The proposed development, in the absence of any identified locally based need for the house, 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 and the viability of smaller rural settlements. The proposed development would, therefore, be contrary to national and local policy and to the proper planning and sustainable development of the area.
2. Having regard to the soil conditions and extensive ponding on and in the vicinity of the site, the Board is not satisfied, on the basis of the submissions made in connection with the application and appeal, that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment system with a polishing filter. The proposed development would, therefore, be prejudicial to public health.

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Mary Kennelly  
Senior Planning Inspector

12<sup>th</sup> April 2022